

Contents

LICENSE AGREEMENT	3
ARTICLE 1.....	5
DEFINITIONS AND INTERPRETATION.....	5
1.1 Definitions.....	5
1.2 Measurements and Arithmetic Conventions.....	7
1.3 Priority of contract documents and errors/discrepancies	7
GRANT OF LICENSE	8
2.1 Grant of LICENSE.....	8
2.2 LICENSE Period	8
2.3 Restriction on licensing the use of the Licensed Area or any part thereof	9
ARTICLE 3.....	10
CONSIDERATION TO DMRC.....	10
ARTICLE 4.....	14
RETAIL SPACE DEVELOPMENT AND OPERATIONS	14
4.1 Entry to the Retail Space for work.....	14
4.2 Use of the Retail Space and Peaceful Possession.....	14
4.3 Detailed Scope of Work for License of the Retail Space	15
4.4 Operations & Maintenance of the said Licensed Area.....	17
4.5 Reporting requirements	17
4.6 Retail Space Safety and Security Measures	17
4.7 Co-ordination	18
ARTICLE 5.....	19
RIGHTS AND OBLIGATIONS.....	19
5.1 The Licensee's Responsibilities and Duties	19
5.5 Assignability and Encumbrance	21
ARTICLE 6.....	22
RESTRICTION ON CHANGES IN LICENSEE AND SPECIAL PURPOSE COMPANY	22
ARTICLE 7.....	23
INSURANCE.....	23
ARTICLE 8.....	24
ACCOUNTS AND AUDIT.....	24
ARTICLE 9.....	25
FORCE MAJEURE	25
9.1 Force Majeure Event.....	25
9.2 Notice of Force Majeure Event.....	25
9.3 Performance of Obligations.....	25

9.4 Termination due to a Force Majeure event.....	26
ARTICLE 10.....	27
TERM AND TERMINATION.....	27
10.1 Term.....	27
10.2 Termination by DMRC	27
10.3 Termination for Force Majeure	28
10.4 Consequences of Termination	28
10.5 Rights of DMRC on Termination	29
ARTICLE 11.....	30
DISPUTE RESOLUTION	30
11.1 Amicable Resolution	30
11.2 Arbitration	30
ARTICLE 12.....	32
REPRESENTATIONS AND WARRANTIES, DISCLAIMER	32
12.1 Representations and Warranties of the Licensee.....	32
12.2 Obligation to notify change.....	33
ARTICLE 13.....	34
MISCELLANEOUS	34
13.1 Interest and Right of Set Off.....	34
13.2 Governing Law and Jurisdiction	34
13.3 Waiver	34
13.4 Survival.....	34
13.5 Amendments.....	35
13.6 Notices.....	35
13.7 Severability	36
13.8 No Partnership.....	36
13.9 Language.....	36
13.10 Exclusion of Implied Warranties etc.....	36
13.11 Counterparts	36
Plans/Drawings of The Retail Space and Specified Area	38
DRAFT ESCROW AGREEMENT.....	39

LICENSE AGREEMENT
(Separate for each Retail Space)

This Agreement is executed on this [*] day of [*] 2011 is entered into at New Delhi

BY AND BETWEEN

The **Delhi Metro Rail Corporation Limited**, a joint venture of the Government of India and the Government of the National Capital Territory of Delhi, having its registered office at Metro Bhawan, Fire Brigade Lane, Barakhamba Road, New Delhi 110001 (hereinafter referred to as “**DMRC**” which expression shall unless repugnant to the context include its successors and assigns) of the One Part,

AND

M/s _____ Ltd.¹, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____ (hereinafter referred to as the “**Licensee**” which expression shall unless repugnant to the context include the successors and permitted assigns) of the Other Part

OR

M/s _____ Ltd.², a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____; M/s _____ Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____; and Messrs _____ Ltd., and a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____; who form a consortium for the purposes of this Agreement and Retail Space to be implemented under this Agreement (hereinafter collectively referred to as the “**Licensee**” which expression shall unless repugnant to the context include their respective successors and permitted assigns including any Special Purpose Company that may be permitted by DMRC to be established as detailed in this Agreement) of the Other Part

WHEREAS:

- A. DMRC has been established with the principal object of planning, designing, developing, constructing, maintaining operating and financing Mass Transit and other urban transport and people mover system of all types and descriptions in the National Capital Territory of Delhi and other areas of the National Capital region (hereinafter called the ‘**territory**’);

¹ In case of a single company

² In case of a Consortium include the names and addresses of the Consortium members. A Special Purpose Company (SPC) may be allowed subsequent to the signing of the agreement but the SPC will not be a party to sign the Agreement. SPC can be permitted only by way of convenience to the consortium members, without in any way affecting the obligations and responsibilities of the consortium members. For the functional aspects SPC may become the operating company of the Retail Space. DMRC will recognise only the consortium/individual as tendered, which will be jointly and severally responsible for fulfilling all the obligations under the agreement. DMRC is not liable to enter into any separate agreement with SPC.

- B. The Delhi Metro Railway (Operation and Maintenance) Act, 2002 has been enacted by the Parliament to provide for the operation and maintenance, and to regulate the metro railway in the metropolitan city of Delhi and for matters connected therewith and incidental thereto;
- C. Considering the public utility services rendered by DMRC and with the aim of subsidizing the charges for the passengers and promoting the use of the Metro Rail, DMRC has been authorised to develop real estates and other commercial facilities in the Metro Stations and other places in the Territory and generate revenues there from;
- D. In pursuance of the above DMRC decided to offer _____ (Name of the Retail Space) at HUDA City Centre MRTS station to a Retailer for operating the Retail spaces, maintenance and management in return for payments specified in this agreement. The area is more fully described and delineated in the plan attached hereto as Schedule A. (the said Sq.m. is hereinafter referred to as the '**Specified Area**').
- E. DMRC proposed to grant to a selected bidder a License to operate, manage, maintain and License the use of the Retail space and facilities in the Specified Area for specified purposes (the Retail Space authorized to be undertaken is hereinafter called the '**Retail Space**').
- F. DMRC invited proposals for selection of Retailers for the Retail Space on a auction basis through the tender notice dated _____ and after evaluation of the bids received, DMRC has accepted the bid of the Licensee herein and has issued them a Letter of Acceptance ('LOA') requiring inter alia, the execution of this LICENSE Agreement within 30 (Thirty) days thereof after the satisfaction of all conditions precedent specified in the Bid and the LOA dated
- G. The Licensee has paid to the DMRC the upfront fee of Rs ----- Crores.
- H. The Licensee represents and warrants that it/they have duly fulfilled all the terms and conditions necessary for the execution of this Agreement as per the terms contained in the bidding documents and are in a position to execute this Agreement and implement the Retail Space as envisaged in the Bid and this Agreement.

NOW THEREFORE, in lieu of the mutual promise and consideration set out herein DMRC and the Licensee (each individually a "Party" hereto, and collectively the "Parties") hereby agree as under:

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 ascribed to them hereunder:

“Agreement” means this Agreement, and includes any amendments, annexures hereto made in accordance with the provisions hereof.

“Applicable Law” means all Acts, Rules and Regulations in force and in effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs of or orders of any court of record, as may be in force and effect during the subsistence of this Agreement applicable to the Retail Space and the Parties hereto.

“Applicable Permits” means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Law, in connection with the “Retail Space” during the subsistence of this Agreement.

“Bid” means the documents in their entirety comprised in the bid, including all clarifications, addenda and revisions issued by DMRC to the Bidders, the Bid submitted by the successful Bidder (Licensee) in response to the Tender Notice in accordance with the provisions thereof. The words “Bid” and “Tender” are used synonymously.

“Change in Law” means the occurrence or coming into force of any of the following after the date of signing this Agreement:

- (a) the enactment of any new Indian law
- (b) the repeal, modification or re-enactment of any existing Indian law
- (c) any change in the rate of any Tax

Provided that Change in Law shall not include:

- (i) coming into effect after the date of signing this Agreement of any provision of a statute which is already in place as of the date of signing this Agreement or
- (ii) Any new law or any change in existing law under the active consideration of or in the contemplation of any Government as of the date of signing this Agreement, which is a matter of public knowledge.

“Commencement Date” means the date on which access to the Retail Space is allowed by DMRC to the Licensee, in accordance with the terms of this agreement.

“Completion” in relation to the Retail Space shall mean completion of building civil works thereof (in accordance with the applicable byelaws and rules in force and approvals and sanctions received) including utilities & services such as Electricity, Water Supply,

Sewerage, HVAC, Lifts & elevators, Fire fighting, and other common amenities as duly certified by the grant of Occupancy Certificate by the competent authority.

“Consideration” shall mean and includes the payments to be made by the Licensee to the DMRC as provided in Article 3 hereafter.

“Damages” shall mean any claim of DMRC against the Licensee for breach of this Agreement, including but not limited to, losses, dues, arrears etc. against which DMRC shall be entitled to claim and adjust the Performance Security.

