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**DRAFT LICENSE AGREEMENT**

This Agreement is executed on this the \_\_\_\_ day of \_\_\_\_\_(Month), Two Thousand and Eleven 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 Barakhamba Road, Fire Brigade Lane, Connaught Place, 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.<sup>1</sup>, 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,

**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');
- 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 subsidising 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 undertake, setting up and operation of a Theme Park near Shastri Park Metro Station, Delhi. The area is more fully described and delineated in the plan attached hereto as Schedule A.
- E. DMRC proposes to grant to a selected person a License to set up, develop, finance, manage, maintain a 'Theme Park' on the specified areas.
- F. DMRC invite proposals for selection of Licensee for the Project on a competitive basis through the tender notice dated 25.07.11 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') bearing No. DMRC/PD/C1/TEND/TPSP/dated \_\_\_\_\_, requiring inter alia, the execution of this License Agreement within 30 days thereof after the satisfaction of all conditions precedent specified in the Bid.

<sup>1</sup> In case of a single company

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- G. The Licensee has paid to the DMRC the Upfront Fee of Rs. 5.0 crores (Rupees Five crores only).
- H. The Licensee has submitted requisite Performance Security to DMRC.
- I. 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 Project 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.

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**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:

- (i) **"Agreement"** means this Agreement, and includes any amendments, annexures hereto made in accordance with the provisions hereof.
- (ii) **"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 judgements, 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 Project and the Parties hereto.
- (iii) **"Applicable Permits"** means all clearances, permits, authorisations, consents and approvals required to be obtained or maintained under Applicable Law, in connection with the "Project" during the subsistence of this Agreement.
- (iv) **"Bid"** means the documents in their entirety comprised in the bid, including all clarifications, addenda and revisions issued by DMRC to the Bidders, the Proposal 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.
- (v) **"Change in Law"** means the occurrence or coming into force of any of the following after the date of signing this Agreement:
  - (i) the enactment of any new Indian law
  - (ii) the repeal, modification or re-enactment of any existing Indian law
  - (iii) 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.
- (vi) **"Commencement Date"** means the date on which access to the site to undertake the Project is allowed by DMRC to the Licensee, in accordance with the terms of this agreement.

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- (vii) **“Completion”** in relation to the Project 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.
- (viii) **“Completion Certificate”** means the final Occupancy Certificate issued by the competent authority, certifying the completion of the entire construction of the Project Facility and declaring the same fit for occupation.
- (ix) **“License Period”** means the period beginning from the Commencement Date and ending on the Termination Date by efflux of time or sooner determination in accordance with the date of this Agreement.
- (x) **“Consideration”** shall mean and includes the payments to be made by the Licensee to the DMRC as provided in Article 3 hereafter.
- (xi) **“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.
- (xii) **“Emergency”** means a condition or situation that is likely to endanger the security of the individuals working for the Project or which poses an immediate threat of material damage to any of the Project Facilities.
- (xiii) **“Force Majeure”** or **“Force Majeure Event”** means an act, event, condition or occurrence as specified in Article 9.
- (xiv) **“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 Project or the performance of all or any of the services or obligations of the Licensee under or pursuant to this Agreement.
- (xv) **“Independent Auditor”** means the auditor appointed by DMRC to independently audit and verify all matters, expenses, costs and realizations of the licensee, which have been carried out by the Statutory Auditors of the Licensee.
- (xvi) **“Parties”** means the parties to this Agreement and **“Party”** means either of them, as the context may admit or require.
- (xvii) **“Performance Security”** shall mean the security to be furnished by the Licensee as detailed in Article 3 hereafter.
- (xviii) **“Permits”** shall mean and include all applicable statutory, environmental or regulatory licences, authorisation, permits, consents, approvals, registrations and franchises from concerned authorities.

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- (xix) **“Project”** shall have the meaning as set out in Recital E hereinabove.
- (xx) **“Project Facility”** means the built up places and facilities, the Licensee is authorized to develop and licence the use thereof to sub-licensees.
- (xxi) **“Space/Site”** means the property namely the Specified Area at Shastri Park Metro Station Plot for setting up a ‘Theme Park’ as detailed in the Schedule A given on License by DMRC to the Licensee under and in accordance with this Agreement, on which the Project is to be developed.
- (xxii) **“Specified Area”** shall have the meaning as set out in Recital D.
- (xxiii) **“Sub Licensee”** mean all persons who are allowed by the Licensee to use the built spaces and facilities in the Specified Area.
- (xxiv) **“Tax”** means and includes all taxes, fees, cesses, levies that may be payable by the Licensee under the Applicable Law to the Government or any of its agencies.
- (xxv) **“Termination”** means termination of this Agreement by efflux of time or sooner determination in accordance with the provisions of this Agreement.
- (xxvi) **“Termination Date”** means the end of the license period of 15 years from the commencement date or date of sooner determination of the license period in accordance with the terms of this 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

The several documents forming 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 Request For Proposal (RFP) document, including the Draft License Agreement and tender document.

