

INDIA INTERNATIONAL CONVENTION & EXHIBITION CENTRE LIMITED

International Competitive Bidding

SELECTION OF DEVELOPER FOR A HOTEL AT IICC, NEW DELHI

Request for Proposals

16 DECEMBER 2019

India International Convention & Exhibition Centre Limited

8th Floor, Tower-1, LIC, Jeevan Bharti Building,
Connaught Place New Delhi-110001, INDIA.

Disclaimer

1. This Request for Proposals document (“**RfP**”) is neither an agreement nor an offer by India International Convention & Exhibition Centre Limited (“**SPV**”) to the prospective Applicants or any other person. The purpose of this RfP is to provide information to the interested parties that may be useful to them in the formulation of their Proposal pursuant to this RfP.
2. The SPV does not make any representation or warranty as to the accuracy, reliability or completeness of the information in this RfP and it is not possible for the SPV to consider particular needs of each party who reads or uses this RfP. This RfP includes statements which reflect various assumptions and assessments arrived at by the SPV in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. Each prospective Applicant should conduct its own investigations and analyses and check the accuracy, reliability and completeness of the information provided in this RfP and obtain independent advice from appropriate sources.
3. The SPV will not have any liability to any prospective Applicant or any other person under any laws (including without limitation the law of contract or tort), the principles of equity, restitution or unjust enrichment or otherwise for any loss, expense or damage which may arise from or be incurred or suffered in connection with anything contained in this RfP, any matter deemed to form part of this RfP, the declaration of the Selected Applicant, the information supplied by or on behalf of the SPV or its employees, any consultants or otherwise arising in any way from the Selection Process. The SPV will also not be liable in any manner whether resulting from negligence or otherwise however caused arising from reliance of any Applicant upon any statements contained in this RfP.
4. The SPV will not be responsible for any delay in receiving the Proposals. The issuance of this RfP does not imply that the SPV is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, for the Project and the SPV reserves the right to accept/reject any or all of the Proposals submitted in response to this RfP at any stage without assigning any reasons whatsoever. The SPV also reserves the right to suspend or annul the Selection Process at any stage with intimation to all who have submitted Proposals.
5. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The SPV accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.
6. The SPV reserves the right to change/ modify/ amend any or all provisions of this RfP. Such revisions to the RfP / amended RfP will be made available on the official website for accessing the information related to this RfP: www.dmicdc.com (the “**Official Website**”) or the MSTC e-Bidding Portal: <http://www.mstcecommerce.com/auctionhome/iicc/index.jsp> (the “**MSTC e-Bidding Portal**”). Any reference to the RfP herein shall be deemed to be a reference to the RfP as may be revised by the SPV.

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Section 1 – Letter of Invitation

New Delhi

Date: 16 DECEMBER, 2019

1.1 Project Introduction

- 1.1.1 The exhibition and convention centre, Dwarka (“IICC”) is envisioned as a world-class, transit-oriented, mixed use district, providing one of the largest facilities of its kind in India and Asia. The IICC is planned to be developed at Sector 25, Dwarka, New Delhi, approximately 11 Kms from IGI Airport, and will be well-connected to metro and road links. The site is 89.72 Ha. in a well-developed area in the western end of Delhi adjoining the Millennium City of Gurgaon.

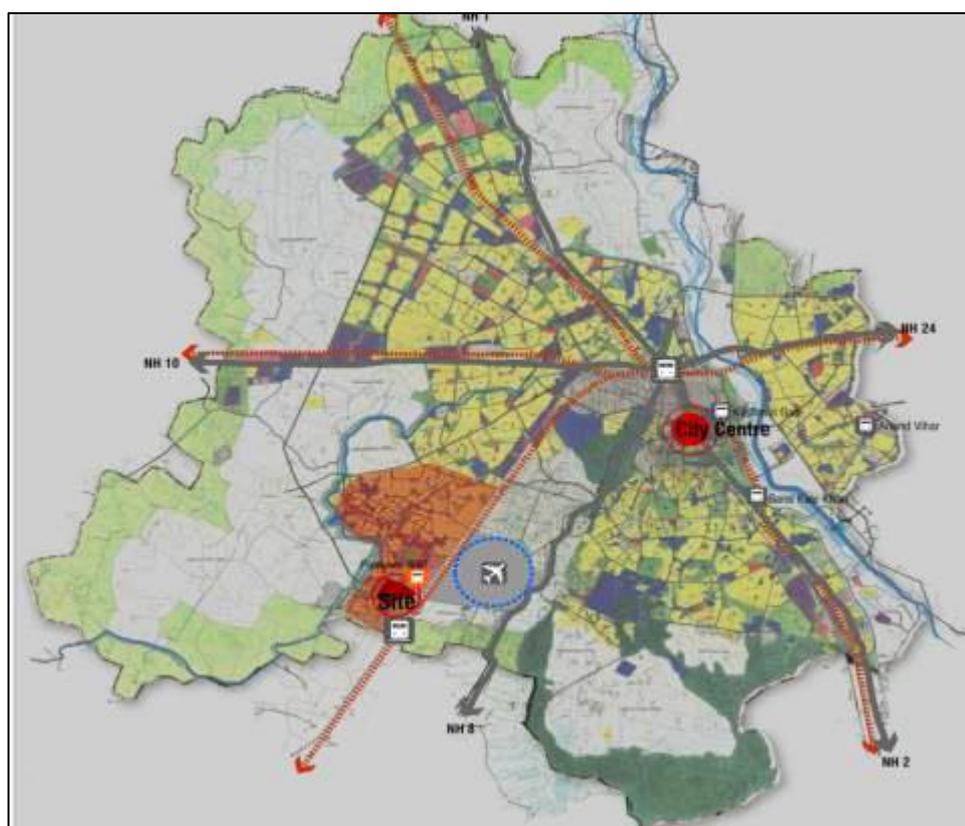


Fig. 1: Location map of IICC

- 1.1.2 The IICC is a flagship project of Government of India. The IICC is foreseen as an internationally recognized architectural icon with innovative design and novel green building features.
- 1.1.3 The IICC is intended to be launched as an international brand to promote and stimulate future growth and development. The IICC will be an integrated complex with a host of mutually beneficial facilities – exhibition halls, convention centre, arena, open exhibition spaces, banquet halls, auditoria, star hotels, food and beverage outlets, offices and retail services.
- 1.1.4 These components will have the ability to be utilized independently or in conjunction with each other, depending upon the nature of the event.

1.1.5 The IICC district is proposed to include approximately 300,000 sq. m. of covered exhibition space (240,000 sq. m. of indoor exhibition space, 60,000 sq. m. of foyer space) and 60,000 sq. m. of convention space, as well as 50,000 sq. m. of outdoor exhibition space. In addition, it is planned to contain a sports arena of approximately 50,000 sq. m., approximately 260,000 sq. m. of hotel space, and approximately 380,000 sq. m. of commercial space for retail, entertainment and class-A offices. Approximately 28,000 basement-level car-parking spaces are also proposed. The size and diversity of the IICC suggests that each area will have unique features that define both the challenges and the opportunity to stimulate investment and generate a desirable level of success.



Fig. 2: Layout concept of IICC as per indicative master plan

| IICC Features | | | |
|---------------|----------------------|---|---|
| A, B | Exhibition halls | H | Front grand foyer |
| C | Convention centre | F | Arena |
| D, E | Open exhibition area | G | Mixed use district (hotel, offices, retail, commercial, etc.) |

1.1.6 The SPV intends to develop the IICC in phases. The first phase involves the development of India International Convention & Expo Centre (“**IICC Phase 1**”), which shall comprise the following features (indicated at A, C and D in Fig. 2):

- (a) A convention centre of approximately 60,000 sq. m., and

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- (b) Closed exhibition area of approximately 60,000 sq. m. comprising 2 (two) exhibition halls and approximately 20,000 sq. m. of adjoining foyer.
- It also involves, *inter alia*, the development, engineering, financing, procurement, construction, operation and maintenance of the hotel that will form part of the ICC (the “**Project**”) on the Project Site (as defined in the Agreement):

| | |
|--------------------------------------|---|
| Plot Number | 9 |
| Maximum permissible ground coverage: | 43,658.3784 sq. feet (4,056.00 sq.m.) |
| Maximum Permissible Built-Up Area | 4,24,872.6608 sq. feet (39,472.00 sq.m.) |
| Core use: | Development of a 5-star hotel facility |
| Unit conversion | 1 sq. m. = 10.7639 sq. feet |

- 1.1.7 The SPV invites proposals to undertake the development, engineering, financing, procurement, construction, operation and maintenance of the Project, and such other obligations as set out in and in accordance with the Agreement.

1.2 Objectives

- 1.2.1 The objective of this RfP is to select a Developer for the Project.
- 1.2.2 The Developer will be selected as per the procedure described in this RfP.
- 1.2.3 The RfP includes the following documents:

SECTION 1: Letter of Invitation

SECTION 2: Instructions to Applicants

SECTION 3: Technical Proposal Submission Documents

SECTION 4: Draft Development Agreement

SECTION 5: Procedure for e-Bidding and e-Auction

- 1.3 All clarifications/ corrigenda will be published only on the Official Website, and the MSTC e-Bidding Portal.
- 1.4 Capitalised terms that are used but not defined herein shall, unless repugnant to the context in which they appear, have the meaning ascribed thereto in the Agreement.

Yours sincerely

Managing Director,
India International Convention & Exhibition Centre Limited.

Section 2 – Instructions to Applicants

2.1 Introduction

2.1.1 Applicants are advised that the SPV will select the Developer on the basis of an evaluation that will be conducted by the SPV in accordance with the selection process specified in this RfP (the “**Selection Process**”). Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the SPV’s decisions are without any right of appeal whatsoever.

2.1.2 The Applicants are invited to submit technical and financial proposals (collectively called as the “**Proposal**”) as specified in this RfP. The term “**Applicant**” refers to a single entity or the group of entities coming together as a consortium for the purpose of submitting a Proposal (“**Consortium**”). The Proposal will form the basis for signing the Agreement.

2.1.3 The Applicant shall submit the Proposal in the form and manner specified in this RfP. The Proposal shall be submitted as per the forms given in relevant sections herewith.

(i) The Selected Applicant shall be required to incorporate a special purpose company under the Companies Act, 2013 within 30 (thirty) days from the date of the LoA. This special purpose company (the “**Developer**”) shall be required to:

(a) Enter into a development agreement in the form specified in Section 4 of this RfP (the “**Agreement**”) with the SPV; and

(b) Have an office in the National Capital Region of Delhi.

(ii) The Developer shall undertake the development, engineering, financing, procurement, construction, operation and maintenance of the Project, and such other obligations as set out in and in accordance with the Agreement.

(iii) The land for the Project will be leased out to the Developer through and in accordance with the Agreement.

(iv) The term of the Agreement (“**Term**”) shall, subject to such extensions as may be effected pursuant to this RfP and/ or the Agreement, be for a period of 95 (ninety five) years from the date the Agreement is signed.

(a) The Developer shall achieve COD (as defined in the Agreement) within 5 (five) years from the date of signing of the Agreement:

Provided that the SPV may, at its discretion, grant the Developer extensions to the time limit to achieve the COD, subject to a maximum period of 2 (two) years. It is clarified that such extension will be subject to the payment of an additional fee, by the Developer to the SPV, calculated, for every day of delay, at the rate of 0.1% (zero point one per cent) of the amount equivalent to the Performance Security for the relevant Contract Year. Further, it is clarified that such extension will be in accordance with the terms of the Agreement;

(b) In the event that the SPV fails to procure the commissioning of IICC Phase 1 (to the extent not including the Project) by March 31, 2021, the Term and the scheduled date to achieve COD shall be extended in the manner set out in the Agreement.

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- (v) The Developer shall be liable to pay to the SPV the following amounts:
- (a) The lease premium at the rate of Lease Premium Per Square Foot for the Maximum Permissible Built-Up Area (“**Lease Premium**”).
- i. The manner of payment of the Lease Premium (including the instalments in which it is to be paid, and the schedule of payment of such instalments) is set out in the Agreement.
- Provided that in the event that the SPV fails to procure the commissioning of IICC Phase 1 (to the extent not including the Project) by March 31, 2021, the schedule of payment of the instalments of the Lease Premium shall stand revised in the manner set forth in the Agreement.
- ii. It is clarified that the Lease Premium is exclusive of all applicable taxes, and the Developer shall be liable to pay to the SPV the Lease Premium and the applicable taxes thereon.
- (b) A common area maintenance cost per square metre of Maximum Permissible Built-Up Area of the Project on a monthly basis commencing from the COD until the expiry of the Term or the termination of the Agreement, whichever is earlier (the “**Common Area Maintenance Charge**”). The Common Area Maintenance Charge payable in a Contract Year shall be:
- i. communicated by the SPV to the Developer, for the Contract Year in which COD occurs, on or before the date of occurrence of COD, and for every subsequent Contract Year at the beginning of such Contract Year;
- ii. subject to reconciliation based on the audited books of account of the SPV with respect to such Contract Year, and if, pursuant to such reconciliation, it is determined that there is any amount due to or from the Developer in respect of the Common Area Maintenance Charge for the said Contract Year, the same will be adjusted against the subsequent payment(s) due from the Developer to the SPV in respect of the Common Area Maintenance Charge.
- (c) Charges on a monthly basis towards the services provided by the SPV, as described in detail in Schedule C (*Services Provision*) of the Agreement (the “**Centralised Services Charges**”). The Centralised Services Charges shall be:
- i. payable commencing from the COD until the expiry of the Term or the termination of the Agreement; and
- ii. determined and communicated to the Developer by the SPV, for the Contract Year in which COD occurs on the date of occurrence of COD and for every subsequent Contract Year, prior to the commencement of each Contract Year, subject to the condition that the Centralised Services Charges so determined shall be comparable with prevalent market prices for equivalent services.
- (vi) For the purpose of this RfP, the term ‘Contract Year’ means:

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- (a) For the year in which the Agreement is signed, the period commencing on such date and expiring on the immediately succeeding March 31;
 - (b) Thereafter, the period commencing on April 1 and expiring on the immediately succeeding March 31; and
 - (c) For the calendar year in which the Term is set to expire, the period commencing on April 1 and expiring on the last day of the Term.
- 2.1.4 Applicants should familiarize themselves with local conditions, including conditions at the Project Site (as defined in the Agreement), and take them into account in preparing their Proposals.
- 2.1.5 The SPV will timely provide, at no cost to the Developer, relevant project data and reports related to the Project available with the SPV. However, for avoidance of doubt, it is hereby clarified that the data/ information provided under the RfP, or to be provided by the SPV to the Applicants later, is only indicative and solely for the purposes of rendering assistance to the Applicants towards preparation of their Proposals. The Applicants are hereby advised to undertake their own due diligence (to their complete satisfaction) before placing reliance on any such data/ information furnished or to be provided later by the SPV and/ or any of its consultants.
- 2.1.6 Applicants shall bear all costs associated with the preparation and submission of their Proposals, and their participation in the Selection Process, including but not limited to postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by SPV or any other costs incurred in connection with or relating to its Proposal. The SPV is not bound to accept any Proposal, and reserves the right to annul the Selection Process at any time prior to declaration of the Selected Applicant, without thereby incurring any liability to the Applicants.
- 2.1.7 The SPV requires that the Applicant/ Developer avoid conflicts with other assignments or its own interests, and act without any consideration for future work.
- 2.1.8 It is the SPV's policy to require that the Applicants/ Developer observe the highest standard of ethics during the Selection Process and execution of the Agreement. In pursuance of this policy, the SPV will:
- (i) Reject the Proposal if it is found that the Applicant has engaged in corrupt practice or fraudulent activities in competing for the Agreement;
 - (ii) Declare an Applicant ineligible, either indefinitely or for a stated period of time, to participate in any bid processes conducted by the SPV if it at any time determines that the Applicant/ Developer has engaged in corrupt or fraudulent practices in competing for and in executing the Agreement.
- 2.1.9 Applicants (including all members of the Consortium, as the case may be) are required to follow the highest level of work ethics. If any Applicant or its member has a Conflict of Interest or indulges in Prohibited Practices, the Applicant is liable to be disqualified. Further, in the event any entity has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of the PDD, it would not be eligible to submit a Proposal either by itself or through its Associate.
- 2.1.10 Arbitration: If any dispute or difference of any kind whatsoever arises in connection with or arising out of or relating to or under this RfP, the parties to the dispute shall promptly and in
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good faith negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of 30 (thirty) days from the date on which the above-mentioned dispute or difference arises, such dispute or difference shall be finally settled by arbitration. The arbitral tribunal shall consist of a sole arbitrator appointed by mutual agreement of the parties. In case of failure of the parties to mutually agree on the name of a sole arbitrator, the arbitral tribunal shall consist of 3 (three) arbitrators. Each party shall appoint 1 (one) arbitrator and the 2 (two) arbitrators so appointed shall jointly appoint the third arbitrator. The seat of arbitration shall be New Delhi, India and the arbitration shall be conducted in the English language. The Arbitration and Conciliation Act, 1996 (with all amendments) shall govern the arbitral proceedings. The award rendered by the arbitral tribunal shall be final and binding on the parties.