“Emergency” means a condition or situation that is likely to endanger the security of the individuals working for the Retail Space or which poses an immediate threat of material damage to any of the Retail Space Facilities.

“Escrow Account” means an Account, which the Licensee shall maintain in a Scheduled Commercial Bank acceptable to DMRC in which all the revenues of the Licensee from the Retail Space of whatsoever nature shall be credited and outflows of cash on account of payments to DMRC and other purposes shall be debited, in accordance with the provisions of this Agreement as a payment security mechanism to protect the interest of DMRC.

“Fit-out Period” means the period of maximum 180 (One Hundred Eighty) days from the date of handing over of the premises for carrying out the fit-outs, finishing works etc. in order to operationalise the Retail Spaces.

“Force Majeure” or **“Force Majeure Event”** means an act, event, condition or occurrence as specified in Article 9.

“Governmental Agency” means Central or State Government or any ministry, department, commission, board, authority, instrumentality or agency, under the control of Central or State Government or any other local or municipal bodies or institutions having jurisdiction over all or any part of the Retail Space or the performance of all or any of the services or obligations of the Licensee under or pursuant to this Agreement.

“Independent Auditor” means the auditor appointed by DMRC to independently audit and verify all matters, expenses, costs and realizations of the Licensee.

“License Period” means the period beginning from the Commencement Date and ending on the Termination terms by efflux of time or sooner determination in accordance with the date of this Agreement.

“Licensed Area” means the Specified Area and facilities, being offered to the Licensee for the operations at the Retail Space in terms of this Agreement.

“Maintenance Fee” shall mean the fee charged by the Licensee from sub- Licensees /tenants for the maintenance and upkeep of the Retail Space including all user charges.

“Parties” means the parties to this Agreement and **“Party”** means either of them, as the context may admit or require.

“Performance Security” shall mean the security to be furnished by the Licensee as provided in Article 3 hereafter.

“**Permits**” shall mean and include all applicable statutory, environmental or regulatory licenses, authorization, permits, consents, approvals, registrations and franchises from the relevant authorities.

“**Receivables**” shall mean and include all amounts, fees, consideration, charges etc. received by the Licensee by the Sub-Licensee(s) of the Licensed Area or through the operations at the Licensed Area being carried out by Licensee.

“**Retail Space**” means the property namely the Specified Area within the HUDA City Centre Station Box for commercial development as detailed in the Schedule A given on License by DMRC to the Licensee under and in accordance with this Agreement. The Retail Space area is demarcated in the plan placed in Annexure 7 of this document.

“**Specified Purpose**” means use of the Licensed Area by the Licensee or the Sub-Licensee for its development of and undertake the activities as specified in Clause 4.3.2 herein.

“**Sub Licensee**” means all persons who are allowed by the Licensee to use the Retail Space area and facilities in the Specified Area for specified purposes.

“**Tax**” means and includes all taxes (including service tax as applicable from time to time), fees, cesses, levies that may be payable by the Licensee under the Applicable Laws to the Government or any of its agencies.

“**Termination**” means termination of this Agreement by efflux of time or sooner determination in accordance with the provisions of this Agreement.

“**Termination Date**” means the end of the License period of **12** years from the commencement date or date of sooner determination of the Agreement whichever is earlier.

1.2 Measurements and Arithmetic Conventions

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

1.3 Priority of contract documents and errors/discrepancies

1.3.1 The several documents forming a part of this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall, in the event of any conflict, discrepancy or ambiguity between them, be in the order they are set out:

- (i) This Agreement;
- (ii) Schedules to this Agreement;
- (iii) The Letter of Acceptance issued to the Licensee;
- (iv) The written clarifications and addenda issued to the Bidders;
- (v) The Bid Application Form (BAF) document, including the Draft License Agreement.

ARTICLE 2

GRANT OF LICENSE

2.1 Grant of LICENSE

- 2.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, and in particular subject to the due fulfillment of all the obligations assumed towards DMRC by the Licensee, DMRC hereby grants and authorizes the Licensee:
- (a) To have access to operate, manage and maintain the Retail Space at the Specified Area during the License Period at the cost and risk of the Licensee;
 - (b) To sub-license, at its own costs and risk, the use of the Retail Space Facilities during the period of this Agreement and derive incomes there from in the form of License fees, maintenance charges and other user charges.
- 2.1.2 The Licensee shall not be entitled to use or allow the use of the Retail Space Facilities by the sub-licensee or any other person or for any other purpose other than the Specified Purpose.
- 2.1.3 *The* Retail Space Licensed by DMRC to the Licensee in terms of this Agreement comprises the bare shell structure inclusive of columns at **HUDA City Centre** MRTS station totaling to an approximate area of _____ **Sq. m.** at the _____ Level, more fully described and delineated in **Schedule A** attached hereto. The Licensee may have to construct partition walls, floors in certain areas and all other related works.
- 2.1.4 DMRC may at its sole discretion, subject to availability and technical feasibility and if the same will not in any manner affect the operation of the other activities of DMRC, provide additional area to the Licensee on terrace of the Licensed Area and/or on the ground floor for installation of utilities and services such as water tanks, Air Conditioning plants and generators etc. on commercial terms mentioned in this Agreement.
- 2.1.5 Nothing contained herein, including the act of granting permission to develop the Licensed Area at the Retail Space and to License the use of the Licensed Area or any part thereof shall vest or create any proprietary interest in the Licensed Area or any part thereof including any permanent fixtures, fittings, etc. installed in the structure of the Licensed Area in favour of the Licensee or any Sub-Licensees or any part thereof or any other person claiming through or under the Licensee or sub-Licensees. The Licensee shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber or deal with the Licensed Area in any manner except sub License the use of the Licensed Area as provided under Article 2.1.1 above. The Licensee acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement and shall duly bind the sub-licensee to whom any License or authorisation is given for use of the Licensed Area.

2.2 LICENSE Period

- 2.2.1 The LICENSE is hereby granted in favour of the Licensee for a total period of **12**

(twelve) **years from the Commencement Date** subject to sooner determination of the License in terms of Agreement during which the Licensee is authorized to implement the Retail Space and undertake the activities specified under sub-clauses (a) and (b) of Article 2.1.1 above.

2.2.2 At the end of the LICENSE period or sooner determination of this Agreement for any reason whatsoever all rights given under this LICENSE Agreement shall cease to have effect and the Retail Space and Licensed Area with all the furniture and fixtures and other assets permanently attached to the Licensed Area shall revert to DMRC without any obligation on part of DMRC to pay or adjust any consideration or other payment to the Licensee. The Licensee voluntarily gives DMRC the right to seal the said Licensed space and remarket the same as part on its discretion upon Termination of this Agreement. No claim, compensation or damages will be entertained by DMRC on this account.

2.3 Restriction on licensing the use of the Licensed Area or any part thereof

2.3.1 The Licensee shall be entitled, during the subsistence of this Agreement, to allow the use of the Licensed Area through a sub-licensing arrangement to sub-Licensee/s subject to the terms and conditions contained in this Agreement and subject to all Applicable Laws.

2.3.2 The Licensee shall be entitled to sub license the use of the Licensed Area, during the subsistence of this Agreement only with a clear stipulation that the licenses granted to the sub-licenses shall terminate simultaneously with the Termination of this License Agreement including on sooner determination of the LICENSE for any reason whatsoever. All contracts, agreements or arrangements with sub-Licensees shall specifically stipulate this covenant of termination of the sub-Licensees rights and further that the sub licensee shall not have any claim whatsoever against DMRC for any such termination.

2.3.3 The Licensee shall prepare a draft Standard format of the sub license agreement or arrangement, which the Licensee will be required to sign with the sub licensee for the use of the Licensed Area. The Licensee shall furnish the draft of such agreement to DMRC for modification or suggestion. DMRC shall be entitled to incorporate such clauses, as DMRC may consider appropriate to protect DMRC's interest.

2.3.4 The Licensee shall enter into sub-licensee arrangements strictly as per the drafts approved by DMRC and the Licensee shall not incorporate or change in such sub license agreement that would have any adverse effect on the covenants incorporated by DMRC. In case of any deviation from the draft of the sub-license agreement in any particular circumstance, which supersedes or adversely affects DMRC's terms and covenants, the prior written consent of DMRC shall be taken before entering into any such agreement with a sub-licensee.

