

DRAFT DEVELOPMENT AGREEMENT

BETWEEN

INDIA INTERNATIONAL CONVENTION & EXHIBITION CENTRE LIMITED

AND

[•]

FOR

DEVELOPMENT OF A HOTEL AT ICC, NEW DELHI

DATED [•]

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DEVELOPMENT AGREEMENT

This development agreement is made at [New Delhi] on this [●] day of [●], 2018 (the “**Agreement**”) and is entered into:

BY AND BETWEEN

India International Convention & Exhibition Centre Limited (hereinafter referred to as the “**SPV**”) (which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and permitted assigns) of the one part;

AND

[●], a company registered under the Companies Act, 2013, having its registered office at [●] (hereinafter referred to as the “**Developer**”, which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and permitted assigns), of the other part;

The “**SPV**” & the “**Developer**” are hereinafter individually referred to as “**Party**” and collectively as “**Parties**”.

WHEREAS:

- A.** The SPV is currently inviting tenders for the development of an exhibition and convention centre (“**IICC**”) as a world-class, transit oriented, mixed use district, providing one of the largest facilities of its kind in India and Asia. The IICC planned to be developed at Sector 25, Dwarka, New Delhi (“**IICC Site**”). The SPV holds legal and beneficial title and ownership of the entire land comprising the IICC Site.
- B.** The SPV had invited proposals by its Request-for-proposal No. *** dated *** (the “**RfP**”) for selecting an applicant to develop, engineer, finance, procure, construct, operate and manage a hotel (“**Project**”) at the IICC Site and had shortlisted certain applicants including, *inter alia*, [●];
- C.** Pursuant to the said selection process, [●] has been selected to execute the Project (“**Selected Applicant**”) through the SPV and has accordingly been issued a letter of award dated [●] (“**LOA**”) requiring, *inter alia*, the execution of this Agreement;
- D.** By signing and returning a duplicate copy of the LOA in acknowledgment, the Selected Applicant has conveyed that it shall undertake to incorporate a special purpose company under the Companies Act, 2013 which will enter into this Agreement and perform the obligations and exercise the rights of the Developer hereunder;
- E.** The SPV has identified the following land for development of the Project (the “**Project Site**”) and has agreed to lease the Project Site to the Developer free from all Encumbrances;

Maximum permissible ground coverage	43,658.3784 sq. feet (4,056.00 sq. m.)
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Maximum Permissible Built-Up Area	4,24,872.6608 sq. feet (39,472.00 sq. m.)
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The Maximum Permissible Built-Up Area as set out above supersedes any other number or dimension of the plot contained in the Schedule E (Urban Design Guidelines) at “Annexure 4. Urban Design Guidelines_Plot 9”.

- F.** The Selected Applicant has, in accordance with the RfP and LOA, promoted and incorporated a special purpose company (the “**Developer**”) under the provisions of the Companies Act 2013 to enter into this Agreement for undertaking, *inter alia*, the obligations of development, engineering, financing, procurement, construction, operation and maintenance of the Project, and to fulfil the obligations of the Developer pursuant to the LOA, and has requested the SPV to accept the Developer as the entity which shall undertake and perform the aforementioned obligations.
- G.** The SPV has accordingly agreed to enter into this Agreement with the Developer, subject to and on the terms and conditions set forth hereinafter, and for a total period of 63 (sixty three) years, provided that the Developer and the SPV may, at any time during the last Contract Year, renew the Agreement by a period of not more and not less than 30 (thirty) years, and on such terms as may be mutually agreed between them (the “**Term**”).