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**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 fulfilment of all the obligations assumed towards DMRC by the Licensee, DMRC hereby grants and authorises the Licensee:

- (i) To have access to construct, develop, finance, commission, operate, manage and maintain the Project and the Project Facility at the Specified Area during the License Period at the cost and risk of the Licensee.
- (ii) At his cost and risk the Licensee's licence to sub-license the use of the Project 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 allow the use of the Project Facilities by any other person or for any purpose other than to develop and construct the Project Facility and to sub-licence the use to sub-licensees as specified in Article 2.1.1.

2.1.3 *The Site given by DMRC to the Licensee in terms of this Agreement comprises the Specified Area.* It is proposed to construct and develop a selected Theme Park on that area through a operator related through this tender. The space has been offered on a "**as is where is basis**".

2.1.4 Nothing contained herein, including the act of granting permission to develop the Project Facility at the Site and to licence the use of the Project Facility or any part thereof shall vest or create any proprietary interest in the Project Facility or any part thereof including any permanent fixtures, fittings, etc. installed in the structure of the Project Facility in favour of 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 Project Facility in any manner except the licence to sub licensees the use of the Project Facility as provider 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 licence or authorisation is given for the use of the Project Facility.

**2.2 LICENSE PERIOD**

2.2.1 The License is hereby granted in favour of the Licensee for a total period of 15 (fifteen) years from the Commencement Date subject however to sooner determination as provided in this Agreement during which the Licensee is authorized to implement the Project and undertake the activities specified under sub-clauses (i) and (ii) of Article 2.1.1 above.

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- 2.2.2 At the end of the License period or sooner termination of this Agreement for any reason whatsoever, all rights given under this License Agreement shall cease to have effect and the Site and Project Facility with all the furniture and fixtures and other assets permanently attached to the Project Facility shall revert to DMRC without any obligation to DMRC to pay or adjust any consideration or other payment to the Licensee.
- 2.3 RESTRICTION ON LICENSING THE USE OF THE PROJECT FACILITY OR ANY PART THEREOF**
- 2.3.1 The Licensee shall be entitled, during the subsistence of this agreement, to allow the use of the Project Facility through a sub-licensing arrangement to sub-licensees 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 licence the use of the Project Facility, during the subsistence of this agreement only with a clear stipulation that sub-licenses granted shall terminate simultaneously with the termination of this License Agreement including on sooner termination of the License Period 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 licence agreement or arrangement, which the Licensee will be required to sign with the sub licensee for the use of the Project Facility. The Licensee shall furnish the draft of such deed to DMRC for modification(s) or suggestion(s). DMRC shall be entitled to incorporate such clauses, as DMRC may consider appropriate to protect DMRC's interest. The Licensee shall enter into sub-licence arrangements as per the Standard format with the covenants stipulated by DMRC and the Licensee shall not incorporate or change any clauses in the agreement that would have any adverse effect on the covenants incorporated by DMRC. In case of any deviation from the above-mentioned standard draft of the 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.
- 2.3.4 At any point of time, the successful bidder (Licensee) will not enter into any sub-licence with anybody in which they give any such right to a sub- licensee, which adversely affects the interests of DMRC's or is not available to the bidder in the very first place

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**Article 3**  
**CONSIDERATION TO DMRC**

- 3.1 In consideration of the rights, privileges and interests granted by DMRC to the Licensee in terms of this Agreement, the Licensee shall pay the following consideration 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. 5 crore (Rupees five crores only)** plus service tax if applicable 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 annual basis** for the Specified Area (15 ha) of Rs. \_\_\_\_\_ (to be filled as per the accepted bid) payable from the day after the expiry of the period of 6 (six) months from the Commencement Date, which shall be escalated at the rate of 5% after the expiry of every year from the date of first payment.
- 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. No claim, damages or any compensation will be entertained by DMRC in this regard.
- 3.3 The Recurring payments in Article 3.1 (ii) shall become payable from the first day after 6 (six) months from the Commencement Date notwithstanding that the Licensee has not been able to sub licence or other wise put to use whole or any part of the Project Facility 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 year within seven days of commencement of the respective year.
- 3.5 Any delay in payments of the amounts becoming due on the due dates shall constitute a wilful material default on the part of Licensee and the DMRC shall encash the Performance Security and claim damages from the Licensee and be entitled to even terminate the Agreement as mentioned in Article 3.7 dealing with Performance Security. This shall be without prejudice to other rights of DMRC against the Licensee including the rights specified in Article 3.6 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.
- 3.6 PERFORMANCE SECURITY**
- 3.6.1 The Licensee shall for the due and faithful performance of its obligations, provide to DMRC cash deposit/ Bank Guarantee (format for bank guarantee is shown in Schedule C)/ Demand Draft / Pay Order from a scheduled commercial bank acceptable to DMRC, and payable at New Delhi for a sum equivalent to one year's