ARTICLE 3

CONSIDERATION TO DMRC

Consideration

- 3.1 In consideration of the rights, privileges and interests granted by DMRC to the Licensee in terms of this Agreement, the Licensee will pay the following amounts to DMRC in addition to the due performance of all other obligations, responsibilities and liabilities assumed by the Licensee under this Agreement:
- (i) Fixed (Non-refundable) Upfront Fee of Rs...../- (Rupees only) before signing of this LICENSE Agreement. The Licensee has paid this amount vide Pay Order/Cheque/Draft No..... dated drawn on
 - (ii) Recurring payments on quarterly basis for the Retail Space area of Rs..... Lakhs (.....only) payable from the day after the expiry of the Fit-out period from the Commencement Date, which shall be escalated at the rate of **15%** every three years on compounding basis from the date of handing over the Retail space. The additional area on terrace, ground floor, concourse or basements if made available as specified under Article 2.1.4 above for installation of utilities and services area the same will be charged at **half the pro-rata rates** for recurring payments for the Retail Space area of approx. -----sqm and shall also be payable on quarterly basis from the day after the expiry of the Fit-out period;
 - (iii) Maintenance fee of INR 120/sq. m./per month for the total leased area on quarterly basis from the date of handing over the site.
 - (iv) Payment of charges for the energy, water and other utility services to the extent provided by DMRC in the Retail Space facilities.
 - (v) The recurring payments in item ii and maintenance fee in item iii above shall be escalated at the rate of **15 %** every three years on compounding basis
- 3.2 The upfront and recurring payments shall be adjusted on pro-rata basis if there is any variation in the area between that stated in the tender document and actual area made available at the time of handing over possession to the Licensee.
- 3.3 The Recurring payments in Article 3.1(ii) shall become payable from the first day after Fit-out period from the Commencement Date notwithstanding that the Licensee has not been able to sub license or otherwise put to use whole or any part of the Licensed Area for any reason whatsoever except for force majeure reasons as specified in Article 9 or for reasons solely attributable to DMRC without any contributory factor on the part of the Licensee.
- 3.4 The Licensee shall make the Recurring payments under Article 3.1(ii) above for each quarter within seven days of commencement of the respective quarter.
- 3.5 The Licensee shall pay the charges under Article 3.1 (iv) above as per the bills raised by DMRC based on actual consumption, within 15 (fifteen) days of receipt of such

bills. The cost of any apparatus necessary for such determination of consumption including but not restricted to meters necessary for such determination of consumption and all other incidental charges & overheads shall be borne by the Licensee.

- 3.6 Any delay in payments of the amounts becoming due on the due dates shall constitute a willful material default on the part of Licensee and in such case DMRC shall be entitled to encash the Performance Security and claim damages from the Licensee and will also be entitled to terminate the Agreement as mentioned in Article 3.8 dealing with Performance Security. The rights of DMRC in terms of this clause shall be without prejudice to other rights of DMRC against the Licensee including the rights specified in Article 3.7 herein dealing with payment security and escrow mechanism. In addition, DMRC shall be entitled to interest at the rate of 1.25 percent per month for the delay in the payment of the amounts due to DMRC.

3.7 Payment Security & Escrow

- 3.7.1 DMRC shall at all times have the first and paramount charge over all receivables of any nature whatsoever that the Licensee is entitled to claim or receive from the sub-licensees for the use of the Licensed Area or from the operations of the Licensee in the Licensed Area. The Licensee shall not create any encumbrance, charge, lien or otherwise execute any instrument which would in any manner affect or prejudice the first charge over the receivables in favour of DMRC. The Licensee shall not create any charge over the receivables including the amounts in the Escrow Account and also the actionable claims in regard to the Retail Space in favour of any person including in favour of the banks or lending institution over-riding or otherwise adversely affecting the interest of DMRC. Subject to the above and to the first and paramount charge, DMRC may allow the Licensee to create second charge over the receivables in favour of financial institutions.
- 3.7.2 The Licensee shall within 2 months from the date of signing of this Agreement identify a Nationalised/Scheduled Bank acceptable to DMRC and open an Escrow Account in terms of the Escrow Agreement to be signed between the Licensee, DMRC and the Bank as per the draft attached hereto as Schedule B. The Bank will act as the Escrow Agent for the purposes of receiving the receivables in terms of this Agreement.
- 3.7.3 The Licensee hereby unconditionally and irrevocably without demur agree to receive and deposit all receivables from sub-licensing the use of the built spaces or from the operations of the Licensee at the Licensed Area or otherwise from the Licensed Area at the Specified Area into the Escrow Account with the Bank. The amounts in cash, if any received by the Licensee shall be deposited in the Escrow Account within 24 hours of the receipt or the immediate next working day in case of a Bank holiday. The Licensee shall not give credit or make any adjustment against the receivables for any payment due from the Licensee. The Licensee shall ensure that no other person is authorised to utilize or appropriate any part of the receivables contrary to the above.
- 3.7.4 The Escrow Bank shall be given irrevocable instruction to remit to DMRC the amounts becoming due to DMRC under this Agreement as per the claims made by DMRC from time to time. So long as any amount is outstanding to DMRC from the Licensee, the amounts in the Escrow Account shall not be utilized for any purpose

other than for payment to DMRC. After due discharge of all amounts outstanding to DMRC, the Escrow Bank shall be entitled to allow the amount to be utilized by the Licensee till such time further amounts become due from the Licensee to DMRC as per the claims made by DMRC. As soon as such claim is received from DMRC, the amounts lying in the Escrow Account including any amounts thereafter coming into the Escrow Account shall be used for payment to discharge the dues of DMRC as mentioned above.

- 3.7.5 The Licensee hereby acknowledges and undertakes not to open or establish any other account other than the Escrow account with any Bank or Body Corporate for the receipt/ deposit of the receivables from the use of the Licensed Area in terms of this Agreement.
- 3.7.6 The Licensee shall instruct in unambiguous terms all its tenants/sub Licensees in the agreements signed with them, that all payments receivables to be made to the Licensee will be deposited in the said escrow account.
- 3.7.7 The Licensee will at all times maintain a minimum balance equivalent to one quarter of the recurring payment in the escrow account.

3.8 Performance Security

- 3.8.1 The Licensee shall for the due and faithful performance of its obligations, provide to DMRC Bank Guarantee/Demand Draft/Pay Order from a Scheduled Commercial Bank '**except Regional Rural Banks(RRB's) & Local Area Banks (LAB's)**' acceptable to DMRC, and payable at New Delhi for a sum equivalent to one year's Recurring payments including payments for the additional area as per Article 3.1. This Performance Security shall be submitted along with the Upfront Payment to DMRC. The Performance Security shall be kept valid on a rolling basis till the end of the LICENSE Period. The amount of the security deposits shall be periodically escalated in accordance with the escalation as per Article 3.1 (ii).
- 3.8.2 The said Performance Securities shall be returned by DMRC after the expiry of the LICENSE Period subject to adjustment of any amounts and claims due and payable to DMRC in terms of this Agreement and fulfilment of all handover requirements by the Licensee, to the satisfaction of DMRC and further subject to adjustment for all loss and/or damages suffered by DMRC.
- 3.8.3 If the Licensee defaults in any recurring payment for more than 60 days from the due date as per the provisions of this Agreement, DMRC shall be entitled to encash the Performance Security without being liable in any manner whatsoever to the Licensee and to appropriate the Performance Security as 'Damages', without prejudice to other rights and claims of the DMRC.
- 3.8.4 Upon encashment of the said Performance Security, the Licensee within 7 (seven) days of receiving a written notice for the same from DMRC deposit such amounts with DMRC so as to ensure that the aggregate amount the Performance Security deposited with DMRC is equal to Rs_____ (Rupees_____ Only) at all times during the Term of this Agreement. If the Licensee fails to provide such additional amounts towards Performance Security within the stipulated time, DMRC shall be entitled to Terminate this Agreement in accordance with the provisions of Article 10,

without being liable in any manner whatsoever to the Licensee and to appropriate the balance Performance Security as 'Damages'.

- 3.8.5 In case the Licensee has defaulted a second time in recurring payment, then DMRC shall be entitled to terminate this Agreement in accordance with the provisions of Article 10, without being liable in any manner whatsoever to the Licensee and to appropriate the Performance Security as 'Damages'.

ARTICLE 4

RETAIL SPACE DEVELOPMENT AND OPERATIONS

4.1 Entry to the Retail Space for work

- 4.1.1 DMRC shall allow the Licensee access to the area earmarked for the Licensed Area as detailed in Schedule A to the Licensee for undertaking the work relating to the Retail Space within 30 (thirty) days of signing of this Agreement. In case such access to the Licensee gets delayed for Force Majeure reason or for reasons solely attributable to DMRC with no contributory factor on the part of the Licensee, the date of Commencement of the LICENSE period shall be proportionately extended.
- 4.1.2 In the event the Force Majeure reasons preventing access to the Licensee continues for more than 180 days as envisaged in Article 4.1.1 above either DMRC or the Licensee shall be entitled to terminate this Agreement. In such event DMRC shall return the amount of Rs._____ (Upfront payment + Performance Security) paid by the Licensee to DMRC. There shall be no further liability or obligation of either party towards the other in case the Agreement is Terminated in terms of this Cause.