2.1.11 The Proposal shall be valid for a period of not less than 180 (one hundred and eighty) days from the Proposal due date (the “**PDD**”).

2.1.12 Brief description of the Selection Process: The SPV has adopted a two-stage Selection Process for evaluating the Proposals.

- (i) The Proposal shall comprise the technical proposal (the “**Technical Proposal**”) and financial proposal (“**Financial Proposal**”), which will be evaluated as specified in this RfP.
- (ii) The Financially Qualified Applicants (as determined pursuant to the evaluation of the Proposals as set out in this RfP) will be invited to participate in an electronic auction to be conducted in the manner set forth in Section 5 (“**Procedure for e-Bidding and e-Auction**”).
- (iii) The Financially Qualified Applicant who quotes the highest Lease Premium Per Square Foot pursuant to the e-Auction will be the Selected Applicant.

2.1.13 Number of Proposals: No Applicant or its Associate shall submit more than 1 (one) Proposal. An Applicant applying individually or as a member of a Consortium shall not be entitled to submit another Proposal either individually or as a member of any other Consortium, as the case may be.

2.1.14 Visit to the SPV and verification of information: Applicants are encouraged to submit their respective Proposals after visiting the office of the SPV or its delegates as the case may be, and ascertaining for themselves the availability of documents and other data with the SPV, applicable law and regulations or any other matter considered relevant by them.

2.1.15 Right to reject any or all Proposals:

- (i) Notwithstanding anything contained in this RfP, the SPV reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.
- (ii) Without prejudice to the generality of above, the SPV reserves the right to reject any Proposal if:
 - (a) At any time, a material misrepresentation is made or discovered; or
 - (b) The Applicant does not provide, within the time specified by the SPV, the supplemental information sought by the SPV for evaluation of the Proposal.

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- (iii) Such misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If such disqualification/ rejection occurs after the Proposals have been opened and the highest ranked Applicant gets disqualified/ rejected, then the SPV reserves the right to consider the next highest ranked Applicant (subject to such Applicant matching the Lease Premium Per Square Foot quoted by the highest ranked Applicant), or take any other measure as may be deemed fit in the sole discretion of the SPV, including annulment of the Selection Process.

2.1.16 Acknowledgement by Applicant

- (i) It shall be deemed that by submitting the Proposal, the Applicant has:
- (a) Made a complete and careful examination of the RfP;
 - (b) Received all relevant information requested from the SPV;
 - (c) Accepted the risk of inadequacy, error or mistake in the information provided in the RfP or furnished by or on behalf of the SPV;
 - (d) Satisfied itself about all matters, things and information, including matters hereinabove, necessary and required for submitting an informed Proposal and performance of all of its obligations thereunder;
 - (e) Acknowledged that it does not have a Conflict of Interest; and
 - (f) Agreed to be bound by the undertaking provided by it under and in terms hereof.
- (ii) The SPV and/ or its advisors/ consultants shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RfP or the Selection Process, including any error or mistake therein or in any information or data given by the SPV and/ or its consultant.

2.1.17 RfP Processing Fee: The RfP submissions shall be accompanied by an electronic payment of INR 1,00,000/- (Indian Rupees One Lakh only) plus Goods and Services Tax at 18% (eighteen percent), as a non-refundable RfP processing fee (the “**RfP Processing Fee**”), in the manner set forth in Section 5 (“**Procedure for e-Bidding and e-Auction**”). Proposals unaccompanied by the aforesaid RfP Processing Fee shall be liable to be rejected by the SPV.

2.2 Clarification and amendment of RfP

2.2.1 Applicants may seek clarification on this RfP within 1 (one) week of the date of issuance of this RfP. Any request for clarification must be sent by standard electronic means (PDF or word file)/ fax to the SPV’s office addressed to:

Managing Director,
India International Convention & Exhibition Centre Limited,
8th Floor, Tower-1, LIC,
Jeevan Bharti Building,
Connaught Place New Delhi-110001, INDIA

Email: iiccdwarka@gmail.com

The SPV will endeavour to provide clarifications in relation to the queries not later than 2 (two) weeks prior to the PDD. The SPV will post the clarifications on the Official Website and the MSTC e-Bidding Portal.

- 2.2.2 At any time before the submission of Proposals, the SPV may, for any reason, whether at its own initiative or in response to a clarification requested by an Applicant, modify the RfP by an amendment. All amendments/ corrigenda will be posted only on the Official Website and the MSTC e-Bidding Portal. In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, the SPV may at its discretion extend the PDD.
- 2.2.3 Date of pre-proposal meeting and venue is mentioned in the data sheet set out at Clause 2.14.2. Applicants willing to attend the pre-proposal meeting should inform the SPV beforehand in writing and email. The maximum number of participants from Applicants who chose to attend the pre-proposal meeting shall not be more than 2 (two) per Applicant. The representatives of the Applicants attending the pre-proposal meeting shall carry a letter of authorisation duly signed by the Authorized Representative of the respective Applicant.

2.3 Bid security

- 2.3.1 Each Applicant shall be required to submit a bid security ("**Bid Security**"), in the manner set forth in Section 5 ("**Procedure for e-Bidding and e-Auction**"), for the sum of Rs. [], at the time of RfP submission. Proposals received without the specified Bid Security will be summarily rejected.
- 2.3.2 The SPV will not be liable to pay any interest on the Bid Security. Bid Security of unsuccessful Applicants shall be returned, without any interest, within 2 (two) months of signing the Agreement with the Developer or when the Selection Process is cancelled by the SPV. The Selected Applicant's Bid Security shall be returned, without any interest upon the Developer signing the Agreement and furnishing an irrevocable and unconditional guarantee from a bank for a sum equivalent to 7.5% (seven point five percent) of the Lease Premium (the "**Performance Security**") in accordance with the provisions of the RfP and Agreement.
- 2.3.3 The SPV will be entitled to forfeit and appropriate the Bid Security as loss and damage payable to the SPV in regard to the RfP, without prejudice to any other right or remedy available to the SPV, under the following conditions:
- (i) If any Applicant engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as envisaged under this RfP (including the draft Development Agreement attached herewith);
 - (ii) If any Applicant withdraws its Proposal during the period of its validity as specified in this RfP and as extended by the SPV from time to time;
 - (iii) In the case of the Selected Applicant, if the Developer fails to sign the Agreement, or provide the Performance Security within the specified time limit (it is clarified that the Applicant shall not be obliged to extend the Bid Security nor will there be any claims on or forfeiture of the Bid Security should the Agreement remain unsigned for no fault of the Applicant/ Developer); or
 - (iv) If the Applicant commits any breach of terms of this RfP or is found to have made a false representation to the SPV.

The Performance Security shall be furnished by the Developer to the SPV prior to the date of signing of the Agreement.

2.4 Eligibility of Applicants

- 2.4.1 The Applicant, for participation in the Selection Process, may be a single entity or a Consortium.
- 2.4.2 An Applicant or a member of Consortium may either be a sole proprietorship firm/ a partnership firm/ a limited liability partnership/ a company incorporated under the Companies Act 1956/2013, or a body corporate incorporated under the applicable laws of its origin.
- 2.4.3 An Applicant shall not have a conflict of interest that may affect the Selection Process (the “**Conflict of Interest**”). Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the SPV will forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to the SPV for, *inter alia*, the time, cost and effort of the SPV including consideration of such Applicant’s Proposal, without prejudice to any other right or remedy that may be available to the SPV hereunder or otherwise.
- 2.4.4 An Applicant shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- (i) The Applicant, its member or Associate thereof (or any constituent thereof) and any other Applicant, or member of any other Consortium or Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest:

Provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Applicant, its member or Associate (or any shareholder thereof having a shareholding of more than 5% (five percent) of the paid up and subscribed share capital of such Applicant, member or Associate thereof (or any constituent thereof), as the case may be) in the other Applicant, member or Associate thereof (or constituent thereof) is less than 5% (five percent) of the subscribed and paid up equity share capital thereof:

Provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013.

For the purposes of this clause, indirect shareholding held through one or more intermediate persons shall be computed as follows:

- (a) Where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and
- (b) Subject always to sub-clause (a) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis:

Provided, however, that no such shareholding shall be reckoned under this sub-clause (b) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) A constituent of such Applicant is also a constituent of another Applicant; or

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- (iii) Such Applicant, its member, or its Associate receives or has received any direct or indirect subsidy or grant from any other Applicant, its member, or its Associate; or
 - (iv) Such Applicant has the same legal representative for purposes of this Proposal as any other Applicant; or
 - (v) Such Applicant has a relationship with another Applicant, directly or through common third parties, that puts them in a position to have access to each other's information about, or to influence the Proposal of either or each of the other Applicant.

For purposes of this RfP, "Associate" means, in relation to the Applicant, or its members, a person who controls, is controlled by, or is under the common control with such Applicant or member.

As used in this definition, the expression "control" has the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or any statutory re-enactment thereof.

- 2.4.5 Any person appointed to provide consultancy or other services in respect of the Project that are outside the scope of the Developer's obligations under the Agreement, and their Associates, shall be disqualified from submitting a Proposal, and any breach of this obligation shall be construed as Conflict of Interest:

Provided that the restriction herein shall not apply after a period of 2 (two) years from the completion of such services.

- 2.4.6 Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on date of the PDD would not be eligible to submit a Proposal either by itself or through its Associate.
- 2.4.7 An Applicant or its Associate should have, during the last 3 (three) years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate.
- 2.4.8 In case the Applicant is a Consortium, it shall, comply with the following additional requirements:

- (i) Number of members in the Consortium shall not exceed 3 (three);
- (ii) Subject to the provisions of sub-clause (i) above, the Proposal should contain the information required for each member of the Consortium;
- (iii) Members of the Consortium shall nominate one member as the lead member (the "**Lead Member**"), who shall, in the event of such Consortium being declared the Selected Applicant, hold at least 51% (fifty one percent) of the shareholding in the Developer for the duration set forth in the Agreement. The nomination(s) shall be supported by a power of attorney, executed as per applicable law and in the format specified in this RfP, signed by all the remaining members of the Consortium.

The duties, responsibilities and powers of such Lead Member shall be specifically included in the Jt. Bidding Agreement. It is expected that the Lead Member would be

authorized to incur liabilities and to receive instructions for and on behalf of the Consortium;

- (iv) No change in the composition of the Consortium will be permitted by the SPV during the Selection Process.
- (v) Members of the Consortium shall enter into a legally binding Joint Bidding Agreement (the “**Jt. Bidding Agreement**”) for the purpose of submitting a Proposal. The Jt. Bidding Agreement to be submitted along with the Proposal, shall, *inter alia*:
 - (a) Set out a clear outline/ brief description of the proposed roles and responsibilities of the individual members; and
 - (b) Include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Developer until the date the Agreement is signed.

Except as provided under this RfP, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the SPV.

2.5 Preparation of Proposal

- 2.5.1 Applicants are requested to submit their Proposals in the English language and strictly in the formats provided in this RfP. The SPV will evaluate only those Proposals that are received in the specified forms and are complete in all respects.
- 2.5.2
 - (i) In preparing their Proposals, Applicants are expected to thoroughly examine the RfP. Material deficiencies in providing the information requested may result in rejection of a Proposal.
 - (ii) The qualification criteria prescribed in Clause 2.7.3 (the “**Qualification Criteria**”) shall be the basis of the evaluation of the Applicants’ further participation in the Selection Process.
- 2.5.3 The Technical Proposal shall have two components, **Technical Proposal Submission Form** and **Technical Proposal Submission Documents**, both of which will be submitted on MSTC e-Bidding Portal, in the manner set forth in this RfP Document.
- 2.5.4 Failure to comply with the requirements spelt out above shall render the Proposal liable to be rejected.
- 2.5.5 Technical Proposal shall be signed by the person authorised to sign the Proposal on behalf of the Applicant (the “**Authorized Representative**”). The Authorized Representative shall initial each page in blue ink. In case of printed and published documents, only the cover shall be initialled. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialled by the Authorized Representative. The Authorized Representative shall be as detailed below:
 - (i) The proprietor, in case of a sole proprietorship;
 - (ii) A partner, in case of a partnership firm and/ or a limited liability partnership; or
 - (iii) A duly authorised person holding the power of attorney, in case of a company and/ or corporation.

In case of a Consortium, the Authorized Representative shall be the proprietor, partner or holder of the power of attorney, as the case may be, of the Lead Member.

Power of attorney in favour of the Authorized Representative should be executed as per applicable law and in the format specified herein.

2.5.6 Applicants should note the PDD specified in data sheet set out at Clauses 2.14.1 and 2.14.2. Except as specifically provided in this RfP, no supplementary material will be entertained by the SPV, and that evaluation will be carried out only on the basis of Proposal received by the closing time of the PDD. Applicants will ordinarily not be asked to provide additional material, information or documents subsequent to the PDD, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the SPV reserves its right to seek clarifications/ verifications in case the Proposal is non-responsive (lacking in details) on any aspects for fairly accessing the Proposal received.

2.5.7 The Proposal shall be accompanied by a self-certified copy of the Jt. Bidding Agreement in case of a Consortium, in the format provided in this RfP, signed by all members confirming the following therein:

- (i) Date and place of signing; and
- (ii) Purpose of Consortium (which must include the details of the Project for which the Consortium has been formed).

The furnishing of this Jt. Bidding Agreement to the SPV shall not in any manner prejudice the provisions in the Agreement relating to joint and several liability of the members of the Consortium.

2.5.8 The power of attorney for both Authorized Representative (except in case of a sole proprietorship, where a copy of the registration certificate of such sole proprietorship may be submitted) and Lead Member, as the case may be, shall also be furnished as per the formats provided in the RfP.

2.5.9 The Technical Proposal should provide the following information:

- (i) The net-worth in the format provided in this RfP so as to meet the Qualification Criteria.
- (ii) The financial/ business plan of the Applicant with regard to the Project (in the format specified in this RfP) including a detailed profit and loss budget for the Term.
- (iii) The audited financial statements of the Applicant/ Lead Member for the last 3 (three) financial years preceding the PDD. The financial statements should be certified by the statutory auditor of the Applicant/ Lead Member.

2.5.10 Financial Proposal: The Financial Proposal shall quote an amount in INR per square foot of Maximum Permissible Built-Up Area (“**Lease Premium Per Square Foot**”).

- (i) While preparing the Financial Proposal, Applicants are expected to take into account the various requirements and conditions stipulated in this RfP.
- (ii) While submitting the Financial Proposal, or quoting the Lease Premium **Per Square Foot** as part of the e-Auction, as the case may be, the Applicant shall ensure that Financial Proposal and/ or Lease Premium **Per Square Foot**, as the case may be:

- (a) Shall be without any condition attached or subject to any assumption, and shall be final and binding.