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- recurring payments as per Article 3.1 (ii). 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).
- 3.6.2 The said Performance Securities shall be returned by DMRC after the expiry of the License Period subject to fulfilment of all handover requirements by the Licensee, to the satisfaction of DMRC and further subject to adjustment for all damages suffered by DMRC.
- 3.6.3 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.
- 3.6.4 Upon encashment of the said Performance Security, the Licensee shall submit a fresh Performance Security within 7 (seven) days of receiving a written notice from DMRC. If the Licensee fails to submit the second performance security within the stipulated time, DMRC shall be entitled to terminate this Agreement in accordance with the provisions of Article 11, without being liable in any manner whatsoever to the Licensee and to appropriate the Performance Security as 'Damages'.
- 3.6.5 In case after submission of the fresh Performance Security, the Licensee has defaulted a second time in recurring payment, DMRC shall be entitled to terminate this Agreement in accordance with the provisions of Article 11, without being liable in any manner whatsoever to the Licensee and to appropriate the Performance Security as 'Damages'.

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**Article 4  
PROJECT DEVELOPMENT AND OPERATIONS**

**4.1 ENTRY TO THE SITE FOR WORK**

- 4.1.1 DMRC shall allow the Licensee access to the area earmarked for the Project Facility as detailed in schedule A to the Licensee for undertaking the work relating to the Project 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. DMRC shall not be liable to pay any damages/ costs/claims for such extensions on any account, whatsoever.
- 4.1.2 In the event of Force Majeure preventing access to the Licensee 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 an event, DMRC shall return Upfront payment + Performance Security, paid by the Licensee to DMRC. There shall be no further liability or obligation of either party towards the other.

**4.2 USE OF THE PROJECT SITE AND PEACEFUL POSSESSION**

- 4.2.1 The License, subject to complying with the Terms and Conditions of this Agreement, shall have the use of the Site 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 site or the Project Facility for any other purpose.
- 4.2.2 *The Licensee shall confine its operations to the Project Site. 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 neighbouring / DMRC areas or otherwise cause any interference to the employees, representatives and agents of DMRC.*
- (a) *If any infringement as defined under this article occurs, as determined by DMRC, DMRC will issue a notice to rectify the infringement within a stipulated time. If the infringement is not rectified within the stipulated time, a fine upto Rs. 1.0 lakh (Rupees One Lakh Only) will be imposed by DMRC, alongwith additional time for rectification of such infringement.*

- 4.2.3 The Licensee is required to introduce and observe at all times, appropriate measures for safety, security and orderliness on the premises granted to the Licensee.

**4.3 DETAILED SCOPE OF WORK FOR DEVELOPMENT AND CONSTRUCTION OF THE PROJECT**

- 4.3.1 The Licensee shall, at its sole expense and risk, carry out the design, engineering, financing, procurement, management, operations and maintenance of the Project Facility at the Site in accordance with the provisions of this agreement.

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4.3.2 The nature of the activities and facilities that can be allowed at the Project site is as under.

Eco sensitive activities related to amusement of children as well as adults, such as;

Miniature Garden

Lake with water sports

Discovery & Adventure Park

Picnic Lawns

Eco Haat

Urban Forest

Jetty & Sands

There should not be any activity not permissible in Zone 'O' of MPD 2021, such as

- Construction of a permanent nature, involving concretization of the riverbed.
- Exhibition / Banquet Hall, Drive in Cinema etc.,
- Any other activity not permissible in Zone; 'O'.

4.3.3 The Licensee may use or allow the use of the Project Facility for other activities which are not envisaged in Clause 4.3.2 above, only after prior written approval of DMRC. However, the Licensee is required to work within the ambit of law of the land as well as requirement of any license, permit, approvals of the civic and other government authorities. It will be required in terms of this agreement that the Licensee submits the list of developments and intended activities to DMRC for prior scrutiny and approval, which will not be unreasonably denied.

4.3.4 *The Licensee shall carry out the design and construction of the Project Facility in strict compliance with all applicable prevailing laws in particular, applicable master plan, Building Codes and Standards and good industry practice.*

#### **4.4 PROCEDURE**

##### **4.4.1 Before Commencement of Construction**

Prior to commencement of construction of any of the Project Facilities, the Licensee shall obtain all applicable permits and approvals from DMRC & concerned local authorities, necessary to commence construction of such Project Facilities;

##### **4.4.2 During Construction**

- (i) The Licensee shall:
- (a) Strictly follow the guidelines on quality as set out in applicable codes;
  - (b) Ensure that the construction of the Project Facilities is undertaken with minimal inconvenience to the traffic using the roads surrounding the Project Site;
  - (c) Take the necessary precautions to minimize accidents and respond to the emergency as quickly as possible;
  - (d) Take precautions to avoid inconvenience to, damage to, destructions of or disturbance to any third party rights and properties;