4.2 Use of the Retail Space and Peaceful Possession

- 4.2.1 The Licensee, subject to complying with the Terms and conditions of this Agreement, shall have the use of the Retail Space during the LICENSE Period in accordance with the terms of this Agreement and limited for the purposes mentioned in Article 2 above. The Licensee shall not use the Retail Space or the Licensed Area for any other purpose except for the Specified Purpose as defined herein.
- 4.2.2 The Licensee shall confine its operations to the Retail Space Retail Space. The Licensee shall take all necessary precautions to keep persons and equipment within such areas, and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely the HUDA City Centre Metro Railway Station Premises or otherwise cause any interference to the passengers, visitors, employees, representatives and agents of the DMRC.
- 4.2.3 The Licensee acknowledges and accepts that the nature of the commercial development in the subject property is subservient to the Station use and to serve commuters' interest and accordingly the Licensee hereby declares and undertakes to ensure that such development shall not be an impediment for the smooth functioning of the Station's core operations of the DMRC as envisaged in the Recitals.
- 4.2.4 The Licensee shall ensure at all times during the License period that its activities as well as those of its sub-licensees or any other person acting under or through them do not cause any inconvenience to commuters and/or disturb/disrupt in any manner or create an impediment for the smooth functioning of the operations of DMRC. For this purpose, the Licensee hereby undertakes to introduce and observe at all times, appropriate measures for safety, security and orderliness on the Licensed Area granted to the Licensee.

4.3 Detailed Scope of Work for License of the Retail Space

- 4.3.1 The Licensee shall, at its sole expense and risk, carry out the financing, procurement, management, operations and maintenance of the Licensed Area at the Retail Space in accordance with the provisions of this Agreement.
- 4.3.2 The nature of the activities and facilities that can be allowed at the Retail Space are as under:
- Departmental Store, Discount Store, Hypermarket
 - Restaurants, Fast Food Stalls, Kiosks
 - Offices, Banks,
 - Computer Training Centres
 - Showrooms for Consumer goods like Garments, Electronics / electrical Items, general utilities, etc.
- 4.3.3 The Licensee may use or allow the use of the Licensed Area for other activities which are not envisaged in Clause 4.3.2 above, only after prior written approval of DMRC.
- 4.3.4 The Licensee shall carry out the design and construction of the Licensed Area in strict compliance with all applicable laws, in particular, applicable Building Codes and Standards and good industry practice. Fit-out guidelines will also be provided by DMRC which has to be followed strictly
- 4.3.5 Subject to terms of this Agreement, the Licensee shall be free to design the layout plan and undertake the subdivision and partitioning works, interior design works along with utilities like power supply, water supply, toilets, drainage, HVAC, fire fighting, and telecommunications. Provided that: (a) the Licensee, the sub-licensees and their representatives, agents and other persons undertaking works shall duly adhere to the provisions of all Applicable Laws including and in particular the prevalent Building Bye-Laws of the place where the Retail Space is located and specified guidelines /requirements of other competent authorities. (b) the facilities and works being undertaken or installed shall not in any manner affect, hinder or interfere with the free movement of the passengers, DMRC's staff agents and representatives and visitors. (c) the width of passage and common area for movement of persons in the Licensed Area shall be kept as per prevalent Building Bye-Laws. (d) no material is stored or kept outside the Retail Space or in the common area meant for movement of persons; and (e) no surplus construction machinery and materials, including hazardous materials and wastes shall be left at any place in the Retail Space or the station & the fitout guidelines to be followed during fitout works.
- 4.3.6 Since the proposed development is within the station complex, therefore before applying to any other competent authority for sanction of the scheme/Retail Space layout the Licensee is required to first obtain DMRC's written approval on his proposed drawings and specifications with due consideration of accessibility for maintenance of existing utilities i.e. Water supply, Power supply, fire fighting, Tele communication, Bearing etc.. to ensure that the proposed developments do not conflict with the DMRC's activities and functional requirements, structural aspects, utilities and all traffic movement requirements. It is agreed that DMRC shall not unreasonably interfere with the internal layout of the complex proposed by the

Licensee. DMRC shall convey its decision within a maximum period of **30** (thirty) days after scrutinizing the submission. If DMRC is not satisfied and raises any objections, the Licensee shall be required to appropriately amend/modify his scheme / Retail Space layout within a reasonable time frame and seek DMRC's approval once again. The Licensee shall approach any other competent authority for sanction of the design etc. only after receiving the written approval of DMRC. The Licensee will use only standard materials including but not restricted to electrical materials as per standards prevalent in DMRC. In this connection the Licensee is required to get approved all material from the concerned department of DMRC before commencement of works.

- 4.3.7 Save as on account of Force Majeure reasons or reasons solely attributable to DMRC with no contributory factor of the Licensee, the Licensee shall have to complete in all respects the development of the Retail Space not later than One Hundred Eighty days of the Fit-out Period from the Commencement Date and DMRC may thereafter be entitled to restrict the construction on the Retail Space. The liability of the Licensee to pay the consideration and other amounts to DMRC shall however commence from 180 (One Hundred Eighty) days from the Commencement Date as stated in Article 3 and the LICENSE period shall be restricted to 12 years from the Commencement Date notwithstanding the time allowed for completion under this clause. For delays on account of Force Majeure reasons or reasons attributable solely to DMRC with no contributory factor of the Licensee, the due date for the first recurring payment and LICENSE Period shall be extended accordingly by the 'period of delay', but no financial claims shall be entertained by DMRC on this account.
- 4.3.8 The Licensee acknowledges and accepts that the Parking Facility shall be as available in the station complex and no special arrangement or exclusive Parking Area shall be required to be provided by DMRC for the Licensed Area.
- 4.3.9 The Licensee shall make its own fire-fighting arrangements for the Station Box area. Such fire-fighting arrangements shall conform to the IS Code of Practice / Haryana Fire Services norms since the aforesaid property, being part of the main station building and further being interconnected, becomes even more sensitive from the aspect of fire hazards. The Licensee shall ensure installation of automatic sprinkler systems, fire alarm & detection system under intimation to DMRC department and occupy the premises only after inspection and approval of the concerned department of DMRC. In this connection the Licensee will provide unfettered access to DMRC's fire officers for the purpose of inspection from time to time and shall at own risk and cost install and complete works as may be instructed by the fire officer of DMRC.
- 4.3.10 The Licensee shall be solely responsible and liable for development of the Licensed Area and implementation of the scheme/Retail Space layout. DMRC shall not be responsible in any manner whatsoever to either the Licensee or its contractors or agents and sub-licensees for any default or failure by the Licensee to comply with statutory requirements, design and construction as per the Applicable Laws in particular Building Codes and Good Industry Practice, observance of safety and security measures at Retail Space etc.
- 4.3.11 It is the Licensee's sole responsibility to obtain all necessary clearances and sanctions from competent authorities for approval to the various things such as fire

alarm, detection & fighting, required to be installed at the Licensed Area. DMRC shall only provide assistance wherever possible, on best effort basis (without any legal and binding obligation) to facilitate the process.

4.4 Operations & Maintenance of the said Licensed Area

- 4.4.1 The Licensee shall be solely responsible and liable, at his own cost, for all maintenance, upkeep and repairs of the Retail Space Facilities and all its components, including buildings, utilities and services and allied works as per best industry practices and Applicable Laws and Applicable Permits. The Licensee shall also carry out rectification of defects in the design or construction of any component of the works at its own cost.
- 4.4.2 DMRC shall not be liable to any sub-licensee or end-user or visitors for any laxity or default by the Licensee or the Sub-Licensee in proper upkeep and maintenance of the Licensed Area or any of its components.
- 4.4.3 The Licensee shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there is minimal disruption of the operations of the Station.
- 4.4.4 DMRC may inspect the Licensed Area at any time for its own assessment of the compliance by the Licensee with its maintenance obligations under this Agreement. The Licensee shall extend all reasonable assistance to the DMRC representatives during such inspection visits.
- 4.4.5 The Licensee shall at its cost, carry out its own periodic inspections, and also assist DMRC or its nominee (whenever requested) to carry out any random or periodic inspection of any part or component of the works. The cost of any test, if required, shall be borne by the Licensee.
- 4.4.6 The Licensee will provide unfettered access into the LICENSED premises at all times to DMRC maintenance staff for carrying out maintenance works related to station utilities running through the said premises or accessible only through the Licensee premises.
- 4.4.7 The Licensee will comply with all requirements under the Metro Act and amendments thereto and also comply with all directives as may be issued from time to time from the office of the General Manager (O&M) of DMRC.

4.5 Reporting requirements

The Licensee shall, whenever required by the DMRC, provide in writing, for information, a general description of the arrangements and methods, which it proposes to adopt for the execution of the works during construction and development of the Licensed Area.

4.6 Retail Space Safety and Security Measures

- 4.6.1 Within 30 days from the date of this Agreement the Licensee shall provide to DMRC details of its safety plan, site logistic plan, list of contractors & consultants, material movement route, debris yard, location and procedures for the Works to be undertaken at the Licensed Area. The Licensee shall comply with all safety regulations applicable, in its design, access arrangements and operations on Retail

Space Retail Space. Unless otherwise stated in this LICENSE Agreement, the Licensee shall, from the commencement of work on the Retail Space until the expiration of this LICENSE Agreement, provide fencing, lighting, guarding and watching of the works and facilities. The Licensee shall be responsible for the operation of machinery and any other work and shall take all precautions to ensure safety of the staff, labourers and public.