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

- (a) “**Affected Party**” has the meaning set out in Clause 9.1;
- (b) “**Applicable Law**” mean all laws brought into force and effect by a Government Authority, including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;
- (c) “**Applicable Permits**” mean all clearances, licences, permits, authorizations, no-objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Law in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement, an indicative list of which is set out in Schedule F (Approvals);
- (d) “**Centralized Services Charges**” has the meaning set out in Clause 11.1 (c);
- (e) “**Change in Law**” means the occurrence of any of the following after the PDD:
 - (i) the enactment of any new Indian law;
 - (ii) the repeal, modification or re-enactment of any existing Indian law;
 - (iii) the commencement of any Indian law which has not entered into effect until the PDD; or
 - (iv) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the PDD.
- (f) “**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate shareholding of (i) [the lead member {*in case the Selected Applicant is a consortium*} / or the Selected Applicant {*in case the selected applicant is a sole bidder*} to decline below 51% (fifty one percent) in the Developer prior to second anniversary of the COD; and (ii) the member(s) whose credentials have been relied upon for the purpose of the RfP {*in case the Selected Applicant is a consortium*} to decline below 26% (twenty six percent) in the Developer, prior to the second anniversary of the COD. For the avoidance of doubt, indirect, legal or beneficial ownership of any shares, or securities convertible into shares shall include transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in any person acquiring control over the equity or voting rights of the shares of the Developer;
- (g) “**Change of Scope**” has the meaning set out in Clause 12.1;

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

- (u) “**Encumbrances**” mean any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations;
- (v) “**Extension Fee**” has the meaning set out in Clause 5.1;
- (w) “**FAR**” means Floor Area Ratio;
- (x) “**Financial Closure**” has the meaning set out in Clause 4.2(e);
- (y) “**Financing Documents**” has the meaning set out in Clause 4.2 (e);
- (z) “**Force Majeure**” or “**Force Majeure Event**” has the meaning set out in Clause 9.1;
- (aa) “**Good Industry Practices**” mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced developer engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Developer in accordance with this Agreement, Applicable Law and Applicable Permits in reliable, safe, economical and efficient manner;
- (bb) “**Government Authority**” means any governmental or statutory authority, government department, agency, commission, board, tribunal or court or other entity authorized to make or interpret or adjudicate upon Applicable Law or pass directions, having or purporting to have jurisdiction over the Project or the Parties, or any state, municipality, district or other subdivision thereof (including, any stock exchange or any self-regulatory organization established under Applicable Law);
- (cc) “**IICC**” has the meaning set out in Recital A;
- (dd) “**IICC Phase 1**” means the first phase of development of the IICC as outlined under the agreement dated [●] entered into between the SPV and [●];
- (ee) “**IICC Phase 1 Completion**” means the date on which the SPV issues the completion certificate to [●] under the agreement dated [●] entered into between the SPV and [●];
- (ff) “**IICC Site**” has the meaning set out in Recital A;
- (gg) “**Indemnified Party**” has the meaning set out in Clause 10.2;
- (hh) “**Indemnifying Party**” has the meaning set out in Clause 10.2;
- (ii) “**Lease**” has the meaning set out in Clause 2.1;
- (jj) “**LOA**” has the meaning set out in Recital C;
- (kk) “**Material Adverse Effect**” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;
- (ll) “**Mandated Development Requirements**” has the meaning set out in Schedule D;

- (mm) “**Maximum Permissible Built-Up Area**” has the meaning set out in Recital E;
- (nn) “**O&M Experience**” means the operations and management experience to be exhibited by the Developer for the purposes of undertaking the Project, namely, experience of operating and managing at least 500 (five hundred) rooms in 1 (one) or more properties in hotels rated 4 (four) stars and above in India or overseas, continuously for a period of 3 (three) years in the 10 (ten) years immediately preceding March 31, 2018. It is clarified that the classification for hotels developed by the Ministry of Tourism, Government of India or equivalent international standards will be relied upon for identifying rating of the hotel(s);
- (oo) “**PDD**” means the last date for submitting proposals pursuant to and in accordance with the provisions of the RfP;
- (pp) “**Performance Security**” has the meaning set out in Clause 8.1;
- (qq) “**Planned Built-Up Area**” means the entire area of the ‘above ground construction’ including common areas as per the approved building plan prepared by the Developer.
- (rr) “**Project**” has the meaning set out in Recital B;
- (ss) “**Project Agreements**” means this Agreement, any Sub-Contract and any other agreements or contracts that may be entered into by the Developer with any person in connection with matters relating to, arising out of or incidental to the Project;
- (tt) “**Project Site**” has the meaning set out in Recital E and more specifically detailed in Schedule B (Project Site);
- (uu) “**Selected Applicant**” has the meaning set out in Recital C;
- (vv) “**SPV**” has the meaning attributed thereto in the array of Parties hereinabove;
- (ww) “**SPV Default**” means the occurrence of any of the events set out in Clause 13.2;
- (xx) “**Sub-Contracts**” mean any agreements that may be entered into by the Developer with any person or persons in connection with matters relating to, arising out of, or incidental to the Project, as described in Clause 5.4;
- (yy) “**Taxes**” means any Indian taxes including goods and service tax, local taxes, cess and any impost or surcharge of a like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Authority, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;
- (zz) “**Term**” has the meaning set in Recital G;
- (aaa) “**Termination**” means the expiry or termination of this Agreement and the Lease hereunder;