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- (e) Provide a safe, clear and informative system of road signs in connection with the project, wherever required;
  - (f) Ensure adequate safety of the personnel deployed at the project site, which would include measures for the safety such as the provision and maintenance of barricades, traffic signs and illumination during night in consultation with the DMRC;
  - (g) Be in compliance with the Applicable Laws and Applicable Permits obtained for the project including the clearances obtained by the Government Agency.
  - (h) Deploy adequate number of qualified and competent personnel having relevant experience and skills for implementation of the Project and interaction with the DMRC.
- (ii) The Licensee shall be responsible for
- (a) the accurate setting-out of the Project Site;
  - (b) the correctness of the positions, levels, dimensions and alignment of all part of the works;
- (iii) Site Safety and Security Measures
- (a) Within 30 days from the date of this Agreement the Licensee shall provide to DMRC details of its safety plan and procedures for the Works. The Licensee shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. Unless otherwise stated in this License Agreement, the Licensee shall, from the commencement of work on the Project Site 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.
  - (b) 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 construction and operation and maintenance of the facilities.
  - (c) Unless otherwise stated in this License Agreement:
    - The Licensee shall be responsible for keeping unauthorised persons off the Project Site, during the construction period
    - Authorised persons during the construction phase shall be limited to the employees of the Licensee, employees of Subcontractors of the Licensee, and employees and persons authorised by DMRC.
- (iv) The Licensee shall arrange for all the material requirements for the Project and disposal of all material wastes. The Applicable permits in this regard would have to be obtained by the Licensee. All excess and unsuitable excavated materials shall be piled at appropriate dumping places or otherwise disposed of by the Licensee in consultation with DMRC.

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**4.4.3 After Completion of Construction**

- (i) Upon completion of construction but prior to issue of the Completion Certificate, the project site shall be cleared of all construction equipment, surplus materials, debris and temporary installations and shall be left in tidy and an aesthetically pleasing appearance to the satisfaction of the DMRC.
- (ii) 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.

4.5 The Licensee shall carry out the design and construction of the Project Facility in strict compliance with all applicable laws in particular, applicable Building Codes and Standards and good industry practice.

4.6 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, 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 Delhi Building Bye-Laws 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) No material is stored or kept outside the site or in the common area meant for movement of persons; and (d) no surplus construction machinery and materials, including hazardous materials and wastes shall be left at any place in the Site.

**4.7 PARKING**

4.7.1 The licensee would be required to provide adequate parking facilities for users of the Theme Park so that they do not encroach on the parking facilities already provided by DMRC for Metro commuters at Shastri Park Station. Parking facilities for the Theme Park would be managed by the licensees and would be included within the area licensed out for the Theme Park and must be shown in the plan of the Theme Park while submitting it to DMRC for approval.

4.7.2 No special arrangement or exclusive parking area shall be required to be provided by DMRC for the Project Facility.

4.8 Before applying to any other competent authority for sanction of the scheme, the Licensee is required to first obtain DMRC's written approval on his proposed drawings and specifications. 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 to the Licensee within a maximum period of 30 (thirty) days after scrutinising the submission. If DMRC is not satisfied and raises any objections, the Licensee shall be required to appropriately amend/modify his scheme / plans within a reasonable time frame and seek DMRC's approval once

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again. The Licensee shall approach any other competent authority for sanction of the design etc. only after receiving the written approval of DMRC.

- 4.9 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 project and project facilities not later than 6 (six) months of the Commencement Date and DMRC may thereafter be entitled to restrict the construction on the site. The liability of the Licensee to pay the consideration and other amounts to DMRC shall however commence from 2 (two) years from the Commencement Date as stated in Article 3 and the License period shall be restricted to thirty (30) 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.
- 4.10 *The licensee shall arrange for power supply requirements on his own and shall solely be responsible for all aspects related to it. DMRC shall not be responsible in any manner whatsoever to either the Licensee or his 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 site etc. DMRC shall not bear any costs associated with it.*
- 4.11 *Operator will have to make his own fire-fighting arrangements for the licensed area after taking all types of approvals from Delhi Fire Services. Fire protection system shall conform to the IS Code of Practice/Delhi Fire Service norms. The Licensee must also intimate DMRC prior to taking up execution of such works.*
- 4.12 *The Licensee shall be solely responsible and liable for development and implementation of the Project Facility. 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 site, etc. DMRC shall not bear any costs associated with it.*
- 4.13 *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 fighting etc, required to be installed at the Project Facility. DMRC shall only provide assistance wherever possible, on best effort basis (without any legal and binding obligation) to facilitate the process.*

**4.14 OPERATIONS AND MAINTENANCE OF THE PROJECT FACILITY**

*The Licensee shall be solely responsible and liable, at his own cost, for all maintenance, upkeep and repairs of the Project Facilities and all its components, including access ways, pavements, green areas, 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. The*

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*Developer shall be responsible for the following aspects of Operations & Maintenance of the Project Facility.*

**4.14.1 Security**

*To ensure overall safety and security of people and vehicles in the entire project area round the clock.*

**4.14.2 Water Supply**

*Operator shall arrange the water supply on his own and shall solely be responsible for all aspects related to it including statutory clearances.*

**4.14.3 Storm Drainage and Sewage Disposal**

- (i) All chambers, manholes, catch basins etc. and lines should be clear at all times through regular cleaning and de-silting and choking, if any, shall be attended to promptly.
- (ii) All gratings and covers should be in place at all times and losses, if any shall be replaced promptly.
- (iii) All pumps, panels and controls for evacuation of storm water and sewage shall be maintained in proper working order at all times.