4.6.2 The Licensee shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all plant and machinery, equipment, materials and other things required for the operation and maintenance of the facilities and shall indemnify and keep DMRC indemnified against any third party claims or loss or damage in respect of the same.

4.6.3 Unless otherwise stated in this LICENSE Agreement:

- i) The Licensee shall be responsible for keeping unauthorized persons off the Retail Space, during the Fit-out Period.
- ii) Authorised persons during the Fit-out Period shall be limited to the employees of the Licensee, employees of subcontractors of the Licensee, and employees and persons authorised by DMRC.

4.7 Co-ordination

4.7.1 The Licensee shall, upon request by DMRC, co-operate in the co-ordination of the works with the work of any other persons to whose systems the facilities are to be connected, provided that such co-operation shall not empower the Licensee to unreasonably interfere with the carrying out of the works. The Licensee shall afford all reasonable opportunities for carrying out their work to:

- i) the workmen of DMRC;
- ii) any other persons employed by the DMRC and their workmen; and
- iii) the workmen of any public authority who may be employed in the execution on or near the Retail Space of any work not included in this LICENSE Agreement, which DMRC may require.

4.7.2 Penalty clause

If any infringement/default as defined under clause 4.2.2, 4.2.3, 4.3.9 and 4.3.11 occurs, as determined by DMRC, DMRC will issue a notice to rectify such infringement/default within a stipulated time. If the infringement is not rectified within the stipulated time, a fine upto Rs. 1 Lakh (Rs. One Lakh only) will be imposed by DMRC, along with the additional time for rectification of such infringement/default.

ARTICLE 5

RIGHTS AND OBLIGATIONS

5.1 The Licensee's Responsibilities and Duties

The Licensee's Responsibilities and Duties shall include the following, in addition to and without prejudice to other obligations under this Agreement

- a) to obtain due Permits, necessary approvals, clearances and sanctions from the competent authorities for building plans, infrastructure facilities including power, water supply, drainage & sewerage, fire fighting, telecommunication, etc.;
- b) to comply and observe at all times with all Applicable Permits, approvals and Applicable Laws in the performance of its obligations under this Agreement including those being performed by any of its Contractors;
- c) to furnish DMRC with the "As built" Drawings of the Retail Space within the Fit out Period;
- d) to operate and maintain the Licensed Area at all times in conformity with this Agreement;
- e) to be responsible for safety, soundness and durability of the Retail Space including other structures forming part thereof and their compliance with the local building byelaws;
- f) to ensure that no structural damage is caused to the existing buildings and other permanent structures at the station as a result of his activities or any of its agents, contractors, tenants, etc.;
- g) to ensure at all times that the said development within the Station box is neither an impediment for smooth flow of traffic nor a cause of inconvenience and safety hazard for the station structure and for commuters;
- h) to take all reasonable steps to protect the environment (both on and off the Retail Space Retail Space) and to limit damage and nuisance to people and property resulting from construction and operations, within guidelines specified as per Applicable Laws and Applicable Permits;
- i) to submit the annual audited results of this Retail Space to DMRC on or before 30th June of every year.
- j) to pay at its own cost all applicable existing and future taxes/charges/fees including property tax, stamp duty, registration charges and any other related Legal Documentation charges, if any, in respect of the said Licensed Area, including land, as leviable, except for ground rent.
- k) to duly supervise, monitor and control the activities of Contractors under their respective Retail Space Agreements as may be necessary;
- l) to make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Licensee's obligations under this Agreement;

- m) to obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice and furnish copies of the same to DMRC;
 - n) to take all reasonable precautions for the prevention of accidents on or about the Licensed Area and provide all reasonable assistance and emergency medical aid to accident victims;
 - o) not to permit any Contractor or other person, claiming through or under the Licensee, to create or place any encumbrance or security interest over all or any part of Retail Space or the Retail Space Assets, or on any rights of the Licensee therein or under this Agreement, save and except as expressly permitted in this Agreement;
 - p) to ensure that such Retail Space remains free from all encroachments, encumbrances and trespass during the entire LICENSE Period;
 - q) during execution of Works, to keep the Retail Space free from all unnecessary obstruction, and store the Equipment or surplus materials dispose of such equipment or surplus materials in a manner that causes least inconvenience to the Metro Station and Commuters or otherwise to DMRC's activities.
 - r) within 30 (thirty) days of achieving 'Completion' of the said development in the Retail Space, to remove from the 'Retail Space' all surplus construction machinery and materials, including, without limitation, hazardous materials and wastes, and keep the 'Retail Space' in a neat and clean condition, and in conformity with the Applicable Laws; except that the Licensee shall be entitled to retain on any Retail Space, until the expiry of the LICENSE period, such equipment, materials and temporary works as required by it for the purpose of fulfilling its obligations under this LICENSE Agreement in respect of operation and maintenance of the Retail Space.
 - s) on expiry of LICENSE Period, within a maximum period of **30** days, to leave the entire complex in a clean and safe condition to the satisfaction of DMRC. Provided that if the Licensee fails to clear, the Retail Space Facilities and Retail Space, DMRC may invoke the Performance Security, and get the complex cleaned at the cost of Licensee.
 - t) to provide all assistance to the independent consultant / expert / independent auditor / arbitrator as it may require for the performance of its duties and services;
 - u) at all times, to afford access to the Retail Space to the authorised representatives of DMRC, Senior Lenders, other persons duly authorised by any Governmental Agency having jurisdiction over the Retail Space, to inspect the Retail Space and to investigate any matter within their authority and upon reasonable notice; and
 - v) to comply with the divestment requirements and hand over the Licensed Area to DMRC upon Termination of the Agreement;
- 5.2 The Licensee will be solely and primarily responsible to DMRC for observance of all the provisions of this LICENSE Agreement on behalf of the Licensee, its employees and representatives and further on behalf of the sub-licensees, their employees and agents and any person acting under or for and on behalf of the Licensee or the sub-licensees; contractor (s) appointed for the Retail Space as fully as if they were the acts or defaults of the Licensee, its agents or employees.

- 5.3 The Licensee shall be liable for and shall indemnify, protect, defend and hold harmless DMRC, DMRC's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Licensee to discharge its obligations under this clause and to comply with the provisions of Applicable laws and Applicable Permits.
- 5.4 The Licensee shall acknowledge and recognize that time is the essence of this Agreement and that the performance of its obligations shall be construed accordingly.

5.5 Assignability and Encumbrance

- 5.5.1 Except for the sub-licensing the use of the built space, Licensed Area as per the terms of this Agreement, the Licensee shall not assign any of its rights, or interest in this Agreement in favour of any company/person(s) at any time and for any reasons whatsoever.
- 5.5.2 The Licensee may subject to the first and paramount charge of the DMRC over the receivables from the sub-licensees and other users of the built up space and facilities, for the payment of the amounts becoming due to DMRC, create second or further charge over the receivables as security to recognised Financial Institution(s) / Banks for financial assistance and funding of the Retail Space.
- 5.5.3 Under no circumstance, shall the land or building or facilities constructed or installed at the Licensed Area or Retail Space be mortgaged, charged or otherwise any lien (including negative lien), charge or encumbrance be created or agreed to be created in favour of any person, including Lenders / Financial Institution(s) / Banks.

ARTICLE 6**RESTRICTION ON CHANGES IN LICENSEE AND SPECIAL PURPOSE COMPANY**

- 6.1 There shall be no change in the Licensee's shareholding structure that was submitted to DMRC at the time of bidding, till the Completion of the Retail Space. If there are changes in the structure before completion, the Licensee must take prior approval of DMRC.
- 6.2 Without in any manner affecting the obligations of the Licensee to DMRC, the Licensee if comprises of a Consortium, may establish a Special Purpose Company to implement the Retail Space. The Consortium members of the Licensee shall continue to be responsible and liable jointly and severally, for due performance of all the obligations and responsibilities assumed by them under this Agreement.
- 6.3 The Relevant Members (i.e. Members who had stake of 26% or more in the Retail Space at the time of bidding) of the 'Consortium' shall together maintain a minimum equity stake of 51% of the aggregate shareholding of the Special Purpose Company at all times. Any deviation from the above shareholding structure shall expressly be with the prior consent of DMRC. Further, any change in the equity shareholding pattern of the Special Purpose Company during the LICENSE period resulting in change in management control shall be notified to DMRC and be subject to prior permission of DMRC, which shall not be unnecessarily withheld. All members of the Consortium shall be liable jointly and severally for the execution of the Retail Space and the liabilities and obligations undertaken in terms of this LICENSE Agreement.