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

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of 2 (two) or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in New Delhi are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (k) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

- (l) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (m) the words importing singular shall include plural and *vice versa*;
- (n) references to any gender shall include the other and the neutral gender;
- (o) “**lakh**” means 100,000 (one hundred thousand) and “**crore**” means 10,000,000 (ten million);
- (p) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (q) any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference:

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

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

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

ARTICLE 2: GRANT OF PROJECT SITE

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

2.2 It is agreed and understood by the Developer that:

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

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

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

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

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

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

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

ARTICLE 3: ENTRY INTO COMMERCIAL SERVICE

3.1 Commercial Operations Date

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

3.2 Extension of Term

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

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

ARTICLE 4: DEVELOPMENT OF THE PROJECT

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

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

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

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

ARTICLE 5: OBLIGATIONS OF THE DEVELOPER

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

- (j) provide the SPV a copy of the building plan approval, within 7 (seven) days from its receipt, as and when accorded by the concerned authorities.
- 5.2 The Developer shall not undertake or permit any Change in Ownership, except with the prior approval of the SPV.
- 5.3 The Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) Perform and fulfill all its obligations under this Agreement, and incidental thereto, or necessary for performing the Developer's obligations under this Agreement, as a reasonable and prudent person, and in accordance with Applicable Law, the Mandated Development Requirements (as set out in Schedule D), the Applicable Permits, and Good Industry Practices;
 - (b) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of its obligations under this Agreement;
 - (c) Not assign, transfer or sublet or create any Encumbrance on this Agreement, or the Lease hereby granted, or on the whole or any part of the Project Site, nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement;
 - (d) Not assert any ownership rights over the Project Site;
 - (e) Make, or cause to be made, necessary applications to the relevant Government Authorities, as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Law;
 - (f) Procure or cause to be procured, as required, appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (g) Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (h) Not do or omit to do any act, deed or thing which may in any manner be violative of any of Applicable Law or the provisions of this Agreement;
 - (i) Take reasonable measures to prevent the destruction, scarring and defacement of the natural surroundings and environment at the Project Site;
 - (j) Appoint its representative duly authorized to deal with the SPV in respect of all matters under or arising out of or relating to this Agreement;
 - (k) Effect and maintain at its own cost, during the entire Term, such insurances for such maximum sums as may be required under Applicable Law and as may be necessary or prudent in accordance with Good Industry Practices, including but not limited to:
 - (i) contractor's all risk insurance covering all risks including any loss, damage or destruction or construction work in relation to the Project in relation to the construction activities in relation to the Project;

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

5.4 Sub-Contracts

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

5.5 Personnel

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

ARTICLE 6: OBLIGATIONS OF THE SPV

- 6.1 The SPV shall, make available to the Developer the utilities/facilities listed out in Schedule C (Services Provision) at the cost of the Developer in accordance with the applicable charges (as set out in Schedule C (Services Provision)). The SPV shall ensure that the utilities/facilities provided by it in accordance with Schedule C (Services Provision) are upgraded/augmented to meet such requirements as may be prescribed under Applicable Law.
- 6.2 The SPV shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder, and, in particular, shall:
- (a) Not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (b) Support, cooperate with and facilitate the Developer in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (c) Appoint its representative duly authorised to deal with the Developer in respect of all matters under or arising out of or relating to this Agreement; and
 - (d) Hand over possession of the Project Site in accordance with Clause 1.2 of Schedule A (Terms of Lease).
- 6.3 The SPV shall authorize, grant or cause to grant the Developer such permissions, consents, no-objections, etc. as may be required and as may be within its rightful authority to develop, operate and maintain the Project.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Developer

The Developer represents and warrants to the SPV that:

- (a) It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) It has taken all necessary corporate and other actions under Applicable Law to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) It has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) It is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) The information furnished in response to the RfP and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its constitution documents, or any Applicable Law or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) There are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) It has complied with Applicable Law in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

- (k) No representation or warranty by it contained herein or in any other document furnished by it to the SPV or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (l) No sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Project, or the grant of the Lease, or entering into this Agreement, or for influencing or attempting to influence any officer or employee of the SPV in connection therewith.