**4.14.4 Solid Waste Management**

All public spaces, common areas, circulation areas, etc. shall be swept and maintained clean and free of litter, dust, waste, debris, etc. on a continuous basis.

**4.14.5 Fire Protection, Detection and Alarm System**

- (i) To operate and maintain the entire and complete Fire Detection and Alarm, Fire Fighting and EPABX system.
- (ii) To have inspection carried out by the Fire Department and keep all clearances valid at all times.

4.14.6 DMRC shall not be liable to any sub-licensee or end-user or visitors for any laxity or default by the *Licensee* in proper upkeep and maintenance of the Project Facility or any of its components.

4.14.7 DMRC may inspect the Project Facility 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.

4.14.8 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*.

4.14.9 *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*

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*particular Building Codes and Good Industry Practice, observance of safety and security measures at site, etc. DMRC shall not bear any costs associated with it.*

4.14.10 Operator will provide safe access passage for station commuters. Passage shall be in accordance with requirements of DMRC.

#### **4.15 CO-ORDINATION**

The *Licensee* shall, upon request by DMRC, co-operate 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 site of any work not included in this License Agreement, which DMRC may require.

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**Article 5**  
**RIGHTS AND OBLIGATIONS**

- 5.1 The **Licensee's Responsibilities and Duties** shall include the following, in addition to and without prejudice to other obligations under this Agreement:
- (i) 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, environmental clearance and protection etc.;
  - (ii) 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;
  - (iii) to furnish DMRC with the "As built" Drawings of the Project within 30 (thirty) days of the Completion of construction of the Project ;
  - (iv) to operate and maintain the Project Facility at all times in conformity with this Agreement;
  - (v) to be responsible for safety, soundness and durability of the Project including other structures forming part thereof and their compliance with the local building byelaws;
  - (vi) to ensure that no structural damage is caused to the existing buildings and other permanent structures at the site as a result of his activities or any of its agents, contractors, tenants, etc.;
  - (vii) to take all reasonable steps to protect the environment (both on and off the Project Site) 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;
  - (viii) to pay at its own cost all applicable existing and future taxes/charges/fees including property tax, service tax, stamp duty, registration charges and any other related Legal Documentation charges, if any, in respect of the said Project Facility, including land, as leviable, except for ground rent.
  - (ix) to duly supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;
  - (x) 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;
  - (xi) to obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
  - (xii) to take all reasonable precautions for the prevention of accidents on or about the Project Facility and provide all reasonable assistance and emergency medical aid to accident victims;
  - (xiii) 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 Site or the Project Assets, or on any rights of the Licensee therein or under this Agreement, save and except as expressly permitted in this Agreement;
  - (xiv) to ensure that such Site remains free from all encroachments, encumbrances and trespass during the entire License Period;
  - (xv) within 30 (thirty) days of achieving 'Completion' of the said development in the Site, to remove from the 'Site' all surplus construction machinery and materials, including, without limitation, hazardous materials and wastes, and keep the 'Site'

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- in a neat and clean condition, and in conformity with the Applicable Laws; except that the Licensee shall be entitled to retain on any Project Site, until the expiry of the concession 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 Project.
- (xvi) On expiry of License Period, within a maximum period of 30 days, to leave the entire complex/developed commercial centre in a clean and safe condition to the satisfaction of DMRC. Provided that if the Licensee fails to clear, the Project Facilities and Site, DMRC may invoke the Performance Security, and get the developed complex/ commercial centre cleaned at the cost of Licensee.
- (xvii) to provide all assistance to the independent consultant / expert / independent auditor / arbitrator as it may require for the performance of its duties and services;
- (xviii) at all times, to afford access to the Site to the authorised representatives of DMRC, Senior Lenders, other persons duly authorised by any Governmental Agency having jurisdiction over the Project, to inspect the Project and to investigate any matter within their authority and upon reasonable notice; and
- (xix) To comply with the divestment requirements and hand over the Project Facility to DMRC upon Termination of the Agreement.
- 5.2 The Licensee shall be solely and primarily responsible to DMRC for observance 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; the sub contractor 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 judgements 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 recognise that time is of 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, facility 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 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 Project.

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5.5.3 *Under no circumstance, shall the land or building or facilities constructed or installed at the Project Facility or Site 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.*

**5.6 TREASURES/FOSSILS**

In the event of discovery by the Licensee or his employees during the progress of the work of any treasure, fossils, minerals or any articles of value or interest, the Licensee shall give immediate intimation of such treasure or things to the DMRC and the same shall become the property of the Government/ DMRC.

The Licensee shall not claim right title or interest on such things at any time.