ARTICLE 7

INSURANCE

- 7.1 The Licensee shall, at its cost and expense, purchase and maintain during the LICENSE period insurance to cover against :
- (a) Loss, damage or destruction of the Licensed Area, at replacement value;
 - (b) The Licensee's general liability arising out of his Agreement;
 - (c) Liability to third parties;
 - (d) The risks that may devolve on DMRC as a consequence of any act of negligence or omission by the Licensee; and
 - (e) Any other insurance that may be necessary under and in accordance with the Financing Documents, Applicable Laws to protect the Licensee and its employees, including all Force Majeure Events that are insurable, and not otherwise covered in items above.
- 7.2 For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Licensee pursuant to this Article 7 are herein referred to as the "Insurance Cover".
- 7.3 Evidence of Insurance Cover: The Licensee shall, from time to time, provide to DMRC copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance including copies of all premium payment receipts, renewals) obtained by him in accordance with this Agreement.
- 7.4 Such insurance shall not be cancelled, changed or terminated until the expiration of at least 45 (forty five) days after written notice of such cancellation, change or termination has been given to DMRC in writing.
- 7.5 If at any point of time the Licensee fails to maintain in force and effect any / all of the insurances required under this Agreement, DMRC may, at its option, purchase and maintain such insurance and all sums incurred by DMRC therefore shall be reimbursed by the Licensee forthwith on demand, failing which the same shall be recovered by the DMRC by exercising right of set off or otherwise.
- 7.6 In the event of default i.e. avoiding the insurance cover, the Licensee agrees and undertakes to indemnify and hold the DMRC/licensor harmless against any and all liabilities, losses, damages, claims, expenses suffered by the DMRC.

ARTICLE 8**ACCOUNTS AND AUDIT**

- 8.1 The Licensee shall appoint and have during the subsistence of this Agreement as its 'Statutory Auditors' a firm of Chartered Accountants duly licensed to practice in India.
- 8.2 The Licensee shall maintain full accounts of all inflows collected by it from the Retail Space and of O&M Expenses and other costs.
- 8.3 Notwithstanding anything to the contrary contained in this Agreement, DMRC shall have the right, but not the obligation, to appoint at its cost, another firm of chartered accountants to independently audit ("Independent Auditor") and verify all matters, expenses, costs, realizations which have been carried out by the Statutory Auditors of the Licensee. In such an event, the Licensee shall provide to such Independent Auditor access to all documents and records, without demur or reservation.
- 8.4 In the event of their being any difference between the finding of the Independent Auditor, as the case may be, and the certification provided by the Statutory Auditors of the Licensee, such Auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved by recourse to the Dispute Resolution Procedure.

ARTICLE 9

FORCE MAJEURE

9.1 Force Majeure Event

Any of the following events resulting in material adverse effect shall constitute a Force Majeure Event :

- a. Earthquake, flood, inundation, landslide;
- b. Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- c. Fire caused by reasons not attributable to the Licensee;
- d. Acts of terrorism; and
- e. War, hostilities (whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war;
- f. Strikes or boycotts, other than those involving the Licensee, its contractors or their employees, agents, etc.; and
- g. Any other similar things beyond the control of the Party.

9.2 Notice of Force Majeure Event

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

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

9.3 Performance of Obligations

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

- a. Due notice of the Force Majeure Event has been given to the other party as required by the preceding Article 9.2;
- b. The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;

- c. There shall be no Termination of this Agreement due to Force Majeure Event except as provided in Article 9.4;
- d. Where the Licensee is the Affected Party, the various deadlines set forth in this Agreement and the LICENSE Period shall be extended by the period for which such Force Majeure Event shall subsist.
- e. Where the Licensee is the Affected Party, it has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Retail Space Facilities as a result of the Force Majeure Event and to restore the Retail Space Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- f. When the affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- g. The affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- h. Any insurance proceeds received by The Licensee shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice, unless otherwise agreed to by DMRC.

9.4 Termination due to a Force Majeure event

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

ARTICLE 10

TERM AND TERMINATION

10.1 Term

It is the intention of the parties that this Agreement shall continue to operate and be binding on the Parties for the LICENSE Period of 12 years from the Commencement Date, unless terminated earlier in accordance with the provisions of this Article 10.

10.2 Termination by DMRC

DMRC may terminate this Agreement due to any of the following events of default by the Licensee (hereinafter called the “**Licensee Event of Default**”):

- a. The Licensee has failed to perform or discharge any of its obligations in accordance with the provisions of this Agreement, unless such event has occurred because of a Force Majeure Event, or due to reasons solely attributable to DMRC without any contributory factor of the Licensee ;
- b. If at any time any payment, assessment, charge, lien, penalty or Damage herein specified to be paid by the Licensee to DMRC, or any part thereof, shall be in arrears and unpaid ;
- c. Any representation made or warranties given by the Licensee under this Agreement is found to be false or misleading ;
- d. The Licensee engaging or knowingly has allowed any of its employees, agents, tenants, contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement ;
- e. The Licensee has been adjudged as bankrupt or become insolvent;
- f. The Licensee has created any encumbrance, charges or lien in favour of any person or agency, over the Licensed Area or the Retail Space, save and except as otherwise expressly permitted under this Agreement ;
- g. A resolution for voluntary winding up has been passed by the shareholders of the Licensee ;
- h. Any petition for winding up of the Licensee has been admitted and liquidator or provisional liquidator has been appointed or the Licensee has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of DMRC, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Licensee under this Agreement ;
- i. The Licensee has abandoned the Licensed Area ;
- k. Not ensuring that the sub-licensees make all payments whatsoever through the escrow account or if it is reasonably established that direct payments are being made to the Licensee by-passing the escrow account.
- l. The constitution of the Consortium is changed without obtaining prior written consent of DMRC.

Provided that in the event of application of sub-clauses (a) and (b), above DMRC shall give to the Licensee **30** days time to cure the default prior to considering the events specified therein as Licensee's events of default and in the event the Licensee remedies the default to the satisfaction of the DMRC within the course period, the event will not be considered as a Licensee Event of Default.

10.3 Termination for Force Majeure

The Agreement may be terminated for Force Majeure Reasons as specified in Article 9.4.

10.4 Consequences of Termination

10.4.1 Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the LICENSE Period by efflux of time or due to a Force Majeure Event or the Licensee Event of Default.

10.4.2 At the end of LICENSE period, the Retail Space & the entire facility thereof shall transfer back to DMRC at nil value. DMRC at its own discretion may allow the sub-Licensees / tenants / end users to continue on mutually negotiable terms & conditions.

10.4.3 Transfer of Assets: On the termination, the Licensee shall subject to the provisions of this Agreement

- (a) Hand over/surrender vacant and peaceful possession of the entire Licensed Area, free from all encumbrances, to DMRC free of cost within [15] days of such Termination.
- (b) Transfer all its rights, titles and interest in or over the assets comprised in the Retail Space which are required to be transferred to DMRC in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
- (c) All Retail Space assets shall have been renewed and cured of all defects and deficiencies as necessary so that the Retail Space is in accordance with the specifications & standards mutually decided upon.
- (d) Hand over to DMRC all documents including as-built drawings, manuals and records relating to construction, operation and maintenance of the Retail Space and a certificate from his statutory auditors stating zero financial encumbrance on the Retail Space;
- (e) At its cost remove from the Retail Space all such moveable assets, which are not taken over by or transferred to the DMRC.

It is hereby agreed between the parties that the Licensee or the sub-Licensee or any other person acting through or under them shall not remove any of the Retail Space Facilities at Retail Space including all equipment and other fixtures attached to the Retail Space Facilities and shall remove only movables which can be removed without causing any damage to the structure.

- 10.4.4 Retail Space Contracts: The Licensee shall transfer/assign such Retail Space Contracts, which are (i) valid and subsisting, and (ii) capable of being transferred to DMRC. The Licensee shall entirely at its cost, terminate all such Retail Space Contracts which are not transferred/assigned to the DMRC.
- 10.4.5 Applicable Permits: The Licensee shall, at its cost, transfer to DMRC all such Applicable Permits, which the DMRC may require and which can be legally transferred.
- 10.4.6 Both parties shall at least 6 (six) months prior to the expiry of the normal LICENSE Period of 12(twelve) years or sooner determination as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets, including the specifications & standards to be maintained as on the Transfer Date.
- 10.4.7 Each party shall pay the other party the various payments due as on the termination date in accordance with this Agreement.
- 10.4.8 Upon the Licensee conforming to all Divestment Requirements and handing over the possession of the Licensed Area to DMRC as per this Article 10.4, DMRC shall issue a "Vesting Certificate" which will have the effect of constituting evidence of divestment of all rights, title, interests and lien in the Licensed Area by the Licensee and their vesting in DMRC pursuant hereto.
- 10.4.9 The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Agreement on the termination in entirety, and unless otherwise provided in this Agreement, the cost involved in transfer contemplated shall be shared by the respective Parties.

10.5 Rights of DMRC on Termination

Notwithstanding anything contained in this Agreement, DMRC shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Licensee in connection with the Retail Space.