In case any assumption or condition is indicated in the Financial Proposal, the entire Proposal shall be considered non-responsive and liable to be rejected.

- (b) Takes into account all the expenses and tax liabilities and cost of insurance specified in the draft Development Agreement, levies and other impositions applicable under the prevailing law on the Developer.

2.5.11 The Financial Proposal should be submitted as per the format prescribed in this RfP.

2.5.12 The Lease Premium Per Square Foot shall be quoted in Indian Rupees only.

2.5.13 Applicants must conduct their due diligence about the tax implications and SPV will not be liable for any incident.

2.5.14 The Proposals must remain valid for not less than a period of 180 (one hundred and eighty) days from the PDD. The SPV will make its best effort to complete the signing of the Agreement within this period. If the SPV wishes to extend the validity period of the Proposals, it may ask the Applicants to extend the validity of their Proposals for a stated period. Applicants who do not agree have the right not to extend the validity of their Proposals, subject to such Proposals thereafter being rejected by the SPV.

2.6 Submission, receipt and opening of Proposals

2.6.1 The Proposals shall be filled and submitted online at the MSTC e-Bidding Portal and in accordance with the procedure laid down in Section 5.

- (i) The details of the registration process to be followed by the Applicants, and process of preparation and submission of online Proposals are laid down in Section 5.
- (ii) Proposals received in the hardcopy will not be accepted by the SPV.
- (iii) Proposals should be submitted online on or prior to the time and date mentioned in Clause 2.14.2.
- (iv) It is the responsibility of the Applicants to submit the Proposals on the MSTC e-Bidding Portal prior to the time and date specified in Clause 2.14.2. The SPV shall not be responsible for any delay due to any of the technical/ server issues.

2.6.2 Technical Proposal Submission Documents to include Documents 3A, 3B, 3C, 3D, 3E and 3F, as prescribed in Section 3 of this RfP Document.

2.6.3 Proposal submissions:

| Content | Forms |
|--------------------|--------------------------|
| Technical Proposal | Forms 3A, 3B, 3C, 3E, 3F |
| Financial Proposal | Section 4 |

2.6.4 Address for communication:

Managing Director,
India International Convention & Exhibition Centre Limited,
8th Floor, Tower-1, LIC,
Jeevan Bharti Building,
Connaught Place New Delhi-110001, INDIA
Email: iiccdwarka@gmail.com

- 2.6.5 Any Proposal uploaded after the closing time for submission of Proposals will not be considered.
- 2.6.6 After the PDD, the Technical Proposal shall be downloaded/ opened by the Evaluation Committee to evaluate whether the Applicants meet the Qualification Criteria.
- 2.6.7 After the Proposal submission and until the Selected Applicant is declared, if any Applicant wishes to contact the SPV on any matter related to its Proposal, it should do so in writing at the address indicated in Clause 2.6.4. Any effort by the Applicant to influence the SPV during the Selection Process (including, *inter alia*, the evaluation and/ or comparison of the Proposal, and the declaration of the Selected Applicant) may result in the rejection of the Applicant's Proposal.

2.7 Proposal evaluation

- 2.7.1 As part of the evaluation, the Technical Proposals shall be checked to evaluate whether the Applicant meets the Qualification Criteria. The Financial Proposals of only those Applicants whose Technical Proposals are found to meet the Qualification Criteria would be further evaluated in accordance with the criteria set out in this RfP.
- 2.7.2 Prior to evaluation of Proposals, the SPV will determine whether each Proposal is responsive to the requirements of the RfP. The SPV may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal will be considered responsive at each stage only if:

Technical Proposal

- (i) It is received in the form specified in this RfP;
- (ii) It is received by the PDD including any extension thereof in terms hereof;
- (iii) It is accompanied by the RfP Processing Fee and Bid Security as specified in this RfP;
- (iv) It is signed and marked as stipulated in this RfP;
- (v) It is accompanied by Jt. Bidding Agreement, if applicable, and the power of attorney (for the Authorized Representative (except in case of a sole proprietorship, where a copy of the registration certificate may be submitted) and, if applicable, the Lead Member);
- (vi) It does not contain any condition or qualification; and
- (vii) It is not non-responsive in terms hereof.

Financial Proposal

- (i) It is received in the form specified in this RfP;
- (ii) It is received by the PDD including any extension thereof in terms hereof;

-
- (iii) It is signed and marked as stipulated in this RfP;
 - (iv) It does not contain any condition or qualification; and
 - (v) It is not non-responsive in terms hereof.

The SPV reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal will be entertained by the SPV in respect of such Proposals after the PDD. However, the SPV reserves the right to seek clarifications from the Applicant during the evaluation process. The SPV will subsequently examine and evaluate Proposals in accordance with this RfP.

- 2.7.3 The Applicant, or, Lead Member in case of a Consortium, or the Associate(s) of the Applicant or Lead Member, as the case may be, should, as of the PDD have a minimum net-worth of Rs 500,00,00,000/- (Rupees Five Hundred Crore only) in the preceding financial year before the PDD as per the audited financial report.

For the purpose of this Clause, minimum net-worth shall be the summation of the subscribed and paid up share capital and the reserves and surplus, less the revaluation reserves, miscellaneous expenditure not written off, deferred revenue expenditure, and deficit in the Profit & Loss Account, if any. In the case the Applicant, member or Associate (as the case may be) is a fund, this would be minimum unleveraged investible funds.

- 2.7.4 The evaluation committee (“**Evaluation Committee**”) appointed by the SPV will carry out the evaluation of the Technical Proposals.

- 2.7.5 Those Applicants who meet the Qualification Criteria shall be deemed as “**Technically Qualified Applicants**”. The SPV shall open the Financial Proposal of only the Technically Qualified Applicants. The Technically Qualified Applicants shall be ranked on the basis of the descending Lease Premium Per Square Foot quoted by them. It is clarified that two or more Technically Qualified Applicants with same quoted Lease Premium Per Square Foot will have the same rank. In case the number of Technically Qualified Applicants is more than 3 (three), the Proposal of the Applicant with the lowest rank (clarified as Proposal of the Applicant with the lowest quoted Lease Premium Per Square Foot) shall be rejected and such Applicant shall not be invited to participate in the e-Auction. Remaining Applicants will be referred to as the “**Financially Qualified Applicants**”.

- 2.7.6 The SPV will notify and invite the Financially Qualified Applicants, indicating the date and time for the e-Auction. The notification will be sent by electronic mail.

- (i) During the e-Auction, the Financially Qualified Applicants will submit their quotations for the Lease Premium Per Square Foot, subject to the condition that such quoted Lease Premium Per Square Foot shall not be less than the highest amount of Lease Premium Per Square Foot quoted in the Financial Proposals of the Financially Qualified Applicants.
- (ii) The Financially Qualified Applicant quoting the highest Lease Premium Per Square Foot pursuant to the e-Auction will be considered the selected Applicant (the “**Selected Applicant**”) and will be invited to incorporate the Developer to sign the Agreement. The Applicant quoting the next highest Lease Premium Per Square Foot shall be kept in reserve.

2.8 Negotiation

The Selected Applicant may, if necessary, be invited for negotiations. The negotiations shall not be for reducing or increasing the Lease Premium, but will be for re-confirming the obligations of the Developer under this RfP and the Agreement. Issues such as understanding of the Project, and the financial/ business plan of the Applicant with regard to the Project shall be discussed during the negotiations. In case the Selected Applicant fails to reconfirm its commitment, the SPV reserve the right to designate the next highest ranked Applicant as the Selected Applicant (subject to the next highest ranked Applicant matching the Lease Premium Per Square Foot quoted by the highest ranked Applicant) and invite it for negotiations.

2.9 Declaration of Selected Applicant

- 2.9.1 After selection, a Letter of Award (the “**LoA**”) will be issued, in duplicate, by the SPV to the Selected Applicant and the Selected Applicant shall, within 7 (seven) days of the receipt of the LoA, sign and return the duplicate copy of the LoA in acknowledgement thereof. In the event the duplicate copy of the LoA duly signed by the Selected Applicant is not received by the stipulated date, the SPV may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the SPV on account of failure of the Selected Applicant to acknowledge the LoA, and the next highest ranked Applicant may be considered (subject to the next highest ranked Applicant matching the Lease Premium Per Square Foot quoted by the highest ranked Applicant).
- 2.9.2 Execution of Agreement: After acknowledgement of the LoA and furnishing of the Performance Security by the Developer, the Developer and SPV shall execute the Agreement with the SPV within 30 (thirty) days from the date of issuance of LoA. The Selected Applicant and/ or the Developer shall not be entitled to seek any deviation in the Agreement.
- 2.9.3 Commencement of Project: The Developer’s obligations relating to the Project shall commence on the date prescribed therein. If the Selected Applicant fails to incorporate the special purpose company in the manner and within the period specified in Clause 2.1.3(i), or the Developer fails to sign the Agreement or commence compliance with its obligations as specified in the Agreement, the SPV may invite the next highest ranked Applicant for contract signing (subject to the next highest ranked Applicant matching the Lease Premium Per Square Foot quoted by the highest ranked Applicant). In such an event, the Bid Security/ Performance Security, as the case may be, of the first ranked Applicant shall be liable to be forfeited by the SPV.

2.10 Confidentiality

Information relating to evaluation of Proposals and recommendations concerning declaration of the Selected Applicant shall not be disclosed to the Applicants who submitted Proposals or to other persons not officially concerned with the process until the issuance of the LoA.

2.11 Fraud and corrupt practices

- 2.11.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RfP, the SPV will reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “**Prohibited Practices**”) in respect of the Selection Process. In such an event, the SPV will, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security, as mutually agreed genuine pre-estimated compensation and damages payable to the SPV for, *inter alia*, time, cost and effort of the SPV, in regard to the RfP, including consideration and evaluation of such Applicant’s Proposal.

2.11.2 Without prejudice to the rights of the SPV under Clause 2.11.1, and the rights and remedies which the SPV may have under the LoA or the Agreement, if an Applicant or the Developer, as the case may be, is found by the SPV to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practice during the Selection Process, or after the issue of the LoA or the execution of the Agreement, such Applicant or the Developer shall not be eligible to participate in any tender or RfP issued by the SPV during a period of 2 (two) years from the date such Applicant or Developer, as the case may be, is found by the SPV to have directly or through an agent, engaged or indulged in any Prohibited Practice.

2.11.3 For the purposes of this RfP, the following terms shall have the meaning hereinafter respectively assigned to them:

- (i) “Corrupt practice” means (a) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the SPV who is or has been associated in any manner, directly or indirectly with the Selection Process or the LoA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the SPV, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (b) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LoA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LoA or the Agreement, who at any time has been or is a legal, financial or technical consultant/ adviser of the SPV in relation to any matter concerning the Project;
- (ii) “Fraudulent practice” means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (iii) “Coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the Selection Process;
- (iv) “Undesirable practice” means (a) establishing contact with any person connected with or employed or engaged by the SPV with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (b) having a Conflict of Interest; and
- (v) “Restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

2.12 Pre-Proposal meeting

A pre-Proposal meeting of the Applicants will be convened at the designated date, time and place. A maximum of 2 (two) representatives of each Applicant will be allowed to participate on production of an authorisation letter duly signed by the Authorized Representative of the respective the Applicant.

2.13 Miscellaneous

2.13.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at New Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Selection Process.

2.13.2 The SPV, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:

- (i) Suspend and/ or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
- (ii) Consult with any Applicant in order to receive clarification or further information;
- (iii) Retain any information and/ or evidence submitted to the SPV by, on behalf of and/ or in relation to any Applicant; and/ or
- (iv) Independently verify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.

2.13.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the SPV, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

2.13.4 All documents and other information provided by the SPV or submitted by an Applicant to the SPV shall remain or become the property of the SPV. Applicants and the Developer, as the case may be, are to treat all information as strictly confidential. The SPV will not return any Proposal or any information related thereto. All information collected, analysed, processed or in whatever manner provided by the Developer to the SPV in relation to the Project shall be the property of the SPV.

2.13.5 The SPV reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

2.14 Tentative schedule for Selection Process

2.14.1 The SPV will endeavour to follow the following schedule:

| | |
|--|-------------------|
| Date of issue of RfP | 16 December, 2019 |
| Last date for receiving queries/ requests for clarifications | 13 January, 2020 |
| Pre-Proposal meeting | 15 January, 2020 |
| SPV's response to queries/ requests for clarifications | 21 January, 2020 |
| PDD | 14 April, 2020 |
| Date of e-Auction | 30 April, 2020 |

Section 3 – Technical Proposal: Standard Forms

Document 3A: Format for Joint Bidding Agreement (in case of Consortium)

Document 3B: Format for power of attorney for Authorized Representative

Document 3C: Format for power of attorney for Lead Member of Consortium

Form 3D: Technical Proposal Submission Letter

Document 3E: Qualification Criteria

Document 3F: Financial/ Business Plan for the Project

Document 3A: Format for Jt. Bidding Agreement (in case of Consortium)

(To be executed on stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT (the “**Agreement**”) is entered into on this the _____ day of _____, 2019.

AMONGST

1. _____, a _____ [incorporated/ registered] under the _____ and having its registered office at _____ (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND,

2. _____, a _____ [incorporated/ registered] under the _____ and having its registered office at _____ (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND,

3. _____, a _____ [incorporated/ registered] under the _____ and having its registered office at _____ (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns);

The above mentioned parties of the [FIRST, SECOND AND THIRD] PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”.

WHEREAS,

- A. India International Convention & Exhibition Centre Limited, a company incorporated under the Companies Act, 2013, having its registered office at _____ (hereinafter referred to as the “**SPV**”) has invited proposals by its Request for Proposal No. _____ dated _____ (the “**RfP**”) for appointment of a Developer (the “**Developer**”) for an office at IICC, New Delhi (the “**Project**”).
- B. The Parties are interested in jointly bidding for implementing the Project as a Consortium and in accordance with the terms and conditions of the RfP and other bid documents issued in respect of the Project.
- C. It is a necessary condition under the RfP that the members of the Consortium shall enter into a joint bidding agreement and furnish a copy thereof with the proposal.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and interpretations:

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RfP.

2. Consortium:

- (a) The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Selection Process.

-
- (b) The Parties hereby undertake to participate in the Selection Process only through this Consortium and not individually and/ or through any other consortium constituted for the Project, either directly or indirectly or through any of their Associates.

3. Covenants:

The Parties hereby undertake that in the event the Consortium is declared the Selected Applicant, the Parties shall incorporate a special purpose company under the Companies Act, 2013 within 30 (thirty) days of the date of the LoA. This special purpose company (the “**Developer**”) shall enter into a development agreement with the SPV (“**Development Agreement**”) for performing all obligations as the Developer in terms of the Development Agreement. The Developer should have an office in National Capital Region.

4. Role of the Parties:

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the member in charge of the Consortium (“**Lead Member**”) and shall:
- (i) Have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Selection Process and until the date the Development Agreement is signed; and
 - (ii) Hold at least 51% (fifty one percent) of the shareholding in the Developer for the duration set forth in the Development Agreement;
- (b) Party of the Second Part shall be _____; and
- (c) Party of the Third Part shall be _____.

5. Joint and several liability:

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RfP and the Development Agreement until the date on which the Developer and SPV sign the Development Agreement.

6. Lead Member:

Without prejudice to the joint and severe liability of all the Parties, each Party agrees that it shall exercise all rights and remedies under the RfP through the Lead Member and the SPV shall be entitled to deal with such Lead Member as the representative of the Consortium. Each Party agrees and acknowledges that:

- (a) Any decision (including without limitation, any waiver or consent), action, omission, communication or notice of the Lead Member on any matters related to the RfP shall be deemed to have been on its behalf and shall be binding on it. The SPV shall be entitled to rely upon any such action, decision or communication from the Lead Member;
- (b) Any notice, communication, information or documents to be provided to the Developer shall be delivered to the authorized representative of the Developer (as designated pursuant to the Development Agreement) and any such notice, communication, information or documents shall be deemed to have been delivered to all the Parties.