7.2 Representations and Warranties of the SPV

The SPV represents and warrants to the Developer that:

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

7.3 Disclosure

- (a) In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same.

- (b) Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

7.4 **Disclaimer**

- (a) The Developer acknowledges that prior to the execution of this Agreement, the Developer has, after a complete and careful examination, made an independent evaluation of the Request for Proposals document issued by the SPV on [●], the scope of the Project, the Project Site, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the SPV or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder.
- (b) Save as provided in Clause 7.2, the SPV makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Developer confirms that it shall have no claim whatsoever against the SPV in this regard.
- (c) The Developer acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 7.4(a) above and hereby acknowledges and agrees that the SPV shall not be liable for the same in any manner whatsoever to the Developer or any person claiming through or under it:

Provided that SPV shall during the Term

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

ARTICLE 8: PERFORMANCE SECURITY

8.1 Performance Security

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

For the purposes of this Clause, the Developer shall ensure that 30 (thirty) days prior to the expiry of any Contract Year, the Performance Security shall be renewed and kept valid for the period up to the succeeding Contract Year and effective for a period up to the 6 (six) months after the due date of the last Lease Premium instalment, or till the date of full and final payment of Lease Premium and associated charges and transfer of monies into the accounts of the SPV. For the avoidance of doubt, the Developer shall keep renewing the Performance Security in accordance with the provisions of this Clause 8.1. It is clarified that the Performance Security will be valid from the date of signing of this Agreement and will be kept valid and remain in force and effect up to 6 (six) months after the date of the last instalment of the Lease Premium having been paid by the Developer.

8.2 Appropriation of Performance Security

- 8.2.1 [Upon occurrence of a Developer Default, the SPV shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as damages for such Developer Default. Upon such encashment and appropriation from the Performance Security, the Developer shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, and the Developer shall, within the time so granted, replenish or furnish a fresh Performance Security as aforesaid failing which the SPV shall be entitled to terminate this Agreement in accordance with the terms of this Agreement.]
- 8.2.2 If the Developer fails to pay any of the Taxes, cesses, outgoings or any charges of a like nature (as outlined in Clause 5.3 (l) and (m)), the SPV shall have the right, but not be obligated to pay the same and recover the amount so incurred in relation to payment of such Taxes, cesses or charges from the Developer by appropriating an equivalent amount from the Performance Security, along with interest at a rate per annum of 15%.

ARTICLE 9: FORCE MAJEURE

9.1 Force Majeure

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

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

9.2 Duty to report Force Majeure Event

- (a) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith, giving full particulars of:
 - (i) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 9 with evidence in support thereof;
 - (ii) The estimated duration of such Force Majeure Event, and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party’s performance of its obligations under this Agreement;
 - (iii) The measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
 - (iv) Any other information relevant to the Affected Party’s claim.
- (b) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence.
- (c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 9.2(a), and such other information as the other Party may reasonably request the Affected Party to provide.

9.3 Effect of Force Majeure Event on the Project

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

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

- (b) Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- (c) If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:
 - (i) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
 - (ii) The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
 - (iii) The Affected Party shall promptly resume performance of its obligations hereunder when it is able to do so and shall give to the other Party notice to that effect.

9.4 **Termination Notice for Force Majeure Event**

- (a) If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may terminate this Agreement by issuing a Termination Notice to the other Party, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith.
- (b) Before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

ARTICLE 10: INDEMNIFICATION

10.1 General indemnity

Each Party shall indemnify, defend, save and hold harmless the other Party and its subsidiaries, affiliates, contractors, officers, servants, and/ or agents against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the first Party's obligations under this Agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the other Party and/or its subsidiaries, affiliates, contractors, officers, servants, or agents.