10.6 Right to Re-market the said Retail Space on Termination.

Notwithstanding anything contained in this Agreement, DMRC shall have right to re-market the said Licensed space on termination of this Agreement for whatsoever reasons.

DMRC if it deems necessary will also have the right to seal or lock the said Licensed space upon termination.

ARTICLE 11

DISPUTE RESOLUTION

11.1 Amicable Resolution

- 11.1.1 Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in the clauses below.
- 11.1.2 Except where otherwise provided for in the Agreement, all questions and disputes arising between the parties pertaining or relating to the Agreement directly or indirectly connected with the Agreement shall in the first place be referred to a sole conciliator to be him as the case may be. There will be no objection if the sole conciliator so appointed is an official of DMRC of the rank of Deputy and above.
- 11.1.3 The conciliator shall make the settlement agreement after the parties reach agreement and give an authenticated copy thereof to each of the parties. The settlement agreement shall be final and binding on the parties. The settlement agreement shall have the same status and effect as arbitration award.
- 11.1.4 The views expressed, or suggestions made or the admissions made by either party in the course of conciliation proceeding shall not be introduced as evidence in any arbitration proceedings.

11.2 Arbitration

11.2.1 Procedure

Subject to the provisions of Clause 11.1, any Dispute, which is not resolved amicably, shall be referred to a panel of three (3) arbitrators in terms of the Arbitration & Conciliation Act, 1996. For this purpose, DMRC will make out a panel of five (5) possible arbitrators. Each party shall nominate an arbitrator out of this panel submitted by DMRC and these two arbitrators will appoint the third arbitrator in writing and also inform the concerned parties about such appointment and call upon the other party to appoint its arbitrator. If within 15 days of receipt of such intimation the other party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration & Conciliation Act, 1996. The arbitrator shall give item-wise and reasoned award. Where three (3) arbitrators have been appointed, the award of the majority will prevail.

11.2.2 Place of Arbitration

The place of arbitration shall be New Delhi.

11.2.3 English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings. The award shall be made in writing.

11.2.4 Enforcement of Award

The Parties agree that the decision or award, which shall be a speaking order, resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the Provision of the Arbitration and Conciliation Act, 1996 subject to the rights of the aggrieved parties to secure relief from any higher forum.

11.2.5 Performance during Arbitration

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

11.2.6 The cost of arbitration shall be borne by the respective Parties. The cost shall inter-alia include the fees of the arbitrator(s) as per the rates fixed by the arbitrator from time to time.

11.2.7 Arbitration proceedings shall not be terminated, delayed or suspended due to the occurrence of any force majeure, fire, war or any other cause beyond the control of the parties provided such force majeure occurrence shall be notified to the other party within 21 days of such occurrence.

11.2.8 Where the arbitral award is for payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.

ARTICLE 12

REPRESENTATIONS AND WARRANTIES, DISCLAIMER

12.1 Representations and Warranties of the Licensee

The Licensee (in the case of Consortium each member) represents and warrants to DMRC that:

- a. It is duly organized, validly existing and in good standing under the laws of India;
- b. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d. It has the financial standing and capacity to undertake the development of Retail Space;
- e. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Licensee Memorandum and Articles of Association or any Applicable Law or any covenant, agreement, understanding, decree or order to which the Licensee is a party or by which Licensee or any of its properties or assets are bound or affected;
- g. There are no actions, suits, proceedings or investigations pending or to the Licensee's knowledge threatened against the Licensee at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute the Licensee Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h. It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any government authority which may result in Material Adverse Effect;
- i. It has complied with all applicable law and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- j. No representation or warranty by the Licensee contained herein or in any other document furnished by the Licensee to DMRC or to any government authority in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- k. The Licensee also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that DMRC shall not be liable for the same in any manner whatsoever to the Licensee.

- I. The Licensee shall make its own arrangements in engagement of its staff and labour and shall at no point represent to or claim that the staff, labour are being recruited for and on behalf of DMRC. The Licensee shall at all times comply and represent to the staff and labour employed / engaged by them the requirement for complying with Applicable Laws and applicable Permits, particularly in relation to safety and environmental regulations.

12.2 Obligation to notify change

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

ARTICLE 13

MISCELLANEOUS

13.1 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at the rate of 15% per annum from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Article 13.1 shall neither be deemed or construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

13.2 Governing Law and Jurisdiction

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

13.3 Waiver

13.3.1 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 or obligations under this Agreement;
- ii) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
- iii) shall not affect the validity or enforceability of this Agreement in any manner.

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

13.4 Survival

Termination of this Agreement (a) shall not relieve the Licensee or DMRC of any obligations already incurred hereunder which expressly or by implication survives termination hereof, and (b) except as otherwise provided in any provision of this

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

13.5 Amendments

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

13.6 Notices

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

If to DMRC

The General Manager (Operations)
Delhi Metro Rail Corporation Ltd.,
DMRC Shastri Park Train Depot,
Eastern Approach Road, Shastri Park,
Delhi 110 053.
Fax No. 011-22180060

If to the Licensee

.....
.....
.....

Or such address, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number.

13.7 Severability

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

13.8 No Partnership

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

13.9 Language

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

13.10 Exclusion of Implied Warranties etc.

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

13.11 Counterparts

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

13.12 Employees of Licensee

The employees/ staff of the Licensee shall not be deemed or construed to be the employees of the DMRC. The Licensee understands and undertakes that its employees/ staff shall make no claim against the DMRC for any reasons whatsoever. Further, the Licensee also agrees that the DMRC shall not be liable for any accident/ injury or claims of the workers/ employees during the execution of the developmental works under the present Agreement and the Licensee hereby indemnifies and undertakes to keep DMRC indemnified in respect of the same.

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

SIGNED SEALED AND DELIVERED

For and on behalf of DMRC by:

For and on behalf of the Licensee by:

In the presence of:

1)

1)

2)

2)

Schedule A

Plans/Drawings of The Retail Space and Specified Area

Schedule B**DRAFT ESCROW AGREEMENT**

THIS ESCROW AGREEMENT is made on the _____ day of _____ 2011 among

The Delhi Metro Rail Corporation Limited, a joint venture of the Government of India and the Government of the National Capital Territory of Delhi, having its registered office at _____ (hereinafter referred to as "**DMRC**" which expression shall unless repugnant to the context include its successors and assigns) of the First Part,

AND

M/s _____ Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____ (hereinafter referred to as the "**Licensee**" which expression shall unless repugnant to the context include the successors and permitted assigns) of the second Part

OR

(in case of consortium) Messrs _____ Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____; Messrs _____ Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____; and Messrs _____ Ltd., and a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____; who form a consortium for the purposes of this Agreement and Retail Space to be implemented under this Agreement (hereinafter collectively referred to as the "**Licensee**" which expression shall unless repugnant to the context include their respective successors and permitted assigns of the Second Part

and

_____ a banking company organised and existing under the laws of India and having its head office at _____ and having its branch office at _____ and also in other parts of Delhi (hereinafter referred to as the "**Escrow Agent**" which expression shall unless repugnant to the or meaning thereof include their successors and permitted assigns) of the Third Part .

RECITALS

- A. WHEREAS** DMRC and the Licensee have entered into a LICENSE Agreement dated _____ 2008 (hereinafter referred to as "**LICENSE Agreement**") pursuant to which DMRC has granted to the Licensee LICENSE to develop, procure, finance, construct, manage, maintain and License the use of the built up spaces and facilities in the Specified Area for specified purposes at **HUDA City Centre**, a copy of the LICENSE Agreement signed between DMRC and the Licensee is attached to this Agreement.
- B. AND WHEREAS** to provide security to DMRC and to have the first and paramount charge over all the receivables that the Licensee is entitled to claim or receive from the Sub licensee, appointed in terms of the said License Agreement, from the use of the Retail Space Facilities built up space, etc. in the specified area, the Licensee has agreed to open the Escrow Account in terms of this Escrow Agreement.

- C. AND WHEREAS** it is provided in the LICENSE agreement dated _____ that the Licensee shall, within 2 months from the date of signing of the License agreement shall identify a nationalized/scheduled bank acceptable to DMRC and open an account in terms of the Escrow Agreement to be signed between the Licensee, DMRC and the Bank and that the Escrow Agent shall be instructed to remit to DMRC the amounts becoming due to DMRC under the LICENSE Agreement as per the claims made by DMRC from time to time.
- D. AND WHEREAS** DMRC and the Licensee have agreed to appoint Bank..... (the Escrow Agent) and the said bank has agreed to act as the Escrow Agent to hold and administer monies deposited in the Escrow Account and to transfer such monies in accordance with the terms of this Agreement read with the LICENSE Agreement.