7. Representations of the Parties:

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Party is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) Require any consent or approval not already obtained;
 - (ii) Violate any applicable law presently in effect and having applicability to it;
 - (iii) Violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) Violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) Create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) This Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) There is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination:

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the date the Development Agreement is signed, in case the Consortium is declared the Selected Applicant.

However, in case the Consortium is not the Selected Applicant, the Agreement will stand terminated upon intimation by the SPV that the Consortium has not been selected and upon return of the Bid Security by the SPV.

9. Miscellaneous:

-
- (a) This Joint Bidding Agreement shall be governed by laws of India.
- (b) The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the SPV.

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

SIGNED, SEALED & DELIVERED

For and on behalf of

LEAD MEMBER by:

[Signature]

[Name]

[Designation]

[Address]

SIGNED, SEALED & DELIVERED

For and on behalf of SECOND PART by:

[Signature]

[Name]

[Designation]

[Address]

SIGNED, SEALED & DELIVERED

For and on behalf of THIRD PART by:

[Signature]

[Name]

[Designation]

[Address]

In presence of:

1. [Signature, name and address of witness]
2. [Signature, name and address of witness]

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal or official seal of all members.
2. The Joint Bidding Agreement should attach a copy of the extract of the registration certificate, charter documents or documents such as resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the power of attorney has been executed.

Document 3B: Format for Power of Attorney for Authorized Representative

Know all men by these presents, we, [name of organization and address of the registered office] do hereby constitute, nominate, appoint and authorise Mr. / Ms. [name], son/ daughter/ wife of [name], and presently residing at [address], who is presently employed with/ retained by us and holding the position of [designation] as our true and lawful attorney (hereinafter referred to as the “**Authorized Representative**”), with power to sub- delegate to any person, to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our proposal for and selection as developer of an office at IICC, New Delhi (“**Project**”) in response to the Request for Proposal No. _____ dated _____ issued by India International Convention & Exhibition Centre Limited (the “**SPV**”), including but not limited to signing and submitting all applications, proposals and other documents and writings, accepting the Letter of Award, participating in pre-proposal and other conferences, responding to queries, submitting information/ responses to the SPV, representing us in all matters before the SPV, signing and executing all undertakings consequent to acceptance of our proposal, and generally dealing with the SPV in all matters in connection with or relating to or arising out of our proposal for the said Project and/or upon award thereof to us until the entering into of the development agreement with the SPV.

AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorized Representative pursuant to and in exercise of the powers conferred by this power of attorney and that all acts, deeds and things done by our said Authorized Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS, WHEREOF WE, [name of organization], THE ABOVE-NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS [date in words] DAY OF [month] [year in ‘YYYY’ format].

For [name and registered address of organization]
[Signature]
[Name]
[Designation]

Witnesses:

1. [Signature, name and address of witness]
2. [Signature, name and address of witness]

Accepted

Signature]
[Name]
[Designation]
[Address]

Notes:

1. The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under seal affixed in accordance with the required procedure.
2. Wherever required, the Applicant should submit for verification the extract of the charter documents or other documents such as a resolution/ power of attorney in favour of the person executing this power of attorney for the delegation of power hereunder on behalf of the Applicant.

-
3. For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by Applicants from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

Document 3C: Format for Power of Attorney for Lead Member of Consortium

(To be executed by all members of the Consortium)

Whereas the India International Convention & Exhibition Centre Limited (the “**SPV**”) has invited proposals from empanelled applicants for selection of a developer for an office at IICC, New Delhi (the “**Project**”).

And whereas, [name of Party], [name of Party] and [name of Party] are desirous of coming together as a consortium (the “**Consortium**”) to submit a proposal for the implementation of the Project in accordance with the terms and conditions of the Request for Proposal No. _____ dated _____ and other connected documents in respect of the Project, and

And whereas, it is necessary for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s proposal for implementation of the Project.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS,

We, M/s [name of Party] having our registered office at [registered address] and M/s. [name of Party], having our registered office at [registered address], (hereinafter collectively referred to as the “**Principals**”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s [name of Lead Member], having its registered office at [registered address], being one of the members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “**Attorney**”) and hereby irrevocably authorise the Attorney (with power to sub- delegate to any person) to conduct all business for and on behalf of the Consortium and any one of us during the Selection Process and, in the event the Consortium is declared the Selected Applicant, until the date the Development Agreement is signed, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its proposal for implementing the Project, including but not limited to signing and submission of all applications, proposals and other documents and writings, accepting the Letter of Award, participating in pre-proposal and other conferences, responding to queries, submitting information/ responses to the SPV, signing and executing undertakings consequent to acceptance of the proposal of the Consortium and generally dealing with the SPV in all matters in connection with or relating to or arising out of the Consortium’s proposal for implementing the Project and/ or upon award thereof until the date the Development Agreement is signed.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this power of attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS [date in words] DAY OF [month] [year in ‘YYYY’ format].

SIGNED, SEALED & DELIVERED

For and on behalf of SECOND MEMBER by:

[Signature]

[Name]

[Designation]

[Address]

SIGNED, SEALED & DELIVERED

For and on behalf of THIRD MEMBER by:

[Signature]

[Name]

[Designation]

[Address]

In presence of:

1. [Signature, name and address of witness]
2. [Signature, name and address of witness]

Notes:

1. The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal or official seal of all members.
2. Wherever required, the members of the Consortium should submit for verification the extract(s) of the charter documents and or documents such as a resolution/ power of attorney in favour of the person executing this power of attorney for the delegation of power hereunder.
3. For a power of attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by Applicants from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

Form 3D: Technical Proposal Submission Form

[Location, Date]

To

[Designation],

India International Convention & Exhibition Centre Limited,
Room No. 452A, Ministry of Commerce & Industry, DIPP,
Udyog Bhawan, New Delhi, India, 110 011.

RfP No. _____ dated _____ for selection of a developer for an office at IICC, New Delhi

Dear Sir,

With reference to your RfP Document No. _____ dated _____, we, having examined all relevant documents and understood their contents, hereby submit our Technical Proposal in respect of the development of an office at IICC, New Delhi ("**Project**"). The Proposal is unconditional and unqualified.

We are submitting our Proposal as [sole Applicant/ Consortium comprising [insert a list with full name and address of each member]].

If negotiations are held during the period of validity of the Proposal, we undertake to negotiate in accordance with the RfP. Our Proposal is binding upon us, subject only to the modifications resulting from technical discussions in accordance with the RfP.

We understand you are not bound to accept any Proposal you receive. Further:

1. We acknowledge that the SPV will be relying on the information provided in the Proposal and the documents accompanying the Proposal for selection of the Developer, and we certify that all information provided in the Proposal and in the supporting documents is true and correct, nothing has been omitted which renders such information misleading; and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Selected Applicant for the aforesaid Project.
3. We shall make available to the SPV any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
4. We acknowledge the right of the SPV to reject our Proposal without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. We certify that in the last 3 (three) years, we, or any of our Associates, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against us, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. We declare that:
 - (a) We have examined and have no reservations to the RfP, including any addenda/ amendments/ corrigenda issued by the SPV;

-
- (b) We do not have any conflict of interest in accordance with the terms of the RfP;
- (c) We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in the RfP, in respect of any tender or request for proposals issued by or any agreement entered into with the SPV or any other public sector enterprise or any government, Central or State; and
- (d) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to declare the Selected Applicant, without incurring any liability to the Applicants.
8. We declare that we, or any of our Associates, are not submitting any other proposal for selection as Developer, either as a member of any other Consortium or otherwise.
9. We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to implement the Project or which relates to a grave offence that outrages the moral sense of the community.
10. We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a court of law for any offence committed by us or by any of our Associates. We further certify that neither we nor any of our members have been barred by the central government, any state government, a statutory body or any public sector undertaking, as the case may be, from participating in any project or bid, and that any such bar, if any, does not subsist as on the date of this RfP.
11. We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/ managers/ employees.
12. We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the SPV in connection with the selection of Developer or in connection with the Selection Process itself in respect of the above mentioned Project.
13. We agree and understand that the proposal is subject to the provisions of the RfP. In no case, shall we have any claim or right of whatsoever nature if we are not declared the Selected Applicant or our proposal is not opened or rejected.
14. In the event of our being declared the Selected Applicant, we agree to incorporate a special purpose company under the Companies Act, 2013 within 30 (thirty) days of the date of the LoA. This special purpose company shall enter into a development agreement with the SPV in accordance with the agreement prescribed in the RfP. We agree not to seek any changes in the aforesaid form, and agree to abide by the same. We also agree that this special purpose company shall have an office in the National Capital Region of Delhi.
15. We acknowledge that qualification in the Selection Process will be based on the credentials submitted herewith, and, accordingly, undertake to abide by the obligations set out in the Development Agreement with respect to Change in Ownership.

-
16. We have studied the RfP and all other documents carefully. We understand that except to the extent as expressly set forth in the development agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the SPV or in respect of any matter arising out of or concerning or relating to the selection process, including the declaration of the Selected Applicant.
 17. The Financial Proposal is being submitted separately. This Technical Proposal read with the Financial Proposal shall be binding on us.
 18. We agree and undertake to abide by all the terms and conditions of the RfP.

We remain,
Yours sincerely,

Signature of Authorized Representative
[In full and initials]:
Name and Title of Signatory:
Name of Applicant/ Lead Member:
Address:
(Name and seal of the Applicant/ Lead Member)

Document 3E: Qualification Criteria

Using the format below, provide information for meeting the Qualification Criteria:

| Net-worth in Financial Year 2018-19 |
|--|
| [in figures] [in words] |

Certificate from the Statutory Auditor

This is to certify that [name of entity] [registered address] has the net-worth shown above.

[Name of Authorized Signatory, Designation]

[Name of auditor]

[Signature of authorized signatory]

[Seal of auditor]

Note:

1. In case the Applicant does not have a statutory auditor, it may provide the certificate from practicing Chartered Accountant.
2. For the purpose of evaluation of applicants, Rs.68 (Rupees Sixty Eight) per USD shall be considered as the applicable currency conversion rate. In case of any other currency the same shall first be converted to USD as on the date 60 (sixty) days prior to the PDD and the amount so derived in USD shall be converted into Rupees at the aforesaid rate. The conversion rate of such currency shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

Document 3F: Financial/ Business Plan for the Project

An editable Microsoft Excel model (with workable links and without any password protection) containing the following shall be submitted as part of the Technical Proposal:-

- (a) Revenue projections for the Term;
- (b) Breakup of revenue from different sources;
- (c) Construction and operation cost projections; and
- (d) Breakup of estimated costs into relevant heads.

Section 4 – Draft Development Agreement

Refer “Attachment A_ Draft Development Agreement”

Section 5 – Procedure for e-Bidding and e-Auction

A dedicated e-Bidding Portal has been created by MSTC at <http://www.mstcecommerce.com/auctionhome/iicc/index.jsp> (“MSTC e-Bidding Portal”)

Settings

1. Applicants are required to use a computer with Windows XP (service pack 3 or above)/Windows 7/8/10.
2. Applicants are required to open the portal using Internet Explorer browser.
3. Applicants will be required to have Java 32 bit (x86) latest version installed in their computers. In case more than one version is installed, only the latest 32 bit version has to be retained, other have to be removed. Java can be downloaded from <http://www.oracle.com/technetwork/java/javase/downloads/jre8-downloads-2133155.html>

DO NOT DOWNLOAD 64 Bit version

4. Applicants will be required to have a Class 3 signing type Digital Signature (in the form of USB pen drive) issued by a Certified Authority of Government of India. Detailed list of Certified Authority is available at http://www.cca.gov.in/cca/?q=licensed_ca.html.

Registration

1. Any Applicant interested in participation is required to go to the above-mentioned portal and click on the Register link.
2. On clicking the link, Applicant will be prompted to select Register for e-Bidding of IICC events.
3. On the page that appears a KYC form will have to be filled by the Applicant giving their details.
4. Once the form is filled up, the Applicant is required to click on the ‘Submit’ button to submit the form.
5. Once the form is submitted the Applicant will receive an email on their registered email address, prompting them to submit KYC documents and fee in MSTC e-Mail.

The following documents will have to be submitted:

- Self-attested Income Tax PAN Card of Company
 - Self-attested Income Tax PAN Card of Authorized Representative.
 - Copy of email confirmation Letter received from MSTC after successful completion of on-line registration and containing Applicant registration details of the Applicant.
 - Cancelled cheque of the company or RTGS Mandate Form duly filled in and verified by Applicant’s Banker. RTGS mandate is available at <https://www.mstcecommerce.com/auctionhome/RenderFileGeneralAuctions.jsp?file=RTGS-Mandate-Form.pdf>.
 - A non-refundable registration fee of Rs 10,000/- plus applicable tax paid online through http://www.mstcecommerce.com/auctionhome/e-Payment_deact.jsp. Applicants can access this link through the username and password created by them while filling the KYC form above.
6. Applicants will be required to send these documents along with fee details to mstcnro@mstcindia.co.in, with the subject, “IICC Registration”. Once the documents and fee are submitted with MSTC, the Applicant’s account will be activated in two working days from receipt of the documents.

Submission of Fees through e-Payment

1. After the account has been activated, Applicant has to login in the portal with their username and password.

-
2. After the login the Applicant will see an option for e-Payment.
 3. The Applicant has to click on e-Payment, select the event number.
 4. Select the event from the drop down, select the payment type (RfP Processing Fee or Bid Security), the amount will be displayed. The Applicant can pay the amount using Net Banking or RTGS/NEFT. **If paying through Net banking, please ensure that address on the top of the browser has https.** i.e. <https://www.mstcecommerce.com>
 5. Applicants are required to make separate payments for each type of payment as per the RfP document.
 6. It may be noted that in case Applicant makes a common payment the same may not be authorized by the system and will only be refunded after the completion of RfP and e-auction. (In such cases the Applicant may be required to make the payment twice for getting access.)