10.2 Notice and contest of claims

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

10.3 Defence of claims

- (a) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party.
 - (i) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence.
 - (ii) The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- (b) If the Indemnifying Party has exercised its rights under this Clause 10.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit

or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

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

Provided that if Sub-clauses (ii), (iii) or (iv) of this Clause 10.3(c) are applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

10.4 **No consequential claims**

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

10.5 **Survival on Termination**

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

ARTICLE 11: PAYMENT STRUCTURE

11.1 Payment Structure

Notwithstanding anything to the contrary contained in this Agreement, the Developer shall [commencing from the date of signing of this Agreement] be liable to pay to the SPV the following amounts:

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

Instalment No.	Amount
1	25% of Lease Premium
2	7.50% of Lease Premium
3	7.50% of Lease Premium
4	7.50% of Lease Premium
5	7.50% of Lease Premium
6	7.50% of Lease Premium
7	7.50% of Lease Premium
8	7.50% of Lease Premium
9	7.50% of Lease Premium
10	7.50% of Lease Premium
11	7.50% of Lease Premium

It is clarified that:

- i. Instalment No. 1 shall be payable within 30 (thirty) days of the date of issuance of the LoA or on the date the Agreement is signed, whichever is earlier;
- ii. Instalment Nos. 2-11 shall be paid by the Developer to the SPV in 4 (four) equal quarterly instalments, each quarterly instalment to be paid at the beginning of each quarter of each Contract Year in which the instalment payment due date falls. For the purposes of illustration, the due date for the payment of Instalment No. 2-11 would be the first date of the relevant quarter in which such instalment is payable (for e.g. April 1st, July 1st, October 1st or January 1st, as the case may be). The Developer shall make the payment to SPV within 15 (fifteen) days from the due date of the instalment payment by cheque or bank transfer;
- iii. The Lease Premium is exclusive of all applicable Taxes, and the Developer shall be liable to pay to the SPV the Lease Premium and the applicable Taxes thereon.
- iv. Provided that, in the event that the SPV fails to procure the IICC Phase 1 Completion (to the extent not including the Project) by March 31, 2021, the schedule of payment of the instalments of the Lease Premium shall stand revised, such that for every full quarter of delay, the payment of Lease Premium shall be delayed by 1 (one) quarter.

For the purposes of illustration, in the event IICC Phase 1 Completion occurs before June 30, 2021, the schedule of payment of Lease Premium shall not be revised. However, if IICC Phase 1 Completion occurs between June 30, 2021

and September 30, 2021, the schedule of payment of Lease Premium shall accordingly be extended by a period of 1 (one) quarter.

- (b) A common area maintenance cost per square metre of the Maximum Permissible Built-Up Area of the Project on a monthly-basis commencing from the COD until the expiry of the Term or the termination of the Term, whichever is earlier (the “**Common Area Maintenance Charge**”). The Common Area Maintenance Charge payable in a Contract Year shall be:
 - (i) communicated by the SPV to the Developer, for the Contract Year in which COD occurs, on or before the date of occurrence of COD, and for every subsequent Contract Year at the beginning of such Contract Year; and
 - (ii) subject to reconciliation based on the audited books of account of the SPV with respect to such Contract Year, and if, pursuant to such reconciliation, it is determined that there is any amount due to or from the Developer in respect of the Common Area Maintenance Charge for the said Contract Year, the same will be adjusted against the subsequent payment(s) due from the Developer to the SPV in respect of the Common Area Maintenance Charge.

- (c) Charges on a monthly basis towards the services being provided by the SPV, as described in detail in Schedule C (Services Provision) (“**Centralized Services Charges**”). The Centralized Services Charges shall be:
 - (i) payable commencing from the COD until the expiry of the Term or the termination of the Agreement; and
 - (ii) determined and communicated to the Developer by the SPV, for the Contract Year in which COD occurs, on the date of occurrence of the COD and for every subsequent Contract Year, prior to the commencement of such Contract Year, subject to the condition that the Centralized Services Charges so determined shall be comparable with prevalent market prices for equivalent services.

ARTICLE 12: CHANGE OF SCOPE

12.1 Change of Scope

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

12.2 Procedure for Change of Scope

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

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

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

- (ii) In the event that the Parties are unable to agree, the SPV may, by issuing a Change of Scope Order, require the Developer to proceed with the performance thereof pending resolution of the dispute.