NOW THIS AGREEMENT WITNESSETH AS UNDER

1. At the instance of the Licensee the Escrow Agent has opened a Escrow Account being Account No. with (branch) solely for the purposes of this to duly secure the interest of DMRC in terms of the said License Agreement. DMRC and the Licensee hereby appoint Bank. (address) and Bank hereby accepts the appointment as the Escrow Agent in respect of the amounts deposited in the Escrow Account and to hold and administer the proceeds in the said Escrow Account in accordance with the terms and conditions contained herein.
2. The Licensee hereby unconditionally and irrevocably agree to receive and deposit all receivables of whatsoever nature from sub-licensing the use of the built-up spaces or otherwise the Licensed Area at the Specified Area into the Escrow account with the Escrow Agent.
3. The Licensee agrees to deposit the amounts received in cash at the Escrow Account within 24 hours from the receipt thereof or the immediate next working day in case of a Bank holiday.
4. The Licensee shall not give credit or make any adjustment against the receivables for any payment due from the Licensee.
5. The Licensee hereby acknowledges and undertakes not to open or establish any another account other than the Escrow Account with any Bank or Body Corporate for the receipt/ deposit of the receivables from sub-licensing the use of the built-up space or otherwise from the facilities at the Specified Area.
6. The Licensee shall ensure that no other person is authorized to utilize or appropriate any part of the receivables received from sub-licensing the built-up spaces at the Specified Area.
7. The Escrow Agent has an irrevocable authority to remit and the Escrow Agent shall direct the due remittance to DMRC the amounts becoming due from the Licensee to DMRC under the LICENSE Agreement as per the claims made by DMRC from time to time.
8. So long any amount is outstanding to DMRC from the Licensee as per the Claims made by DMRC, the amounts in the Escrow Account shall not be utilized for any other purpose other than for making outstanding payments to DMRC. After due discharge of all the amounts outstanding to DMRC, the Escrow Agent shall allow the amount to be utilized by the Licensee only till such time further amount becomes due from Licensee to DMRC as per the claims made by DMRC.
9. The Licensee shall not create any charge over the receivables including the amounts in the Escrow Account and also the actionable claims against the persons who are allowed to utilize the built-up space in favour of any person including in favour of the banks or lending institution over-riding or otherwise adversely affecting the interest of DMRC.

22. All terms used in this agreement not expressly defined herein shall have the meaning assigned thereto in the LICENSE Agreement.

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

SIGNED SEALED AND DELIVERED

For and on behalf of DMRC by:

(Signature)

(Name)

(Designation)

For and on behalf of the Licensee by:

(Signature)

(Name)

(Designation)

For and on behalf of theBank :

(Signature)

(Name)

(Designation)

In the presence of:

1)

2)

3)

Schedule C**PERFORMANCE SECURITY**

(To be issued by a Scheduled Commercial Bank in India, 'except Regional Rural Banks(RRB's) & Local Area Banks (LAB's)' acceptable to DMRC, on non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO. _____ dated _____

This Deed of Guarantee executed at _____ by _____ (Name of Bank) having its Head / Registered office at _____ (hereinafter referred to as "**the Guarantor**") which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

In favour of

The Delhi Metro Rail Corporation Limited (hereinafter called "DMRC"), having its office at _____, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

WHEREAS:

1. DMRC intends to offer and retail spaces at **HUDA City Centre** Metro station measuring a total built up area of approx. ----- sq.m. to a Bidder for operating, marketing, maintenance and management in return for payments specified in this Agreement on LICENSE basis. (hereinafter referred to as the 'Retail Space'). This LICENSE is for a period of 12 (twelve) years from the date on which access to the Retail Space to undertake the development and operations at Retail Space is allowed by DMRC to the Licensee (Commencement Date). After the expiry of the LICENSE Period the property will revert to DMRC without any obligation on DMRC to pay or adjust any consideration or other payment to the Licensee. DMRC had invited proposals for selection of Licensee through its tender notice dated.
2. The bid submitted by the _____ having its registered office at _____ has been accepted by DMRC.
3. As per the terms of the above-mentioned LICENSE Agreement, the Licensee is required to develop, procure, finance, construct, manage, operate and maintain / sub-license and License the use of the built up spaces and facilities in the Specified Area for purposes specified in the LICENSE Agreement for the duration of the LICENSE Period.
4. The Licensee is also required to make the payments to DMRC for the development rights at the said Retail Space, as mentioned in clauses 4.1, 4.2 and 4.3.
 - 4.1 Upfront Fee of Rs.____ crores only before the signing of the LICENSE Agreement.
 - 4.2 Recurring payments on quarterly basis of Rs.____/- (Rupees _____) payable from the day after the expiry of the fit out period of one hundred eighty days from the Commencement Date. The Recurring payment shall be escalated at the rate of 15% every three years. Payment at half the pro-rata rates of the Recurring Payments (annuity rates)

shall also be payable for the additional area on terrace and ground floor made available by DMRC for installation of utilities and services, on quarterly basis from the day after the expiry of the period of first six months from the Commencement Date.

4.3 Payment of charges for energy, water and other utility services to the extent provided by DMRC in the Retail Space facilities.

5. The Licensee shall also:

- bear and pay all expenses, costs and charges incurred in the fulfilment of all its obligations under this Agreement ;and
- not assign or create any lien or encumbrance on the LICENSE hereby granted or on the whole or any part of the Licensed Area nor transfer, lease or part possession therewith save and except as expressly permitted by this Agreement.

6. The Licensee is required to furnish an unconditional irrevocable Bank Guarantee for an amount of **Rs. _____/- (Rupees _____ only)** for a sum equivalent to one year's Recurring Payment as security for the performance and fulfillment of all its responsibilities and obligations as per the LICENSE Agreement. The amount of the Bank Guarantee shall be periodically escalated in accordance with the escalation in Recurring Payment as per para 4.2. The Licensee has requested the Guarantor to issue the said Bank Guarantee in favour of DMRC.

7. Now, therefore at the request of The Licensee, the Guarantor has agreed to execute this Guarantee in favour of DMRC for the due payment of **Rs. _____/- (Rupees _____ only)** for the first year of the LICENSE.

NOW, THEREFORE, THIS BANK GUARANTEE WITNESSETH AS FOLLOWS:

1. The Guarantor, as primary obligor shall, without demur, pay to DMRC an amount not exceeding **Rs. _____/- (Rupees _____ only)**, on the same working day of receipt of a written demand from DMRC, calling upon the Guarantor to pay the said amount and stating that the Performance Security provided by the Licensee has been forfeited.
2. The Guarantor agrees that DMRC shall be the sole judge to decide as to whether the Licensee has defaulted in the performance of its obligations as per the LICENSE Agreement, and the decision of DMRC in this regard shall be final and binding on the Guarantor, notwithstanding any differences in this regard between DMRC and the Licensee or any dispute pending before any Court, Tribunal Arbitrator or any other Authority.
3. Any such demand made on the Guarantor by DMRC shall be conclusive, absolute, final and binding on the Guarantor, and the amount due and payable by the Guarantor under this Guarantee will be honored by the Guarantor, simply on demand, without demur, reservation, contest, protest, recourse whatsoever and without need for ascribing any reason to the demand. The liability of the Guarantor under this guarantee is absolute and unequivocal. The above payment shall be made without any reference to the Licensee or any other person.

4. This Guarantee shall be irrevocable, valid and remain in full force till the end of the LICENSE Period, or for such extended period as may be mutually agreed between DMRC and the Licensee, and shall continue to be enforceable till all amounts under this Guarantee are paid. The said Guarantee shall be released by DMRC after the expiry of the LICENSE Period subject to fulfillment of all handover requirements by the Licensee, to the satisfaction of DMRC and further subject to adjustment for all damages suffered by DMRC.
5. This Guarantee is unconditional and irrevocable till such time DMRC discharges this guarantee by issuing a letter to the Guarantor in this behalf.
6. The Guarantor undertakes to pay the amount mentioned herein as principal debtor and not a surety and it shall not be necessary for DMRC to proceed against the Licensee before proceeding against the Guarantor, notwithstanding the fact that DMRC may have obtained or obtains from the Licensee, any other security which at the time when proceedings are taken against the Guarantor hereunder, is outstanding and unrealised.
7. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the LICENSE Agreement or other documents or by extension of time of performance of any obligations granted to the Licensee or postponement / non-exercise / delayed exercise of any of its rights by DMRC against the Licensee or any indulgence shown by DMRC to the Licensee, and, the Guarantor shall not be relieved from its obligations under this Bank Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise or omission on the part of DMRC or any indulgence by DMRC to the Licensee to give such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving the Guarantor.
8. The Guarantee shall not be affected by any change in the constitution or winding up of the Licensee/ the Guarantor or any absorption, merger or amalgamation of the Licensee / the Guarantor with any other person.
9. The Courts at Delhi shall have exclusive jurisdiction to adjudicate on any or all matter arising under this Guarantee.
10. The Guarantor declares that it has power to issue this Guarantee and discharge the obligations contemplated herein and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS EXECUTED THIS GUARANTEE ON THE DAY, MONTH AND YEAR FIRST ABOVE MENTIONED THROUGH ITS DULY AUTHORISED REPRESENTATIVE.

Signed and Delivered by _____ Bank by the hand of Mr. _____, its _____ and authorised official.