Submission of Proposals

1. To submit a Proposal, Applicant must register Digital Signature of the Authorized Representative (as defined in the RfP Document). To register Digital Signature, click on 'Register DSC'. On the box that appears, select the 'Digital Signature' and click on 'OK'.
2. Then Applicant has to click on 'Click for Live Events' button on the Home page.
3. For participating in RfP, Applicant must select 'Proposal Submission', and to participate in e-Auction Applicant has to click on 'e-Auction'.
4. On clicking 'Proposal Submission', the event number will be displayed. Click on the event number to proceed to 'Proposal Submission Screen'.
5. In the Proposal Submission Screen, Applicant will see 'Accept Terms & Conditions', 'Technical Proposal Submission Form', 'Financial Proposal' and 'Technical Proposal Submission Documents'.
6. The first step towards submitting the Proposal is 'Accept Terms & Conditions' on the left side. Click on 'Accept Terms & Conditions' and fill the form given therein. Conditions with agree have to be necessarily agreed, while in the conditions with empty remarks field Applicant can give their comments.
7. After the 'Accept Terms & Conditions' are saved, click on 'Technical Proposal Submission Documents' on the top.
8. Once the Applicant selects from above, they will be required to upload Technical Proposal Submission Documents for the said event, in the format as prescribed in Section 3 of the RfP Document. A list of previously uploaded files will be visible at the bottom of the screen. To revise a document please select the same from the dropdown and upload the new document. Applicants can upload one document against each selection, document can be of any size. Only PDF documents can be uploaded.
9. After the documents have been uploaded, the Applicant can proceed to saving the Technical Proposal Submission Form and Financial Proposal fields. To fill 'Technical Proposal Submission Form' click on Accept Technical Proposal Submission Form and submit the form therein by clicking on 'Save' button.
10. Once Technical Proposal Submission Form terms are saved, proceed with submitting the Financial Proposal, here the Applicant has to input the Lease Premium Per Square Foot as per the RfP terms and conditions.
11. After the documents have been uploaded, click on 'Final Submit' to finally submit the Proposal. In case of any amendments after submission, click on 'Delete Bid' button to delete the 'Technical Proposal Submission Form' and Financial Proposal and resubmit the same. **The Applicant should also note that Proposal will be considered as submitted if and only if the Applicant has made such submission through the "Final Submission" button. Only such Proposals will be opened which have been finally submitted. It is further clarified that saving of the Financial Proposal without final submission will be treated as non-submission of Proposal.**

e- Auction:

12. The Applicants who qualify for e-auction as per rules stipulated in the RFP document will be intimated about their qualification for electronic auction through email. It shall be the sole responsibility of the Applicant to regularly check its email. MSTC / IICC will not be responsible for non-receipt of email by the Applicant and its consequences.
 13. E-auction is the process of inviting binding Lease Premium Per Square Foot (**“Final Financial Proposal”**) from Qualified Applicants through internet for the purpose of determination of the Selected Applicant. During this process, the Qualified Applicant will be able to submit its Final Financial Proposal as many times it wishes. The Qualified Applicant will remain anonymous to other Qualified Applicants participating in the electronic auction process as well as to MSTC / IICC. The Qualified Applicants will be able to see the prevailing highest Final Financial Proposal, but the name of such Qualified Applicant at any point of time will not be displayed. The Qualified Applicant shall have to put its Final Financial Proposal above the displayed highest Final Financial Proposal to become the highest Qualified Applicant. The electronic auction process will have a scheduled start and close time which will be displayed on screen. A Qualified Applicant will be able to put its Final Financial Proposal after the start of bid time and till the close time of electronic auction. The current server time (IST) will also be displayed on the screen. In the event a bid is received during the last 8 (eight) minutes before the scheduled close time of electronic auction, the close time of electronic auction will be automatically extended by 8 (eight) minutes from the last received Final Financial Proposal time to give equal opportunity to all other Qualified Applicants. This process of auto extension will continue till there is a period of 8 (eight) minutes during which no Final Financial Proposals are received.
 14. For example, assuming that the initial scheduled close time for a particular electronic auction is 1:00 pm and a Final Financial Proposal is received at 12:55 pm, the scheduled close time shall be revised to 1:03 pm. Again if a Final Financial Proposal is received at 1:01 pm, the scheduled close time shall be revised to 1:09 pm and so on. In the event that there is no further Final Financial Proposal received till 1:09 pm, the electronic auction will close at 1:09 pm. The revised close time will be displayed on screen and Qualified Applicants should keep refreshing its webpage to get the latest information.
 15. The above example is only illustrative and meant for guidance only.
 16. During the electronic auction, Qualified Applicants shall be required to sign their Proposals with their respective digital signature certificate (DSC).
-

DRAFT DEVELOPMENT AGREEMENT

BETWEEN

INDIA INTERNATIONAL CONVENTION & EXHIBITION CENTRE LIMITED

AND

[•]

FOR

DEVELOPMENT OF A HOTEL AT ICC, NEW DELHI

DATED [•]

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The Maximum Permissible Built-Up Area as set out above supersedes any other number or dimension of the plot contained in the Urban Design Guideline (UDG) handbook.

- F.** The Selected Applicant has, in accordance with the RfP and LOA, promoted and incorporated a special purpose company (the “**Developer**”) under the provisions of the Companies Act 2013 to enter into this Agreement for undertaking, *inter alia*, the obligations of development, engineering, financing, procurement, construction, operation and maintenance of the Project, and to fulfill the obligations of the Developer pursuant to the LOA, and has requested the SPV to accept the Developer as the entity which shall undertake and perform the aforementioned obligations.
- G.** The SPV has accordingly agreed to enter into this Agreement with the Developer, subject to and on the terms and conditions set forth hereinafter, and for a total period of 95 (ninety five) years (the “**Term**”).

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

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:

- (a) “**Affected Party**” has the meaning set out in Clause 9.1;
- (b) “**Applicable Law**” mean all laws brought into force and effect by a Government Authority, 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;
- (c) “**Applicable Permits**” mean all clearances, licences, permits, authorizations, no-objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Law in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement, an indicative list of which is set out in Schedule F (Approvals);
- (d) “**Centralized Services Charges**” has the meaning set out in Clause 11.1 (c);
- (e) “**Change in Law**” means the occurrence of any of the following after the PDD:
 - (i) the enactment of any new Indian law;
 - (ii) the repeal, modification or re-enactment of any existing Indian law;
 - (iii) the commencement of any Indian law which has not entered into effect until the PDD; or
 - (iv) 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 PDD.
- (f) “**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 the aggregate shareholding of (i) [the lead member {*in case the Selected Applicant is a consortium*} / or the Selected Applicant {*in case the selected applicant is a sole bidder*} to decline below 51% (fifty one percent) in the Developer prior to second anniversary of the COD; and (ii) the member(s) whose credentials have been relied upon for the purpose of the RfP {*in case the Selected Applicant is a consortium*} to decline below 26% (twenty six percent) in the Developer, prior to the second anniversary of the COD. 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 Developer;
- (g) “**Change of Scope**” has the meaning set out in Clause 12.1;

- (h) **“Change of Scope Notice”** has the meaning set out in Clause 12.2;
- (i) **“Change of Scope Order”** has the meaning set out in Clause 12.2;
- (j) **“COD”** or **“Commercial Operations Date”** shall have the meaning set out in Clause 3.1;
- (k) **“Common Area Maintenance Charge”** shall have the meaning set out in Clause 11.1 (b);
- (l) **“Layout Plan”** means current master plan of the Project Site, as attached in Schedule B (Project Site). This is indicative in nature and SPV reserves the right to make changes;
- (m) **“Contractor”** means the person or persons, as the case may be, with whom the Developer has entered into any agreement for construction, 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 Developer;
- (n) **“Contract Year”** means:
 - (i) For the year in which the Agreement is signed, the period commencing on such date and expiring on the immediately succeeding March 31;
 - (ii) Thereafter, the period commencing on April 1 and expiring on the immediately succeeding March 31; and
 - (iii) For the calendar year in which the Term is set to expire, the period commencing on April 1 and expiring on the last day of the Term or the Termination of this Agreement.
- (o) **“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:
 - (i) 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;
 - (ii) Not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement;
- (p) **“Developer”** has the meaning attributed thereto in the array of Parties hereinabove;
- (q) **“Developer Default”** means the occurrence of any of the events set out in Clause 13.1;
- (r) **“Due Date”** has the meaning set out in Clause 17.3;
- (s) **“Dispute”** has the meaning set out in Clause 15.1;
- (t) **“Divestment Requirements”** have the meaning set out in Clause 14.1;

- (u) “**Encumbrances**” mean 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;
- (v) “**Extension Fee**” has the meaning set out in Clause 5.1;
- (w) “**FAR**” means Floor Area Ratio;
- (x) “**Financial Closure**” has the meaning set out in Clause 4.2(e);
- (y) “**Financing Documents**” has the meaning set out in Clause 4.2 (e);
- (z) “**Force Majeure**” or “**Force Majeure Event**” has the meaning set out in Clause 9.1;
- (aa) “**Good Industry Practices**” mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced developer 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 Developer in accordance with this Agreement, Applicable Law and Applicable Permits in reliable, safe, economical and efficient manner;
- (bb) “**Government Authority**” means any governmental or statutory authority, government department, agency, commission, board, tribunal or court or other entity authorized to make or interpret or adjudicate upon Applicable Law or pass directions, having or purporting to have jurisdiction over the Project or the Parties, or any state, municipality, district or other subdivision thereof (including, any stock exchange or any self-regulatory organization established under Applicable Law);
- (cc) “**IICC**” has the meaning set out in Recital A;
- (dd) “**IICC Phase 1**” means development of two exhibition halls, one convention center and trunk infrastructure (including Services as mentioned in Schedule C of this Agreement);
- (ee) “**IICC Phase 1 Completion**” means the date on which the SPV declares completion of IICC Phase 1;
- (ff) “**IICC Site**” has the meaning set out in Recital A;
- (gg) “**Indemnified Party**” has the meaning set out in Clause 10.2;
- (hh) “**Indemnifying Party**” has the meaning set out in Clause 10.2;
- (ii) “**Lease**” has the meaning set out in Clause 2.1;
- (jj) “**LOA**” has the meaning set out in Recital C;
- (kk) “**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;
- (ll) “**Mandated Development Requirements**” has the meaning set out in Schedule D;

- (mm) “**Maximum Permissible Built-Up Area**” has the meaning set out in Recital E. For clarity, it shall not include parking and services below the ground level;
- (nn) “**O&M Experience**” means the operations and management experience to be exhibited by the Developer for the purposes of undertaking the Project, namely, experience of operating and managing at least 500 (five hundred) rooms in 1 (one) or more properties in hotels rated 4 (four) stars and above in India or overseas, continuously for a period of 3 (three) years in the 10 (ten) years immediately preceding March 31, 2019. It is clarified that the classification for hotels developed by the Ministry of Tourism, Government of India or equivalent international standards will be relied upon for identifying rating of the hotel(s);
- (oo) “**PDD**” means the last date for submitting proposals pursuant to and in accordance with the provisions of the RfP;
- (pp) “**Performance Security**” has the meaning set out in Clause 8.1;
- (qq) “**Planned Built-Up Area**” means the entire area of the ‘above ground construction’ including common areas as per the approved building plan prepared by the Developer;
- (rr) “**Project**” has the meaning set out in Recital B;
- (ss) “**Project Site**” has the meaning set out in Recital E and more specifically detailed in Schedule B (Project Site);
- (tt) “**Project Agreements**” means this Agreement, any Sub-Contract and any other agreements or contracts that may be entered into by the Developer with any person in connection with matters relating to, arising out of or incidental to the Project;
- (uu) “**Selected Applicant**” has the meaning set out in Recital C;
- (vv) “**SPV**” has the meaning attributed thereto in the array of Parties hereinabove;
- (ww) “**SPV Default**” means the occurrence of any of the events set out in Clause 13.2;
- (xx) “**Sub-Contracts**” mean any agreements that may be entered into by the Developer with any person or persons in connection with matters relating to, arising out of, or incidental to the Project, as described in Clause 5.4;
- (yy) “**Taxes**” means any Indian taxes including goods and service tax, local taxes, cess and any impost or surcharge of a 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 Authority, 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;
- (zz) “**Term**” has the meaning set in Recital G;
- (aaa) “**Termination**” means the expiry or termination of this Agreement and the Lease hereunder;

- (bbb) “**Termination Notice**” means a communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement; and
- (ccc) “**Vesting Certificate**” has the meaning set out in Clause 14.2.

1.2 Interpretation

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 2 (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 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 New 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, period or Project Milestone shall mean and include such date, period or Project Milestone 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 100,000 (one hundred thousand) and “**crore**” means 10,000,000 (ten million);
- (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) any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference:

Provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the SPV hereunder or pursuant hereto in any manner whatsoever;

- (r) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Project Support Consultant shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Project Support Consultant in this behalf and not otherwise;
 - (s) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (t) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement; and
 - (u) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.
- 1.3 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.
- 1.4 Any capitalized word or expression used in this Agreement that is not defined herein but is defined in the Request for Proposals document issued by the SPV on [●], shall, unless repugnant to the context in which such word or expression is used herein, have the means assigned to it in the said Request for Proposals document.

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

ARTICLE 2: GRANT OF PROJECT SITE

2.1 The SPV hereby unequivocally grants to the Developer and the Developer hereby accepts the leasehold right in the Project Site for the Term, along with vacant, uninterrupted and unobstructed possession of the Project Site, and the right to execute the Project without interruption of any nature whatsoever from the SPV or any person claiming for and on behalf of the SPV, on the terms and conditions as set out in Schedule A (Terms of Lease) (“**Lease**”).

2.2 It is agreed and understood by the Developer that:

- (a) The Lease under Schedule A (Terms of Lease) has been granted exclusively for the purpose of executing the Project;
- (b) The Developer shall not in any way transfer, sell, alienate, or create any Encumbrance on the Project Site;
- (c) The ownership and title to the Project Site shall remain vested with Department of Industrial Policy and Promotion or its designated agency;
- (d) Any treasure trove, fossils or other article of interest shall belong to and vest in the SPV and the Developer shall promptly report the discovery thereof to the SPV and follow its instructions for safe removal thereof;
- (e) Any archaeological discoveries shall belong to and vest in the Government of India and the Developer shall promptly report the discovery thereof to the SPV and follow its instructions for safe removal thereof;
- (f) Mining rights do not form part of the Lease and the Developer hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Project Site:

For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein;

- (g) The Developer shall not sublicense, sublet or sublease the whole or any part of the Project Site:

Provided that nothing contained herein shall be construed or interpreted as restricting the right of the Developer to appoint sub-contractors for the performance of its obligations hereunder:

Provided further that the Developer may earmark and develop space for ancillary and allied facilities (including bank ATMs, shops, cafeteria, and utility stores) for guests, staff and management personnel of the office, as the case may be, and may offer such space for operation to third parties under an operation and maintenance arrangement, subject to the condition that the built-up area of such ancillary and allied facilities shall not exceed the extent allowed by Applicable Law;

- (h) The Developer shall have the right to regulate the entry and use of the Project Site by third parties in accordance with and subject to the provisions of this Agreement; and
- (i) The Developer shall allow free access to the Project Site at all times for the authorized representatives of the SPV, and for the persons duly authorized by any Government

Authority to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Developer shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions

ARTICLE 3: ENTRY INTO COMMERCIAL SERVICE

3.1 Commercial Operations Date

- 3.1.1 The commercial operations date of the Project shall be the date on which the Developer receives the 'Occupancy Certificate', as issued by relevant authorities, in relation to the Project and submits a copy of the same to the SPV for its records (the "COD").
- 3.1.2 Upon completion of construction of 50% (fifty percent) Planned Built-Up Area of the Project, the Developer shall be entitled to receive and/or collect any revenue, payments, any other financial/monetary consideration in the form of security deposits, refundable security deposits, premium payments, upfront payments or any other consideration/payment of a like nature with respect to any arrangements it may enter into with any person, in accordance with Clause 2.2 (g), in relation to the Project. For the avoidance of doubt, the Developer shall be responsible for funding all capital requirements for the Project till it achieves 50% (fifty percent) Planned Built-Up Area of the Project.
- 3.1.3 The Developer will notify the SPV forthwith in writing, the date on which 50% (fifty percent) Planned Built-Up Area of the Project is achieved. To enable the SPV to ascertain whether 50% (fifty percent) Planned Built-Up Area of the Project has been achieved, the Developer will provide the SPV with all necessary documents to evidence such completion, including but not limited to, certificates from the lenders of the Developer and the engineer involved in the development of the Project.

3.2 Extension of Term and scheduled date to achieve Commercial Operations Date

- 3.2.1 The Parties hereby acknowledge that IICC Phase 1 (to the extent not including the Project) is scheduled to be commissioned/completed by March 31, 2021.
- 3.2.2 In the event that the SPV fails to procure the IICC Phase 1 Completion (to the extent not including the Project) by March 31, 2021, the delay in commissioning will lead to an extension in the Term and the scheduled date to achieve COD, such that for every full month of delay, the Term and the time limit to achieve COD shall be extended by 1 (one) month.

For the purpose of illustration, in the event IICC Phase 1 Completion occurs before April 30, 2021, the Term and the scheduled date to achieve COD shall not be extended. However, if IICC Phase 1 Completion occurs between April 30, 2021 and May 31, 2021, the Term scheduled date to achieve COD shall accordingly be extended by a period of 1 (one) month.