ARTICLE 13: TERMINATION

13.1 Termination for Developer's Default

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

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

13.2 Termination for SPV Default

- (a) In the event that any of the defaults specified below shall have occurred, and the SPV fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the SPV shall be deemed to be in default of this Agreement (the “**SPV Default**”) unless the default has occurred as a result of any breach of this Agreement by the Developer or due to Force Majeure. The defaults referred to herein shall include:
 - (i) The SPV commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Developer; or
 - (ii) The SPV repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.
- (b) Without prejudice to any other right or remedy which the Developer may have under this Agreement, upon occurrence of a SPV Default, the Developer shall be entitled to terminate this Agreement by issuing a Termination Notice to the SPV.
- (c) Before issuing the Termination Notice, the Developer shall by a notice inform the SPV of its intention to issue the Termination Notice and grant 30 (thirty) days to the SPV to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

13.3 Termination Payments

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

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

For the purpose of this Clause 13.3

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

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

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

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

13.4 **Consequences of Termination**

- (a) Upon Termination for any reason whatsoever, the SPV shall:
 - (i) Be deemed to have forthwith taken possession and control of the Project and Project Site, including all moveable and immoveable properties thereon;
 - (ii) Be entitled to restrain the Developer and any person claiming through or under the Developer from entering upon the Project Site or any part of the Project;
 - (iii) Require the Developer to comply with the Divestment Requirements; and
 - (iv) Have the right to appoint an entity to undertake operation and maintenance of the Project;
 - (v) Succeed upon election by the SPV, without the necessity of any further action by the Developer, to the interests of the Developer under such of the Project Agreements as the SPV may in its discretion deem appropriate, and shall, upon such election, be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the SPV elects to succeed to the interests of the Developer.

For the avoidance of doubt, it is clarified that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Developer and such Contractors, and the SPV shall not in any manner be liable for such sums.

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

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

13.5 **Survival of rights**

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

ARTICLE 14: DIVESTMENT OF RIGHTS AND INTEREST

14.1 Divestment Requirements

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

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

Provided that in the event of Termination prior to the achievement of all the project milestones, the Project and Project Site shall be handed over on ‘as is where is’ basis after bringing them to a safe condition;

- (d) Deliver relevant records and reports pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete ‘as built’ drawings as on the date of transfer;
- (e) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Law;
- (f) Execute such deeds of conveyance, documents and other writings as the SPV may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Developer in the Project and Project Site, including the right to receive outstanding insurance claims to the extent due and payable to the SPV, absolutely unto the SPV or its nominee; and
- (g) Comply with all other requirements prescribed or required under Applicable Law for completing the divestment and assignment of all rights, title and interest of the Developer in the Project, free from all Encumbrances, absolutely unto the SPV or to its nominee.

14.2 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed complete on the date when all of the Divestment Requirements have been fulfilled, and the SPV shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule G (the “**Vesting Certificate**”) which will have the effect of constituting evidence of divestment by the Developer of all of its rights, title and interest in the Project, and their vesting in the SPV pursuant hereto.

It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the SPV or its nominee on, or in respect of, the Project to the effect that all Divestment Requirements have been complied with by the Developer.

ARTICLE 15: DISPUTE RESOLUTION

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

ARTICLE 16: CHANGE IN LAW

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

ARTICLE 17: MISCELLANEOUS

17.1 Governing law and jurisdiction

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

17.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

17.3 Delayed Payments

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

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

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

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

17.4 **Waiver**

- (a) Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

17.5 **Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

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

17.6 **Exclusion of implied warranties etc.**

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

17.7 **Entire Agreement**

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

17.8 **Severability**

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

17.9 **No partnership**

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

17.10 **Third Parties**

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

17.11 **Successors and Assigns**

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

17.12 **Notices**

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

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

To the Developer

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

To the SPV

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

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

- (b) Any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

17.13 Counterparts

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

17.14 Amendments

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

17.15 Survival

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

17.16 Language

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

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

In the presence of:

1.

2.

In the presence of:

1.

2.