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**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 Project. If there are changes in the shareholding 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 Project. The Consortium members of the Licensee shall continue to be responsible and liable 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 Project 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 concession period resulting in change in management control shall be notified to DMRC and prior permission taken . All members of the Consortium shall be liable jointly and severally, for the execution of the Project in accordance with the terms of this License Agreement.

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**Article 7  
INSURANCE**

- 7.1 The Licensee shall, at its cost and expense, purchase and maintain during the license period insurance to cover against:
- (i) Loss, damage or destruction of the Project Facility, at replacement value;
  - (ii) The Licensee's general liability arising out of his agreement;
  - (iii) Liability to third parties;
  - (iv) The risks that may devolve on DMRC as a consequence of any act of negligence or omission by the Licensee; and
  - (v) 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, as and when required/requested, provide to DMRC copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance including copies of all premia 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.

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**Article 8  
INDEMNITY**

- 8.1 *The Operator hereby undertakes to indemnify and hold DMRC harmless against all costs, damages, liabilities, expenses arising out of any third party claims relating to non-completion of Project; quality of the Project and the Construction / construction activities, sale/ agreement to sell entered into between the Operator and End User.*
- 8.2 *The Operator hereby undertakes to indemnify DMRC against all losses and claims in respect of death or injury to any person or loss or damage to any property which may arise out of or in consequence of the execution and completion of works and remedying defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.*
- 8.3 *The Operator hereby undertakes that DMRC shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Operator or any of his contractors/sub contractors. The Operator shall indemnify and keep indemnified DMRC against all such damages and compensation; all claims proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.*

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**Article 9  
ACCOUNTS AND AUDIT**

- 9.1 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. The fees and expenses of the Statutory Auditors shall be borne by the Licensee. DMRC shall be duly informed of such appointment within 15 days of the appointment.
- 9.2 The Licensee shall maintain full accounts of all inflows collected by it from the Project and of O&M Expenses and other costs. It shall provide copies of the said accounts duly audited and certified by the Licensee's Statutory Auditors, as and when requested, during the subsistence of this Agreement to DMRC.
- 9.3 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.
- 9.4 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.

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**Article 10  
FORCE MAJEURE**

**10.1 FORCE MAJEURE EVENT**

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

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

**10.2 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:

- (i) The nature and extent of the Force Majeure Event;
- (ii) The estimated Force Majeure Period;
- (iii) The nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
- (iv) 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
- (v) Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

**10.3 PERFORMANCE OF OBLIGATIONS**

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:

- (i) Due notice of the Force Majeure Event has been given to the other party as required by the preceding Article 10.2;
- (ii) The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (iii) There shall be no Termination of this Agreement except as provided in Article 10.4;
- (iv) 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.

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- (v) 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 Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (vi) 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;
- (vii) 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
- (viii) 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.

#### **10.4 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 Termination Notice in writing to the other Party without being liable in any manner whatsoever.

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**Article 11**  
**TERM AND TERMINATION**

**11.1 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 15 years from the Commencement Date, unless terminated earlier, in accordance with the provisions of this Article 11.

**11.2 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**"):

- (i) 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 a Force Majeure Event, or due to reasons solely attributable to DMRC without any contributory factor of the Licensee.
- (ii) 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.
- (iii) Any representation made or warranties given by the Licensee under this Agreement is found to be false or misleading.
- (iv) The Licensee engaging or knowingly has allowed any of its employees, agents, sub-licensees, 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.
- (v) The Licensee has not completed construction of the Project Facility, in accordance with the specified time.
- (vi) The Licensee has been adjudged as bankrupt or become insolvent.
- (vii) The Licensee has created any encumbrance, charges or lien in favour of any person or agency, over the Project Facility or the Site, save and except as otherwise expressly permitted under this Agreement.
- (viii) A resolution for voluntary winding up has been passed by the shareholders of the Licensee.
- (ix) 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;
- (x) The Licensee has abandoned the Project Facility.

Provided that in the event of application of sub-clauses (i) and (ii) 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.

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**11.3 TERMINATION FOR FORCE MAEJURE**

The Agreement may be terminated for Force Majeure Reasons as specified in Article 10.4.

**11.4 CONSEQUENCES OF TERMINATION**

11.4.1 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.

11.4.2 At the end of License period, the Project site & 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.

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

- (i) Hand over/surrender vacant and peaceful possession of the entire Project Facility, free from all encumbrances, to DMRC free of cost.
- (ii) Transfer all its rights, titles and interest in or over the assets comprised in the Project 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.
- (iii) All Project Assets shall have been renewed and cured of all defects and deficiencies as necessary so that the Project is in accordance with the specifications & standards mutually decided upon.
- (iv) Hand over to DMRC all documents including as-built drawings, manuals and records relating to construction, operation and maintenance of the Project and a certificate from his statutory auditors stating zero financial encumbrance on the Project;
- (v) At its cost remove from the Site 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 Project Facilities at Site including all equipment and other fixtures attached to the Project Facilities and shall remove only movables which can be removed without causing any damage to the structure.

11.4.4 Project Contracts: The Licensee shall transfer/assign such Project 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 Project Contracts which are not transferred/assigned to the DMRC.