ARTICLE 4: DEVELOPMENT OF THE PROJECT

- 4.1 The Developer shall be responsible for designing, building, financing, operating, maintaining and transferring the Project during the Term.
- 4.2 Subject to and in accordance with Applicable Law, Good Industry Practices, and the provisions of this Agreement, the Developer shall be obliged or entitled (as the case may be) to:
- (a) Design, build, finance, operate, maintain and transfer the Project;
 - (b) Ensure that a minimum of 80% (eighty percent) of the Planned Built-Up Area of the Project is used strictly towards space dedicated to the hotel. The remaining 20% (twenty percent) of the Planned Built-Up Area in relation to the Project may be utilized for developing any hotel associated retail/ office space including the mandated retail podium and associated street retail facilities to be developed in accordance with the provisions of Schedule D (Mandated Development Requirements);
 - (c) Construct a defined parking facility in accordance with the provisions of Schedule D (Mandated Development Requirements);
 - (d) Execute the Project in accordance with the Layout Plan;
 - (e) Raise funds from financial institution(s) or bank(s) for financing the Project, achieve Financial Closure within 180 (one hundred and eighty) days of the date of signing this Agreement.

For the purpose of this sub-clause, “**Financial Closure**” shall mean the date of fulfilment of the conditions precedent for initial availability of funds under the financing agreements entered into with the bank(s) or financial institution(s) from which the Developer intends to raise funds. It is hereby clarified that for the purpose of securing its obligations under the financing agreements, the Developer will not create any security, charge or encumbrance on the Project Site or any land or associated with the Project. However, the Developer will be entitled to (i) create a charge over the buildings and/or permanent structures constructed by it in relation to the Project, and (ii) create a charge over or assign its rights over any amounts to be received by the Developer in relation to the Project, in favour of the lending bank(s) or financial institution(s).

Furthermore, bank(s)/financial institution(s) providing debt funding to the Developer in relation to the Project will be entitled to step-in or substitute the Developer in case of any default in debt repayments or otherwise under the financing agreements (“**Financing Documents**”).

- (f) By the end of each quarter in a Contract Year, submit to the SPV in the prescribed format:
 - i. quarterly reports with respect to the progress of the Project; and
 - ii. audited books of accounts for each quarter and audited financial statements in accordance with Applicable Law and applicable accounting standards in India. It is hereby clarified that such books of accounts will be submitted to the SPV for audit purposes every quarter.

ARTICLE 5: OBLIGATIONS OF THE DEVELOPER

- 5.1 The Developer shall comply with Applicable Law and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement, and, in particular, shall:
- (a) Be and remain responsible to procure all at its own cost and expense, electricity, fuel and other utilities as may be required for the construction and subsequent operations of the Project. The SPV shall only provide its reasonable assistance to the Developer in applying for and procuring any such utility connections for the supply of electricity, fuel and other utilities;
 - (b) seek prior approval of the SPV for the project designs to ensure its adherence with the provisions of Schedule D (Mandated Development Requirements). It is hereby clarified that the SPV will have to accord its approval to the project designs within 30 (thirty) days, failing which the SPV will be deemed to have accorded its approval to the Developer;
 - (c) achieve COD within 5 (five) years from the date of signing of this Agreement. Provided that, the SPV may, at its discretion, grant the Developer extensions to the time limit to achieve COD, subject to a maximum period of 2 (two) years. It is clarified that such extension will be subject to the payment of an additional fee, by the Developer to the SPV, calculated, for every day of delay, at the rate of 0.1% (zero point one per cent) of the amount equivalent to the Performance Security for the relevant Contract Year (“**Extension Fee**”);
 - (d) furnish the Performance Security in accordance with Clause 8.1;
 - (e) pay Lease Premium, Common Area Maintenance Charge and Centralized Services Charges to the SPV in the manner specified in Clause 11.1;
 - (f) ensure compliance with all labour, environment, and health and safety laws, etc. as applicable to the Project;
 - (g) develop the Project in accordance within the prescribed limits of Maximum Permissible Built-Up Area as set forth in Recital E. The Developer shall ensure adherence to the site boundary lines (with no setback changes allowed), applicable height restrictions as well as the terms prescribed in Schedule E (Urban Design Guidelines)
 - (h) demonstrate that it has the O&M Experience. In the event that the Developer does not have the requisite O&M Experience, it shall enter into an agreement with a third party, at least 6 (six) months prior to COD, for the operations and management of the Project, for a period of at least 5 (five) years from COD, with a company which can demonstrate the O&M Experience;
 - (i) provide the SPV’s representatives, personnel, officials and agents, access to ‘basement level 1’, forming part of the Project, for installing and maintaining the services tunnel;
 - (j) provide the SPV a copy of the building plan approval, within 7 (seven) days from its receipt, as and when accorded by the concerned authorities;

- (k) provide all necessary protection to the adjacent buildings by providing sheet pile / shoring etc. for all type of excavations including basements and ensure safety and stability of all the adjoining structures or developments taken up by the SPV or any other developer around the Project;
 - (l) ensure and undertake all safety practices and norms to ensure safety around the development being undertaken by the developer in view of the surrounding operational facilities; and
 - (m) maintain same level of cleanliness up keeping and house keeping around the project to the level that is maintained within the complex and all the ingress and egress routes used for the purpose of construction of the project.
- 5.2 The Developer shall not undertake or permit any Change in Ownership, except with the prior approval of the SPV.
- 5.3 The Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) Perform and fulfill all its obligations under this Agreement, and incidental thereto, or necessary for performing the Developer's obligations under this Agreement, as a reasonable and prudent person, and in accordance with Applicable Law, the Mandated Development Requirements (as set out in Schedule D), the Applicable Permits, and Good Industry Practices;
 - (b) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of its obligations under this Agreement;
 - (c) Not assign, transfer or sublet or create any Encumbrance on this Agreement, or the Lease hereby granted, or on the whole or any part of the Project Site, nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement;
 - (d) Not assert any ownership rights over the Project Site;
 - (e) Make, or cause to be made, necessary applications to the relevant Government Authorities, 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 Law;
 - (f) Procure or cause to be procured, as required, appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (g) Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (h) Not do or omit to do any act, deed or thing which may in any manner be violative of any of Applicable Law or the provisions of this Agreement;
 - (i) Take reasonable measures to prevent the destruction, scarring and defacement of the natural surroundings and environment at the Project Site;

- (j) Appoint its representative duly authorized to deal with the SPV in respect of all matters under or arising out of or relating to this Agreement;
- (k) Effect and maintain at its own cost, during the entire Term, such insurances for such maximum sums as may be required under Applicable Law and as may be necessary or prudent in accordance with Good Industry Practices, including but not limited to:
 - (i) contractor's all risk insurance covering all risks including any loss, damage or destruction or construction work in relation to the Project in relation to the construction activities in relation to the Project;
 - (ii) workmen's compensation insurance;
 - (iii) third party liability insurance; and
 - (iv) such other insurance policies as may be required.
- (l) From the date of signing of this Agreement, pay all present and future outgoings, cesses, Taxes (including municipal taxes), rates and other charges whatsoever and all increases thereto, in respect of the Project Site on the due dates thereof. It is hereby clarified that the SPV shall not be liable to pay Taxes, cesses or charges of a like nature.
- (m) Pay all Taxes (including goods and service tax), levies, import duties, fees (including any lease rent/ fees) and other charges, dues, assessments or outgoings payable in respect of the Payment Structure (including goods and service tax) or in respect of, Project or in respect of the materials stored therein which may be levied by any Government Authority. If the Developer fails to pay any of the Taxes, cesses, outgoings or any charges of a like nature (as outlined in sub-clause 5.3 (l) and this sub-clause 5.3 (m)), the SPV shall have the right, but not be obligated to pay such Taxes, cesses and charges to the relevant Government Authority and recover the amount as per the procedure set out in Clause 8.2.2
- (n) Rectify and remedy the defects or deficiencies, if any, stated in the reports prepared by the SPV or its designated authorities;
- (o) Open a bank account in a scheduled bank for all receivables under the Financing Documents entered into with the bank(s) and/ or financial institution(s) from which the Developer intends to raise funds;
- (p) Provide the Authority with 2 (two) copies of a statement of its accounts audited by a third party auditor, within 90 (ninety) days of the close of the Contract Year to which such statement pertains;
- (q) Make, or cause to be made, necessary applications to the relevant Government Authorities, with such particulars and details, as may be required for obtaining approval for its courses and programmes of study, and obtain and keep in force and effect such approvals in conformity with the Applicable Law;
- (r) make the Project including the Project Site available to the SPV at all times during the construction period for regular inspections through the duly authorized Representatives. Provided however that the duly authorized representatives of the SPV shall not interfere with or prevent the Developer's officials and personnel from discharging their functions;

- (s) Make or cause to be made available at the Project Site all utilities and infrastructure required for the Project other than the utilities being provided by the SPV; and
- (t) Bear all stamp duty and registration charges under Applicable Law in relation to the execution of this Agreement.

5.4 Sub-Contracts

- (a) The Developer may, at its discretion, appoint sub-contractors to fulfil its obligations under this Agreement with respect to any activity relating to the Project, including but not limited to the design, construction, operation, maintenance or any part thereof and enter into sub-contracts for this purpose (“**Sub-Contracts**”).
 - (i) The Developer shall organize the supervision, monitoring and control of the sub-contractors necessary to ensure the proper performance of their respective obligations under the Sub-Contracts and to ensure and procure that the sub-contractors comply with all Applicable Permits and Applicable Law in the performance by their obligations;
 - (ii) The Developer shall be entitled to grant sub-leases or sub-licenses in relation to the area comprising and limited to the Project;
 - (iii) Notwithstanding anything contained in the Project Agreements or any other agreement, the Developer shall, at all times, be responsible and liable for all its obligations under this Agreement, and no default under any Project Agreement or agreement shall excuse the Developer from its obligations or liability hereunder; and
 - (iv) The Developer shall procure that each of the Sub-Contracts contains provisions that entitle the SPV to step into such agreement, in its sole discretion, in substitution of the Developer in the event of Termination.
- (b) The Developer shall not enter into any agreement which prejudices the right, title and interest of the SPV under this Agreement in any manner whatsoever.

5.5 Personnel

- (a) The Developer shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.
- (b) The Developer acknowledges, agrees and undertakes that employment of foreign personnel by the Developer and/or the 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 Developer, and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Developer or any of the Contractors shall not constitute a Force Majeure Event, and shall not in any manner excuse the Developer from the performance and discharge of its obligations and liabilities under this Agreement.

ARTICLE 6: OBLIGATIONS OF THE SPV

- 6.1 The SPV shall, make available to the Developer the utilities/facilities listed out in Schedule C (Services Provision) in accordance with the applicable charges on or before 31 March 2024. The SPV shall ensure that the utilities/facilities provided by it in accordance with Schedule C (Services Provision) are upgraded/augmented to meet such requirements as may be prescribed under Applicable Law.
- 6.2 The SPV shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder, and, in particular, shall:
- (a) 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;
 - (b) Support, cooperate with and facilitate the Developer in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (c) Appoint its representative duly authorised to deal with the Developer in respect of all matters under or arising out of or relating to this Agreement; and
 - (d) Hand over possession of the Project Site in accordance with Clause 1.2 of Schedule A (Terms of Lease).
- 6.3 The SPV shall authorize, grant or cause to grant the Developer such permissions, consents, no-objections, and right of way for laying utilities within complex, as may be required and as may be within its rightful authority to develop, operate and maintain the Project.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Developer

The Developer represents and warrants to the SPV that:

- (a) It is duly organized 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 Law to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) It has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) It is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) The information furnished in response to the RfP 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 its constitution documents, or any Applicable Law 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 or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) It has complied with Applicable Law 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) No representation or warranty by it contained herein or in any other document furnished by it to the SPV or to any Government Authority 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
- (l) No sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Project, or the grant of the Lease, 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 Developer that:

- (a) It has good and valid right to the Project Site, and has power and authority to grant the Lease to the Developer;
- (b) 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;
- (c) It has taken all necessary actions under the Applicable Law to authorise the execution, delivery and performance of this Agreement;
- (d) It has the financial standing and capacity to perform its obligations under the Agreement;
- (e) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) There are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the 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;
- (g) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on the SPV's ability to perform its obligations under this Agreement;
- (h) It has complied with Applicable Law in all material respects; and
- (i) It shall not, at any time during the Term, interfere with peaceful exercise of the rights and discharge of the obligations by the Developer, in accordance with this Agreement.

7.3 Disclosure

- (a) 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.

- (b) 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.

7.4 **Disclaimer**

- (a) The Developer acknowledges that prior to the execution of this Agreement, the Developer has, after a complete and careful examination, made an independent evaluation of the Request for Proposals document issued by the SPV on [●], the scope of the Project, the Project Site, local conditions, physical qualities of ground, subsoil and geology, 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.
- (b) 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 Developer confirms that it shall have no claim whatsoever against the SPV in this regard.
- (c) The Developer acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 7.4(a) above and hereby acknowledges and agrees that the SPV shall not be liable for the same in any manner whatsoever to the Developer or any person claiming through or under it:

Provided that SPV shall during the Term

- (i) not create any Encumbrance on the Project Site,
- (ii) ensure that the SPV has good and valid rights and title over the Project Site, and
- (iii) not, unless mutually agreed to with the Developer, do any act or deed, or omit to do any act or deed, which has the effect of prejudicing or in any way affecting the rights granted to the Developer under this Agreement.

ARTICLE 8: PERFORMANCE SECURITY

8.1 Performance Security

The Developer has, for the performance of its obligations hereunder during the Term, provided to the SPV prior to the date of signing of this Agreement, an irrevocable and unconditional guarantee from a bank for a sum equivalent to 7.50% (seven point five zero percent) of the Lease Premium, in the form set forth in Schedule H (the "**Performance Security**").

For the purposes of this Clause, the Developer shall ensure that 30 (thirty) days prior to the expiry of any Contract Year, the Performance Security shall be renewed and kept valid for the period up to the succeeding Contract Year.

8.2 Appropriation of Performance Security

8.2.1 Upon occurrence of a Developer 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 Developer Default. Upon such encashment and appropriation from the Performance Security, the Developer 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, and the Developer shall, within the time so granted, replenish or furnish a fresh Performance Security as aforesaid failing which the SPV shall be entitled to terminate this Agreement in accordance with the terms of this Agreement.

8.2.2 If the Developer fails to pay any of the Taxes, cesses, outgoings or any charges of a like nature (as outlined in Clause 5.3 (l) and (m)), the SPV shall have the right, but not be obligated to pay the same and recover the amount so incurred in relation to payment of such Taxes, cesses or charges from the Developer by appropriating an equivalent amount from the Performance Security, along with interest at a rate per annum of 15%.

ARTICLE 9: FORCE MAJEURE

9.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence of any event of circumstance or combinations of events or circumstances which:

- (a) affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement; and
- (b) is beyond the reasonable control of the Affected Party, and
- (c) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practices.

9.2 Duty to report Force Majeure Event

- (a) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith, giving full particulars of:
 - (i) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 9 with evidence in support thereof;
 - (ii) The estimated duration of such Force Majeure Event, 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;
 - (iii) The measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
 - (iv) Any other information relevant to the Affected Party’s claim.
- (b) 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.
- (c) For so long as the Affected Party continues to claim to be 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 9.2(a), and such other information as the other Party may reasonably request the Affected Party to provide.

9.3 Effect of Force Majeure Event on the Project

- (a) Upon the occurrence of any Force Majeure Event:
 - (i) the scheduled date to achieve COD, and/or
 - (ii) the Term,

shall be extended by a period equal in length (in days) to the duration of the Force Majeure Event.

- (b) Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- (c) 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:
 - (i) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
 - (ii) 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
 - (iii) The Affected Party shall promptly resume performance of its obligations hereunder when it is able to do so and shall give to the other Party notice to that effect.