**SCHEDULE A:
TERMS OF LEASE**

1.1 Term of the Lease

Unless terminated in accordance with the provisions of the Development Agreement dated [●] entered into between [*insert name of the SPV*] and [*insert name of the Developer*], the Lease (as defined under the Development Agreement) shall be for a period of 63 (sixty three) years commencing from the date on which the Development Agreement is signed. Provided that, the Developer and the SPV may, at any time during the last Contract Year, renew the Agreement by a period of not more and not less than 30 (thirty) years, on such terms as may be mutually agreed between them (the “**Term**”).

1.2 Schedule of Handover

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

1.3 Project Site to be free from Encumbrances

- (a) The Project Site shall be made available by the SPV to the Developer free from all Encumbrances and occupations and without the Developer being required to make any payment to the SPV on account of any costs, compensation, expenses and charges for the acquisition and use of such Project Site for the Term, except insofar as otherwise expressly provided in the Agreement.
- (b) For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Project Site shall not be deemed to be Encumbrances.

1.4 Protection of Project Site from encroachments

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

**SCHEDULE B:
PROJECT SITE**

Project Site

Plot Demarcations of Project Site

Project Site is demarcated at 'Plot 09' in "Annexure 1. IICC Concept Master Plan"
GPS coordinates of the Project Site are provided in "Annexure 2. Plots with GPS coordinates"

SCHEDULE C: SERVICES PROVISION

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

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

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

9. Communication Network

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

10. District Cooling

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

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

12. Rainwater harvesting and Storm Water Drainage

- a. The SPV has planned adequate modular rainwater harvesting for the entire complex.

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

Part A:

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

Guest rooms specifications:

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

Part B:

Developer must meet the development requirements mentioned in “Annexure 3.a. Basement Plan and Dimensions” and “Annexure 3.b. Basement Parking Compartmentalisation_Plot 9”.

**SCHEDULE E:
URBAN DESIGN GUIDELINES**

Developer must adhere to the design guidelines mentioned in “Annexure 4. Urban Design Guidelines_Plot 9”

SCHEDULE F: APPROVALS

List of Approvals

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

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

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

A. APPROVALS OBTAINED/TO BE OBTAINED BY SPV

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

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

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

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

1. Approval from SPV for Electricity, Water and Sewerage connection
2. Approval from SPV for HVAC requirements
3. Approval from SPV for HSD connection/requirement
4. Approval from SPV and PNG distributor for PNG connection.
5. Approval from SPV and Telecom vendor for telecommunication/internet connection.
6. Approval from SPV for Storm water connection

7. Approval from SPV for connection to solid waste management system
8. Any other approval required during the construction/operations/development of facility shall be acquired by developer from the respective authority/SPV.

**SCHEDULE G:
VESTING CERTIFICATE**

(See Clause 14.2)

1. The Managing Director, [INDIA INTERNATIONAL CONVENTION & EXHIBITION CENTRE LIMITED] (the "**SPV**") refers to the Development Agreement dated *** (the "**Agreement**") entered into between the SPV and **** (the "**Developer**") for operation and management of a hotel of international standards (the "**Project** ") at the India International Convention & Expo Centre ("**IICC**") planned to be developed at Sector 25, Dwarka, New Delhi ("**IICC Site**").
2. The SPV hereby acknowledges compliance and fulfilment by the Developer of the Divestment Requirements set forth in Clause 14.2 of the Agreement on the basis that upon issuance of this Vesting Certificate, the SPV shall be deemed to have acquired, and all title and interest of the Developer in or about the Project shall be deemed to have vested unto the SPV, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Developer to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Developer in any manner of the same.

Signed this *** day of ***, 2018 at Delhi.

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of DEVELOPER by:

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

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

**SCHEDULE H:
PERFORMANCE SECURITY**

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

WHEREAS:

- (A) [●] (the "**Developer**") and **India International Convention & Exhibition Centre Limited** (the "**SPV**") have entered into a Development Agreement dated [●] (the "**Agreement**") whereby the SPV has agreed to the Developer development, engineering, financing, procurement, construction, operation and maintenance of the Project Facilities (as defined under the Agreement), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Developer to furnish a Performance Security to the SPV in a sum of [Rs [●] (Rupees [●])] ¹ (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Term (as defined in the Agreement).
- (C) We, [insert name of the Bank] through our Branch at [insert address] (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

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

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

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

Signed and sealed this ** day of ***, 2018 at ***.

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Address)