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- 11.4.5 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.
- 11.4.6 Both parties shall at least 6 (six) months prior to the expiry of the normal License Period of 15(fifteen) 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.
- 11.4.7 Each party shall pay the other party the various payments due as on the termination date in accordance with this agreement.
- 11.4.8 Upon the Licensee conforming to all Divestment Requirements and handing over the possession of the Project Facility to DMRC as per this Article 11.4, 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 Project Facility by the Licensee and their vesting in DMRC pursuant hereto.
- 11.4.9 The Parties shall perform/dischage 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.

**11.5 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 Project.

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**Article 12  
DISPUTE RESOLUTION**

**12.1 GOVERNING LAW**

This Agreement shall be governed and construed in accordance with the laws of India.

**12.2 AMICABLE RESOLUTION**

12.2.1 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.

12.2.2 Either Party may require such Dispute to be referred to the Managing Director, DMRC and the Managing Director of The Licensee for the time being (in case of consortium the Managing Director of the Lead Member), for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with Article 12.2 below.

**12.3 ARBITRATION**

**12.3.1 Procedure**

*Subject to the provisions of Clause 12.1, any Dispute, which is not resolved amicably, shall be referred to a panel of three (3) arbitrators in terms of the Arbitration and 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 30 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.*

*There will be no objection if the arbitrator appointed is an official of DMRC of the rank of Deputy and above.*

*The arbitration proceedings shall be governed by the Indian Arbitration and conciliation Act, 1996, as amended from time to time.*

*The award of the tribunal shall be binding on all the parties.*

*The cost of the 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 arbitrator from time to time.*

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*This arbitration clause or any proceedings initiated or pending in the arbitration shall be without prejudice to both parties right to take recourse under other applicable laws and regulations.*

**12.3.2 Place of Arbitration**

The place of arbitration shall be New Delhi.

**12.3.3 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.

**12.3.4 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.

**12.3.5 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.

**12.4** The court at Delhi/New Delhi shall have the exclusive jurisdiction to try all disputes / matters between the parties arising out of or relating to this agreement.

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**Article 13  
REPRESENTATIONS AND WARRANTIES, DISCLAIMER**

**13.1 REPRESENTATIONS AND WARRANTIES OF THE LICENSEE**

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

- (i) It is duly organized, validly existing and in good standing under the laws of India;
- (ii) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) 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;
- (iv) It has the financial standing and capacity to undertake the Project;
- (v) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (vi) 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;
- (vii) 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;
- (viii) 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;
- (ix) 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;
- (x) 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

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- (xi) 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.
- (xii) 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.

**13.2 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.

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**Article 14  
MISCELLANEOUS**

**14.1 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, 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 15% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Article 14.1 shall neither be deemed or construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

**14.2 WAIVER**

14.2.1 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.

14.2.2 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.

**14.3 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.

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**14.4 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.

**14.5 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 Managing Director  
Delhi Metro Rail Corporation Ltd.,  
Metro Bhawan, Barakhamba Road,  
Fire Brigade Lane, New Delhi – 110 001  
Fax No. \_\_\_\_\_

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.

**14.6 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.

**14.7 NO PARTNERSHIP**

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any

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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.

**14.8 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.

**14.9 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.

**14.10 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.

**14.11 EMPLOYEES OF LICENSEE**

The employees/ staff of the Licensee shall not be deemed or construed to be the employees of DMRC. The Licensee understands and undertakes that the employees/staff shall make no claim against DMRC for reason whatsoever.

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 Concessionaire by:

(Signature)  
(Name)  
(Designation)

(Signature)  
(Name)  
(Designation)

In the presence of:

1)  
2)

1)  
2)

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**Schedule A  
Plans/Drawings of The Site**

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**Schedule B**  
**DRAFT ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 2007 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 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 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 "Concessionaire" 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 Project to be implemented under this Agreement (hereinafter collectively referred to as the "Concessionaire" 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 Concessionaire have entered into a Concession agreement dated \_\_\_\_\_ 2007 (hereinafter referred to as "Concession Agreement") pursuant to which DMRC has granted to the Concessionaire concession to develop, procure, finance, construct, manage, maintain and licence the use of the built up spaces and facilities in the Specified Area for specified purposes; a copy of the Concession Agreement signed between DMRC and the Concessionaire 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 Concessionaire is entitled to claim or receive from the sub licensees from the use of the Project Facilities built up space, etc. in the specified area, the Concessionaire has agreed to open the escrow account.

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- C. **AND WHEREAS** it is provided in the Concession agreement dated \_\_\_\_\_ 2007 that the Concessionaire shall, within 2 months from the date of signing of this 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 Concessionaire, DMRC and the Bank and that the Escrow Agent shall be instructed to remit to DMRC the amounts becoming due to DMRC under the Concession Agreement as per the claims made by DMRC from time to time.
- D. **AND WHEREAS DMRC** and the Concessionaire 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 Concession Agreement.