9.4 Termination Notice for Force Majeure Event

- (a) If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may terminate this Agreement by issuing a Termination Notice to the other Party, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith.
- (b) 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) day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.
- (c) Upon Termination on account of a Force Majeure Event, the SPV shall:
 - (i) refund the Performance Security to Developer; and
 - (ii) refund Lease Premium collected, without interest, for the remaining Term after termination of the Agreement

Illustration:

If termination happens on the 3rd anniversary of the Agreement:

- Developer would have paid 32.5% of total Lease Premium
- Remaining duration of Term is 92 years
- SPV shall refund an amount equal to: 32.5% of Lease Premium x (92/95)

If termination happens on the 30th anniversary of the Agreement:

- Developer would have paid 100% of total Lease Premium

- Remaining duration of the Term is 65 years
- SPV shall refund an amount equal to: Lease Premium x (65/95)

If termination happens on the 80th anniversary of the Agreement:

- Developer would have paid 100% of total Lease Premium
- Remaining duration of the Term is 15 years
- SPV shall refund an amount equal to: Lease Premium x (15/95)

ARTICLE 10: INDEMNIFICATION

10.1 General indemnity

Each Party shall indemnify, defend, save and hold harmless the other Party and its subsidiaries, affiliates, contractors, officers, servants, and/ or agents 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 first Party's obligations under this Agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the other Party and/or its subsidiaries, affiliates, contractors, officers, servants, or agents.

10.2 Notice and contest of claims

- (a) If 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 ("**Indemnified Party**"), the Indemnified Party 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.
- (b) If 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.

10.3 Defence of claims

- (a) 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.
 - (i) 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, 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.
 - (ii) 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.
- (b) If the Indemnifying Party has exercised its rights under this Clause 10.3, 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).

- (c) If the Indemnifying Party exercises its rights under this Clause 10.3, 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:
- (i) the employment of counsel by such Party has been authorised in writing by the Indemnifying Party; or
 - (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
 - (iii) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - (iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - a. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - b. that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (ii), (iii) or (iv) of this Clause 10.3(c) are 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.

10.4 **No consequential claims**

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

10.5 **Survival on Termination**

The provisions of this Article shall survive termination of this Agreement.

ARTICLE 11: PAYMENT STRUCTURE

11.1 Payment Structure

Notwithstanding anything to the contrary contained in this Agreement, the Developer shall be liable to pay to the SPV the following amounts:

- (a) The lease premium quoted by the Selected Applicant pursuant to the e-auction conducted in the manner set forth in the RfP (the “**Lease Premium**”) which shall be payable in the following instalments:

| Annual Instalment No. | Amount |
|-----------------------|-----------------------------|
| 1 | 25% of Lease Premium |
| 2 to 31 | 2.50% of Lease Premium each |

It is clarified that:

- i. Annual Instalment No. 1 shall be payable within 30 (thirty) days of the date of issuance of the LoA or on the date the Agreement is signed, whichever is earlier;
- ii. Annual Instalment Nos. 2-31 shall be paid by the Developer to the SPV in 4 (four) equal quarterly instalments, each quarterly instalment to be paid at the beginning of each quarter of each Contract Year in which the instalment payment due date falls. For the purposes of illustration, the due date for the payment of Annual Instalment No. 2-31 would be the first date of the relevant quarter in which such instalment is payable (for e.g. April 1st, July 1st, October 1st or January 1st, as the case may be). The Developer shall make the payment to SPV within 15 (fifteen) days from the due date of the instalment payment by cheque or bank transfer;
- iii. The Lease Premium is exclusive of all applicable Taxes, and the Developer shall be liable to pay to the SPV the Lease Premium and the applicable Taxes thereon.
- iv. Provided that, in the event that the SPV fails to procure the IICC Phase 1 Completion (to the extent not including the Project) by March 31, 2021, the schedule of payment of the instalments of the Lease Premium shall stand revised, such that for every full quarter of delay, the payment of Lease Premium shall be delayed by 1 (one) quarter.

For the purposes of illustration, in the event IICC Phase 1 Completion occurs before June 30, 2021, the schedule of payment of Lease Premium shall not be revised. However, if IICC Phase 1 Completion occurs between June 30, 2021 and September 30, 2021, the schedule of payment of Lease Premium shall accordingly be extended by a period of 1 (one) quarter.

- (b) A common area maintenance cost per square metre of the Maximum Permissible Built-Up Area of the Project on a monthly-basis commencing from the COD until the expiry of the Term or the termination of the Term, whichever is earlier (the “**Common Area**”

Maintenance Charge”). The Common Area Maintenance Charge payable in a Contract Year shall be:

- (i) communicated by the SPV to the Developer, for the Contract Year in which COD occurs, on or before the date of occurrence of COD, and for every subsequent Contract Year at the beginning of such Contract Year; and
 - (ii) subject to reconciliation based on the audited books of account of the SPV with respect to such Contract Year, and if, pursuant to such reconciliation, it is determined that there is any amount due to or from the Developer in respect of the Common Area Maintenance Charge for the said Contract Year, the same will be adjusted against the subsequent payment(s) due from the Developer to the SPV in respect of the Common Area Maintenance Charge.
- (c) Charges on a monthly basis towards the services being provided by the SPV, as described in detail in Schedule C (Services Provision) (“**Centralized Services Charges**”). The Centralized Services Charges shall be:
- (i) payable commencing from the COD until the expiry of the Term or the termination of the Agreement; and
 - (ii) determined and communicated to the Developer by the SPV, for the Contract Year in which COD occurs, on the date of occurrence of the COD and for every subsequent Contract Year, prior to the commencement of such Contract Year, subject to the condition that the Centralized Services Charges so determined shall be comparable with prevalent market prices for equivalent services.

ARTICLE 12: CHANGE OF SCOPE

12.1 Change of Scope

- (a) The SPV may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Schedule B at Annexure “Annexure 1. IICC Layout Plan” or which do not form part of the Mandated Development Requirements (“**Change of Scope**”).
- (b) Any such Change of Scope shall be made in accordance with the provisions of this Article 12 and the costs thereof shall be expended by the Developer and reimbursed to it by the SPV in accordance with Clause 12.2(c).
- (c) If the Developer determines at any time that a Change of Scope is necessary, it shall by notice in writing require the SPV to consider such Change of Scope. The SPV shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 12 or inform the Developer in writing of its reasons for not accepting such Change of Scope.

12.2 Procedure for Change of Scope

- (a) If the SPV determines that a Change of Scope is necessary, it shall issue to the Developer a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- (b) Upon receipt of a Change of Scope Notice, the Developer shall, with due diligence, provide to the SPV such information as necessary, together with preliminary documentation in support of:
 - (i) the impact, if any, which the Change of Scope is likely to have on the scheduled dates, if the works or services are required to be carried out prior to the achievement of the project milestones, and
 - (ii) the options for implementing the proposed Change of Scope and the effect, if any, each such option will have on the cost and time for completing the Project.

Provided that the cost incurred by the Developer in providing such information shall be reimbursed by the SPV to the extent such cost is certified by the SPV or its designated authorities.

- (c) Upon receipt of information set forth in Clause 12.2(b), if the SPV decides to proceed with the Change of Scope, it shall convey its preferred option to the Developer, and the Parties shall, with assistance of the Project Support Consultant, thereupon make good faith efforts to agree upon (i) the costs for implementation thereof, (ii) the manner of payment, either in monetary terms or equivalent consideration, and the schedule thereof, and (iii) the time for implementation, including the impact on COD, as the case may be.
 - (i) Upon reaching an agreement, the SPV shall issue an order (the “**Change of Scope Order**”) requiring the Developer to proceed with the performance thereof.

ARTICLE 13: TERMINATION

13.1 Termination for Developer's Default

- (a) Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Developer fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 90 (ninety) days, the Developer shall be deemed to be in default of this Agreement (a “**Developer 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:
- (i) The Performance Security has been encashed and appropriated in accordance with Clause 8.3 and the Developer fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
 - (ii) Subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article 8, the Developer fails to cure, within a Cure Period of 90 (ninety) days, the Developer Default for which whole or part of the Performance Security was appropriated;
 - (iii) The Developer, for any reason whatsoever, does not (a) achieve the COD within 5 (five) years from the date of signing of this Agreement; or (b) achieve the COD within the extended time period allowed by the SPV; or (c) pay the Extension Fee in accordance with Clause 5.1 of this Agreement;
 - (iv) The Developer fails to operate and maintain the Project in accordance with the terms of this Agreement;
 - (v) The Developer executes the Project otherwise than in conformity with the Mandated Development Requirements and/ or uses any part of the Project Site for development of any component or facility not part of the Mandated Development Requirements;
 - (vi) The Developer fails to fulfil such of the obligations set out in this Agreement;
 - (vii) The Developer abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the SPV;
 - (viii) The Developer has failed to make any payment (and the interest incurred on any delayed payments in accordance with Clause 17.3), including, but not limited to, the Lease Premium, Common Area Maintenance Charge and Centralized Services Charge to the SPV within the period specified in this Agreement;
 - (ix) The Developer creates any Encumbrance in breach of this Agreement;
 - (x) The Developer repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by this Agreement;
 - (xi) A Change in Ownership has occurred in breach of the provisions of Clause 5.2;

- (xii) There is a transfer, pursuant to law either of (i) the rights and/or obligations of the Developer under any of the Sub-Contracts, or of (ii) all or part of the assets or undertaking of the Developer, which transfer has a Material Adverse Effect;
 - (xiii) An execution levied on any of the assets of the Developer has caused a Material Adverse Effect;
 - (xiv) A default has occurred under any Financing Documents, consequent to which the lender has recalled its financial assistance and demanded payment of the amounts outstanding under such agreement;
 - (xv) The Developer has been, or is in the process of being wound-up, dissolved or amalgamated in a manner that would cause, in the reasonable opinion of the SPV, a Material Adverse Effect;
- (b) Without prejudice to any other rights or remedies which the SPV may have under this Agreement, upon occurrence of a Developer Default, the SPV shall be entitled to terminate this Agreement by issuing a Termination Notice to the Developer.
 - (c) The SPV shall by a notice inform the Developer of its intention to issue such Termination Notice and grant 30 (thirty) days to the Developer to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

13.2 Termination for SPV Default

- (a) 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 Developer or due to Force Majeure. The defaults referred to herein shall include:
 - (i) 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 Developer; or
 - (ii) 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.
- (b) Without prejudice to any other right or remedy which the Developer may have under this Agreement, upon occurrence of a SPV Default, the Developer shall be entitled to terminate this Agreement by issuing a Termination Notice to the SPV.
- (c) Before issuing the Termination Notice, the Developer shall by a notice inform the SPV of its intention to issue the Termination Notice and grant 30 (thirty) days to the SPV to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

13.3 Termination Payments

- (a) Upon Termination on account of a Developer Default prior to achievement of COD:

- (i) the SPV will encash the Performance Security for its entire amount;
 - (ii) the SPV will not be liable to make any payments whatsoever to the Developer; and
 - (iii) if the SPV requires and so instructs, the Developer shall remove all buildings, structures, plant, machinery or any permanent constructions on the Project Site and peacefully handover vacant possession of the Project Site without any Encumbrances.
- (b) In the event of Termination on account of a Developer Default post achievement of COD:
- (i) the SPV will encash the Performance Security;
 - (ii) the SPV shall acquire all of the Developer's rights, interests and title in the Project (including the beneficial ownership, right, title and interest in the Project Site) upon payment of the lower of the Book Value or Building Value as determined by 2 (two) independent valuation agencies, one each appointed by the Developer and the SPV. It is clarified that no independent value will be assigned to the Developer's business in this valuation.

For the purpose of this Clause 13.3

“Book Value” shall mean the written down value in the books of accounts of the Developer of an Asset in accordance with depreciation rates as set forth in the Indian Companies Act, 2013. In the event, the depreciation rates for certain assets are not available in the aforesaid Act, then the depreciation rates as provided in the Income Tax Act, 1961 for such Asset as converted to straight line method from the written down value method will be considered. For the purpose of arriving at the Book Value, any revaluation of Assets will be ignored; and

“Building Value” in relation to the Project, means the replacement cost of the building, fittings and fixtures constituting the Project, of the condition, quality and specification as existing on the date of expiry or termination of this Agreement without attributing any value for the business.

- (c) Upon Termination on account of a SPV Default prior to the achievement of COD, the SPV shall:
- (i) refund the Performance Security to the Developer;
 - (ii) refund the Lease Premium collected thus far, from the date of issuance of the LOA, interest free;
 - (iii) refund all construction costs incurred by the Developer in relation to the Project till the date of termination as determined by an independent valuation agency appointed jointly by the SPV and the Developer; and
 - (iv) take possession of the Project.

- (d) Upon Termination on account of a SPV Default after the achievement of COD, the SPV shall:
 - (i) refund the Performance Security;
 - (ii) pay to the Developer the Building Value of the Project; and
 - (iii) refund an amount equivalent to proportionate amount of Lease Premium paid thus far, from the date of issuance of the LOA, interest free.
- (e) For the avoidance of doubt, it is expressly agreed that, subject to Clause 13.4(b), the payment of the amounts under Clause 13.3 shall constitute full discharge by the SPV of its payment obligations in respect of Termination.

13.4 **Consequences of Termination**

- (a) Upon Termination for any reason whatsoever, the SPV shall:
 - (i) Be deemed to have forthwith taken possession and control of the Project and Project Site, including all moveable and immoveable properties thereon;
 - (ii) Be entitled to restrain the Developer and any person claiming through or under the Developer from entering upon the Project Site or any part of the Project;
 - (iii) Require the Developer to comply with the Divestment Requirements; and
 - (iv) Have the right to appoint an entity to undertake operation and maintenance of the Project;
 - (v) Succeed upon election by the SPV, without the necessity of any further action by the Developer, to the interests of the Developer 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 Developer.

For the avoidance of doubt, it is clarified 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 Developer and such Contractors, and the SPV shall not in any manner be liable for such sums.

If the SPV elects to cure any outstanding defaults under the Project Agreements, the amounts the SPV expends thereof shall be deducted from the Termination Payment.

- (b) Upon Termination for any reason whatsoever, each Party shall pay to the other Party such uncontested amounts as may have become due and payable under this Agreement to the other Party prior to the date of Termination.

13.5 **Survival of rights**

- (a) 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 pecuniary damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract.
- (b) 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 14: DIVESTMENT OF RIGHTS AND INTEREST

14.1 Divestment Requirements

Upon Termination, the Developer shall comply with and conform to the following requirements (“**Divestment Requirements**”):

- (a) Notify to the SPV forthwith the location and particulars of all assets forming part of the Project;
- (b) Deliver forthwith the actual or constructive possession of the Project and Project Site free and clear of all Encumbrances;
- (c) Cure the Project and Project Site, including the road, structures, and equipment, of all defects and deficiencies so that the Project is compliant with the Mandated Development Requirements:

Provided that in the event of Termination prior to the achievement of all the project milestones, the Project and Project Site 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, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete ‘as built’ drawings as on the date of transfer;
- (e) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Law;
- (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 Developer in the Project and Project Site, 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 prescribed or required under Applicable Law for completing the divestment and assignment of all rights, title and interest of the Developer in the Project, free from all Encumbrances, absolutely unto the SPV or to its nominee.

14.2 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed 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 G (the “**Vesting Certificate**”) which will have the effect of constituting evidence of divestment by the Developer 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 to the effect that all Divestment Requirements have been complied with by the Developer.

ARTICLE 15: DISPUTE RESOLUTION

- 15.1 The Parties shall meet and endeavour to amicably resolve through discussions any dispute, difference, claim or controversy including the matter of damages, if any (a “**Dispute**”) that arises between the Parties about the validity, interpretation, implementation or alleged breach of any provision of this Agreement, or anything connected or related to or incidental to this Agreement.
- 15.2 If the Dispute is not amicably resolved by the Parties within 90 (ninety) days of the Parties meeting, either Party may submit the Dispute to arbitration to be conducted in accordance with the Arbitration and Conciliation Act, 1996 and the Arbitration and Conciliation (Amendment) Act, 2015 in accordance with the following procedure:
- (a) The arbitration proceedings shall be held at New Delhi.
 - (b) There shall be a panel of 3 (three) arbitrators, of whom each Party shall select 1 (one), and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected.
 - (c) The arbitration proceedings shall be conducted and the award shall be rendered in English.
 - (d) The arbitrators shall make the award within 3 (three) months of entering upon the reference unless the time is extended by consent of both Parties.
 - (e) The award rendered by the arbitrators shall be final, conclusive and binding on the Parties.
 - (f) The award shall be enforceable in any court having jurisdiction, subject to Applicable Law.
 - (g) Each Party shall bear the cost of preparing and presenting its case.
 - (h) The Parties shall equally share the cost of arbitration, including the arbitrators’ fees and expenses.
- 15.3 In the event the Party against whom the award has been granted challenges the award for any reason in a court of law, it shall make an interim payment to the other Party for an amount equal to 75% (seventy-five per cent) of the award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable bank guarantee for a sum equal to 120% (one hundred and twenty per cent) of the aforesaid amount. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at the rate of 10% (ten per cent) per annum from the date of interim payment to the date of final settlement of such balance.

ARTICLE 16: CHANGE IN LAW

- 16.1 If the occurrence of a Change in Law event results in a Material Adverse Effect, the SPV or the Developer may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Developer and the SPV shall thereafter consult in good faith to agree to such modifications, and in the event the Parties do not reach an agreement with respect to such modifications, either of them may refer the matter for determination in accordance with the Dispute resolution procedure outlined in Article 15. It is hereby clarified that the Parties shall continue to fulfill their obligations under this Agreement during pending resolution of any Dispute under this clause 16.1.
- 16.2 For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

ARTICLE 17: MISCELLANEOUS

17.1 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 New Delhi shall have jurisdiction over matters arising out of or relating to this Agreement.

17.2 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).

17.3 Delayed Payments

The Parties hereto agree that payments due from the Developer to the SPV under the provisions of this Agreement (including but not limited to the payments to be made by the Developer under Article 11) shall be made within the period set forth therein (“**Due Date**”). The Developer will be allowed a maximum period of 15 (fifteen) days beyond the Due Date of any payment without attracting interest on such payment. However if the Developer delays in making such payment beyond a period of 15 (fifteen) days, the Developer will be liable to pay an interest calculated as simple interest at the rate of 1.5% (one point five per cent) per month calculated for the number of days of delay from the Due Date of such payment and recovery thereof shall be without prejudice to the rights of the SPV under this Agreement including Termination thereof.

For the purposes of illustration, if the Due Date for any particular payment falls on April 1, the Developer will be allowed a maximum period of 15 (fifteen) days (i.e. till April 15) to make such payment, without attracting interest on such payment. However, if the Developer delays in making such payment beyond a period of 15 (fifteen) days and makes such payment 3 (three) days after the expiry of 15 (fifteen) days from the Due Date i.e. on April 18, the Developer will be liable to pay an interest calculated at the rate of 1.5% (one point five per cent) per month calculated for number of days of delay from the Due Date i.e. for a period of 18 (eighteen) days.

It is clarified that in the event the Developer fails to make any payment under this Agreement to the SPV within 30 (thirty) days of the Due Date of such payment, the same will be treated as

a Developer Default in accordance with Clause 13.1 (a) (viii) and the SPV will be entitled to terminate this Agreement in the manner set forth in Article 13.

17.4 **Waiver**

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

17.5 **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 Developer nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Developer from its obligations, duties and liabilities under this Agreement, Applicable Law and Applicable Permits; and
- (b) the SPV shall not be liable to the Developer by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

17.6 **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.

17.7 **Entire Agreement**

This Agreement and the Schedules together with the bidding documents 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.

17.8 **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 the dispute resolution procedure set forth under this Agreement or otherwise.

17.9 **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.

17.10 **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 party to this Agreement.

17.11 **Successors and Assigns**

- (a) Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.
- (b) This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

17.12 **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) Be given by facsimile or email and by letter delivered by hand to the address given below and marked for attention of the person set out below or to such other person as the Party may from time to time designate by notice to the other Party:

To the Developer

Attention : [●]
Address : [●]
Facsimile : [●]
Email : [●]

To the SPV

Attention : [●]
Address : [●]
Facsimile : [●]
Email : [●]

Provided that notices or other communications to be given to an address outside New Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Party may from time to time designate by notice to the Party;

- (b) 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.

17.13 Counterparts

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

17.14 Amendments

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

17.15 Survival

- (a) All rights and obligations of either Party under this Agreement, including those set forth in Article 10 (Indemnification), Article 13 (Termination), Article 14 (Divestment Requirements), and Article 15 (Dispute Resolution), shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.
- (b) The waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorised representatives, and affiliates of the Parties.

17.16 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.

For and on behalf of the [insert name of the SPV]: For and on behalf of [●]:

In the presence of:

1.

2.

In the presence of:

1.

2.

**SCHEDULE A:
TERMS OF LEASE**

1.1 Term of the Lease

Unless terminated in accordance with the provisions of the Development Agreement dated [●] entered into between [*insert name of the SPV*] and [*insert name of the Developer*], the Lease (as defined under the Development Agreement) shall be for a period of 95 (ninety five) years commencing from the date on which the Development Agreement is signed.

1.2 Schedule of Handover

- (a) The possession of the entire Project Site shall be handed over by the SPV to the Developer on and upon the execution of this Agreement within a period of 30 (thirty) days.
- (b) Upon the issuance of the LOA, the Developer shall have the right to carry out inspections and surveys, at its own cost, on the entire Project Site. It is clarified that the Developer and its Contractors shall have the right to enter upon the Project Site for the purposes set out in this Clause 1.2(b).
- (c) In the event of delay on the part of the SPV in handing over the Project Site, the obligation of the Developer to achieve COD in accordance with the provisions of Clause 5.1 (c), and Term shall be extended by a period equal in length (in days) to the duration of the delay.

1.3 Project Site to be free from Encumbrances

- (a) The Project Site shall be made available by the SPV to the Developer free from all Encumbrances and occupations and without the Developer 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 Project Site for the Term, except insofar as otherwise expressly provided in the Agreement.
- (b) For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Project Site shall not be deemed to be Encumbrances.

1.4 Protection of Project Site from encroachments

During the Term, the Developer shall protect the Project 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 Developer to place or create any Encumbrance or security interest over all or any part of the Site, or on any rights of the SPV therein or under the Agreement, save and except as otherwise expressly set forth in this Agreement.

**SCHEDULE B:
PROJECT SITE**

Project Site

Plot Demarcations of Project Site

Project Site is demarcated by Plot 9 in “Annexure 1. IICC Layout Plan”

SCHEDULE C: SERVICES PROVISION

The following services shall be provided to the Developer by the SPV or its designated agency

1. Domestic Water
 - a. The Developer shall estimate the domestic water requirement of the Project as per prevalent norms and notify the SPV of the same.
 - b. The SPV shall ensure 24x7 supply of domestic water in accordance with the estimates of the Developer as per clause 1.1 above. The domestic water so supplied by the SPV shall be as per prevalent quality norms of DJB.
2. Sewage Treatment Plant (STP)
 - a. SPV will ensure adequate capacity of STP within the complex.
3. Recycled Sewage Water
 - a. The SPV shall ensure 24x7 supply of recycled water for flushing and horticulture uses of the Developer, in accordance with the estimates of the Developer as per clause 1.1 above, upto the 80% of domestic water consumed by the Developer. The recycled sewage water so supplied by the SPV shall be as per the prevalent quality norms of defined in NBC 2016.
4. Yard Hydrant and Hydrant Network Pipeline
 - a. The SPV shall provide charged water for Fire Fighting to the Developer at the latter's plot boundary. The Developer shall be responsible for the Fire Fighting Network within the Project.
5. High Speed Diesel (HSD)
 - a. The SPV or its contracted HSD Oil Marketing Company shall make HSD available to the Developer. The Developer should provide the monthly HSD requirement to the SPV, one week before beginning of every month.
6. PNG Supply
 - a. The SPV shall empanel a PNG supplier vendor with whom the Developer may enter into a commercial agreement as per requirement.
7. Solid Waste Management System
 - a. The SPV shall provide a pneumatic based solid waste management system of adequate capacity as per prevalent norms at all times to the Developer.
8. Power Grid Supply
 - a. The SPV shall provide infrastructure for 11kV line at the Developer's plot boundary. The Developer shall be responsible for converting the 11kV supply to appropriate voltage of use.

- b. The Developer shall take the 11KV connection directly from the electricity distribution company.
- c. As per Environmental Clearance received by the SPV, the Developer shall generate solar power for a minimum of 5% (five percent) of its overall monthly consumption

9. Communication Network

- a. The SPV shall empanel 3 ICT service providers, any of whom the Developer may choose to enter into a commercial agreement as per their choice.

10. District Cooling

- a. The SPV shall supply 24x7 chilled and heated water to the Developer as per Design Specifications listed below.

11. Design Specifications: Input temperature of 5.5 °C and output temperature of 14.5 °C for chilled water and 50 °C - 60 °C for hot water, where hot water shall only be used for heating purposes and not for use in kitchen/ bath room. [Hot water provision applicable only for hotels]. Developer shall communicate its HVAC water requirements to the SPV.

12. Rainwater harvesting and Storm Water Drainage

- a. The SPV has planned adequate modular rainwater harvesting for the entire complex. However, the rainwater surfaces run off and storm water shall be discharged by the developer to the nearest storm water drain provided by SPV. Separate rain water harvesting system within the developer's area shall be provided by the developer as per the regulation of concerned Authority.

**SCHEDULE D:
MANDATED DEVELOPMENT REQUIREMENTS**
[Refer Clause 5.3(a)]

Part A:

Project shall comply with the following specifications relating to its development.

Guest rooms specifications:

| | | |
|---|-----|--|
| Minimum number of guest rooms | 300 | Project should have at least 300 air-conditioned guest rooms |
| Minimum size of bedroom excluding bathroom in square feet | 140 | Rooms should not be less than the specified size. The area may include the vestibule and other covered area within the room but excludes outdoor verandah/ balcony. Single occupancy rooms may be 20 square feet less. |
| Minimum size of bathroom in square feet | 36 | - |

Part B:

Developer must meet the development requirements mentioned in “Annexure 3. Mandatory Development Guidelines_5 Star Hotel”

**SCHEDULE E:
URBAN DESIGN GUIDELINES**

Developer must adhere to the design guidelines mentioned in “Annexure 4. Urban Design Guidelines_Hotel Phase 1”

SCHEDULE F: APPROVALS

List of Approvals

(A) Approvals to be obtained/to be obtained by SPV

(B) To be obtained by Developer from statutory authorities.

(C) Some additions (highlighted) to be included in RFP as part of approval to be obtained by Developer from SPV.

A. APPROVALS OBTAINED/TO BE OBTAINED BY SPV

1. Layout Plan of IICC Complex - approved by South Delhi Municipal Corporation (as given at “Annexure 1. IICC Layout Plan”)
2. Two numbers of Road connectivity from West Side of Project Site- approved by Delhi Development Authority (DDA).
3. Concept Layout plan approval from Delhi Urban Arts Commission (DUAC).
4. Power Sourcing approval (66KV) from BSES Rajdhani Power Ltd (BRPL).
5. Environmental Clearance from MoEFCC/EAC as provided in “Annexure 6: Environmental Clearance”
6. Water Requirement approval by Delhi Jal Board (DJB).
7. Tree Cutting/Afforestation approval by Department of Forest, Delhi.
8. Consent to Establish approval from DPCC

B. APPROVALS/COMPLIANCE TO BE ACQUIRED BY THE DEVELOPER FROM STATUTORY AUTHORITIES

1. NOC from Delhi Traffic Police
2. Height Clearance- approved from Airport Authority of India (AAI).
3. Building Plan Approval by DDA/ SDMC/DUAC/Fire deptt.
4. Permission from Department of Mines for Excavation if applicable.
5. Intimation to DDA/ SDMC before 7 day of start of Construction
6. Environmental monitoring and compliance as per Statutory Requirements.
7. Permission from Central Ground Authority (CGWA) for Piling/ Boring if applicable.
8. Intimation to Health and Safety Department before start of Construction
9. Approval from Chief Controller of Explosive Nagpur (for Storage of Diesel / Petrol) if applicable.
10. Obtaining IGBC Green Building Platinum V3 certification from Indian Green Building Council.
11. NOC from Lift Inspector, Government of National Capital Territory of Delhi
12. NOC for Fire Inspection
13. Power Sourcing approval (11KV) from BSES Rajdhani Power Ltd (BRPL)
14. NOC from BRPL (Power supply).
15. Consent to Operate (COP) Certificate from DPCC
16. In addition to above, any approval required during the construction/operations/development of facility shall be acquired by developer from the respective authority/SPV.

C. APPROVALS TO BE OBTAINED FROM SPV (Other Applicable Permits)

1. Approval from SPV for Electricity, Water and Sewerage connection
2. Approval from SPV for HVAC requirements
3. Approval from SPV for HSD connection/requirement
4. Approval from SPV and PNG distributor for PNG connection.

5. Approval from SPV and Telecom vendor for telecommunication/internet connection.
6. Approval from SPV for Storm water connection
7. Approval from SPV for connection to solid waste management system
8. Any other approval required during the construction/operations/development of facility shall be acquired by developer from the respective authority/SPV.

**SCHEDULE G:
VESTING CERTIFICATE**
(See Clause 14.2)

1. The Managing Director, [INDIA INTERNATIONAL CONVENTION & EXHIBITION CENTRE LIMITED] (the "**SPV**") refers to the Development Agreement dated *** (the "**Agreement**") entered into between the SPV and **** (the "**Developer**") for development, operation and management of a hotel (the "**Project**") at the India International Convention & Expo Centre ("**IICC**") planned to be developed at Sector 25, Dwarka, New Delhi ("**IICC Site**").
2. The SPV hereby acknowledges compliance and fulfilment by the Developer of the Divestment Requirements set forth in Clause 14.2 of the Agreement on the basis that upon issuance of this Vesting Certificate, the SPV shall be deemed to have acquired, and all title and interest of the Developer 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 Developer to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Developer in any manner of the same.

Signed this *** day of ***, 2019 at Delhi.

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of DEVELOPER by:

For and on behalf of INDIA INTERNATIONAL
CONVENTION & EXHIBITION CENTRE
LIMITED by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

**SCHEDULE H:
PERFORMANCE SECURITY**

To,
[Designation],
INDIA INTERNATIONAL CONVENTION & EXHIBITION CENTRE LIMITED
[Insert address]

WHEREAS:

- (A) [●] (the "**Developer**") and **India International Convention & Exhibition Centre Limited** (the "**SPV**") have entered into a Development Agreement dated [●] (the "**Agreement**") whereby the SPV has agreed to the Developer development, engineering, financing, procurement, construction, operation and maintenance 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 Developer to furnish a Performance Security to the SPV in a sum of [Rs [●] (Rupees [●])]¹ (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 Developer'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 Developer, 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, that the Developer 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 Developer is in default in due and faithful performance of its obligations during the Term under the Agreement and its decision that the Developer is in default shall be final, and binding on the Bank, notwithstanding any differences between the SPV and the Developer, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Developer 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 Developer 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 Developer before presenting to the Bank its demand under this Guarantee.

¹ Note: The Guarantee Amount will be for an amount equivalent to 7.50% of the Lease Premium.

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 Developer 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 Developer, 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 Developer 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 Developer 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 Developer is not in breach of this Agreement. Upon request made by the Developer for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Developer, the SPV shall release the Performance Security forthwith, provided that the SPV has issued the Vesting Certificate to the Developer.
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 Developer pursuant to the provisions of the Agreement, whichever is later.

Signed and sealed this ** day of ***, 2019 at ***.

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Address)