**NOW THIS AGREEMENT WITNESSETH AS UNDER**

1. At the instance of the Concessionaire, the Escrow Agent has opened a Escrow Account being Account No. \_\_\_\_\_ with \_\_\_\_\_ (branch) solely for the proposes of this Agreement and to duly secure the interest of DMRC. DMRC and the Concessionaire 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 Concessionaire 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 Project Facility at the Specified Area into the Escrow account with the Escrow Agent.
3. The Concessionaire 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 Concessionaire shall not give credit or make any adjustment against the receivables for any payment due from the Concessionaire.
5. The Concessionaire 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 Concessionaire 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 Concessionaire to DMRC under the Concession Agreement as per the claims made by DMRC from time to time.
8. So long any amount is outstanding to DMRC from the Concessionaire 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 Concessionaire only till such time



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- 19. As full compensation of its services, the Escrow Agent shall be paid by Concessionaire Rs. ....../- per month. The Concessionaire shall be liable and responsible to pay the charges to the Escrow Agent.
- 20. The Concessionaire, DMRC and the Escrow Agent hereby agree and undertake not to disclose any information relating to the provisions of this Agreement to any third party or use the information for any purpose not related to the Project except with the prior written consent of the other parties.
- 21. The rights of the DMRC under this Agreement shall be in addition and without prejudice to all other rights DMRC has under the Concession Agreements.
- 22. All terms used in this agreement not expressly defined herein shall have the meaning assigned thereto in the Concession 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 Concessionaire by:

(Signature)  
 (Name)  
 (Designation)

For and on behalf of the \_\_\_\_\_ Bank :

(Signature)  
 (Name)  
 (Designation)

In the presence of:

- 1)
- 2)
- 3)

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**Schedule C**  
**PERFORMANCE SECURITY FOR A PLOT OUTSIDE SHASTRI PARK METRO**  
**STATION**

(To be issued by a Scheduled Commercial Bank in India, 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 Metro Bhawan, Fire Brigade Lane, Barakhamba Road, New Delhi 110001, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

**WHEREAS:**

1. DMRC decided to undertake the commercial exploitation of the land area of approx. 15000 sq.m. on Shastri Park, Metro Station Plot, Delhi. This Concession is for a period of 30 (thirty) years from the date on which access to the site to undertake the Project is allowed by DMRC to the Concessionaire (Commencement Date). After the expiry of the Concession Period, the property will revert to DMRC without any obligation on DMRC to pay or adjust any consideration or other payment to the Concessionaire. DMRC had invited proposals for selection of Concessionaire through its tender notice dated xx/xx/2007.
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 Concession Agreement, the Concessionaire is required to develop, procure, finance, construct, manage, maintain and licence the use of the built up spaces and facilities in the Specified Area for purposes specified in the Concession Agreement for the duration of the Concession Period.
4. The Concessionaire is also required to make the payments to DMRC for the development rights at the said site, as mentioned in clauses 4.1, 4.2 and 4.3 below:
  - 4.1 **Upfront Fee of Rs. 5 crores/- (Rupees Five crores only)** before the signing of the Concession Agreement.
  - 4.2 **Recurring payments** on quarterly basis of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_) payable from the day after the expiry of the period of first six months from the Commencement Date. The Recurring payment shall be escalated at the rate of 5% every year.

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- 4.3 Payment of charges for energy, water and other utility services to the extent provided by DMRC in the Project Facility.
5. The Concessionaire shall also:
- (i) bear and pay all expenses, costs and charges incurred in the fulfilment of all its obligations under this Agreement ;and
  - (ii) not assign or create any lien or encumbrance on the Concession hereby granted or on the whole or any part of the Project Facility nor transfer, lease or part possession therewith save and except as expressly permitted by this Agreement.
6. The Concessionaire 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 fulfilment of all its responsibilities and obligations as per the Concession 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 Concessionaire has requested the Guarantor to issue the said Bank Guarantee in favour of DMRC.
7. Now, therefore at the request of the Concessionaire, 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 Concession.

**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 Concessionaire has been forfeited.
2. The Guarantor agrees that DMRC shall be the sole judge to decide as to whether the Concessionaire has defaulted in the performance of its obligations as per the Concession 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 Concessionaire 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 honoured 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 Concessionaire or any other person.
4. This Guarantee shall be irrevocable, valid and remain in full force till the end of the Concession Period, or for such extended period as may be mutually agreed between DMRC and the Concessionaire, 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 Concession Period subject to fulfilment of all

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- handover requirements by the Concessionaire, 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 Concessionaire before proceeding against the Guarantor, notwithstanding the fact that DMRC may have obtained or obtains from the Concessionaire, 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 Concession Agreement or other documents or by extension of time of performance of any obligations granted to the Concessionaire or postponement / non-exercise / delayed exercise of any of its rights by DMRC against the Concessionaire or any indulgence shown by DMRC to the Concessionaire, 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 Concessionaire 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 Concessionaire / the Guarantor or any absorption, merger or amalgamation of the Concessionaire / 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.