

**Grant of Lease of Land for Developing and
Operating an International Convention &
Exhibition Centre, Hotels & Allied facilities at
Dwarka,
Delhi, India**

**DRAFT LEASE DEED
(REQUEST FOR PROPOSAL - VOLUME II)**

MAY 2007

**DELHI DEVELOPMENT AUTHORITY
VIKAS SADAN, NEAR INA
NEW DELHI**

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DELHI DEVELOPMENT AUTHORITY

PERPETUAL LEASE

(Under Rule 43 of the DDA (Disposal of Developed Nazul Land) Rules, 1981)

THIS INDENTURE made this _____ day of _____ Two Thousand and _____ BETWEEN THE PRESIDENT OF INDIA (hereinafter called "the Lessor") of the one part and¹, a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____ acting through its duly authorized officer _____ in this behalf vide _____ (hereinafter called "the Lessee") of the second part.

WHEREAS, tenders were invited onfor the grant of lease hold rights of a Demised Plot of land to be used for the purpose of developing and operating an International Convention and Exhibition Centre, Hotels and Allied Commercial Facilities as hereinafter described, belonging to the Lessor.

AND WHEREAS the Consortium of _____, _____ and _____ has in accordance with the Request for Proposal Document, promoted and incorporated the Lessee as a limited liability company under the Companies Act, 1956 and has, by its letter No. _____ dated _____ requested the Lessor to accept the Lessee as the entity which shall undertake and perform the obligations and exercise the rights of

¹ Name of the Lessee/SPC

the Consortium under the Allotment Letter including the obligation to enter into this Lease Deed pursuant to the Allotment Letter².

AND WHEREAS the bid offered by the Lessee, being the highest bid has been accepted by the Lessor;

AND WHEREAS in compliance with conditions of the Allotment Letter, the Lessee has:

- (a) Paid to the Lessor an amount of Rs. _____ towards Lease Premium, details are as follows:
 - (i) _____
 - (ii) _____
- (b) Submitted a Performance Security for a sum of Rs. _____ [computed at 5% of the Lease Premium]
- (c) Submitted the Preliminary Project Development Plan and an undertaking to the effect stating therein that the bidder would incorporate the specific suggestions made by DDA as set out in Schedule 2.

NOW THIS INDENTURE WITNESSETH that in consideration of the amount of Rs. (Rupees.....only) (in words) paid towards Lease Premium before the execution of these presents (the receipt where of the Lessor hereby acknowledges) and of the rent hereinafter reserved and of the covenants on the part of the Lessee hereinafter contained, the Lessor doth hereby demise unto the Lessee, all that plot of land being the Demised Plot No..... in the layout plan ofcontaining by admeasurement an area ofsqm or thereabout situated atand to be used only for developing and operating an International Convention and Exhibition Centre, Hotels and Allied Commercial Facilities which Demised Plot is more particularly described in the schedule hereunder written and with boundaries thereof for greater clearness has been delineated on the plan annexed to these presents and thereon coloured (hereinafter referred to as "the

² Applicable only if the Bid was awarded to a Consortium

Demised Plot”) TOGETHER with all rights, easements and appurtenances whatsoever to the said Demised Plot to be used only for the purpose of developing and operating an international convention and exhibition centre, hotels and allied commercial facilities, belonging or appertaining TO HOLD the premises unto the Lessee in perpetuity fromday of**Two Thousand and** YIELDING and PAYING therefore the yearly rent payable in advance of Rs.5/- (Rupees Five only) till.....day of**Two Thousand and**thereafter at the rate of **two and a half percent** of the Lease Premium or such other enhanced rent, as may hereafter be assessed, (the sums already paid and such other sums or sums hereafter to be paid) towards Lease Premium, under the covenants and the conditions hereinafter contained clear of all deductions, by equal half yearly payments on the **fifteenth day of January and the fifteenth day of July in each year** at the STATE BANK OF INDIA/CENTRAL BANK OF INDIA, New Delhi or at such other place as may be notified by the Lessor for this purpose from time to time, the first of such payments to be made on the**Two Thousand and**and the rent amounting to Rs.....(Rupees.....2^{1/2}% of the tender amount i.e. Rs.....only from the date of the commencement of lease to the last mentioned date having been paid before the execution of these presents.

SUBJECT ALWAYS to the exceptions, reservations, covenants and conditions hereinafter contained, that is to say as follows:

- I. The Lessor excepts and reserves unto himself all mines, minerals, coals, gold washing, earth oils and quarries in or under the Demised Plot, to be used by only **as per the use specified** and full right and power at all times to do all acts and things which may be necessary or expedient for the purpose of searching for, working, obtaining, removing and enjoying the same without providing or leaving any vertical support for the surface of the Demised Plot, or for any building, standing thereon, provided always that the Lessor shall make reasonable compensation to the Lessee for all damage directly occasioned by the exercise of the rights hereby reserved or any of them.
- II. The Lessee for himself, and his heirs, executors, administrators legal representatives and assigns covenants with the Lessor in the manner following, that is to say:
 - (1) Not used.

- (2) The yearly rent of two and a half percent of the Lease Premium hereby reserved shall be calculated on the sum received towards Lease Premium by the Lessor before the execution of these presents and on such additional sum or sums payable towards Lease Premium as provided herein fromday ofTwo Thousand and
- (3) The Lessee shall pay unto the Lessor the yearly rent hereby reserved on the days and in the manner hereinbefore appointed.
- (4) The Lessee shall not deviate in any manner from the lay-out plan nor alter the size of the Demised Plot for the said purpose, either by subdivision, amalgamation, or otherwise, unless specifically permitted to do so by the Lessor.
- (5) (a) The Lessee shall, within a period of 40 months from the Appointed Date (and the time so specified shall be the essence of the contract) after obtaining sanction to the building plan with necessary designs, plans and specifications from the proper municipal or other authority, at its own expenses, erect upon the Demised Plot and complete in a substantial and workmanlike manner the Project Facilities in accordance with the sanctioned building plan to the satisfaction of DDA/municipal authority and also in accordance with terms and conditions of the tender (Appendix), which have been understood, signed, confirmed and delivered by the Lessee to the Lessor.
- (b) Any of the conditions of the said terms and conditions of the tender, including but not limited to those touching upon erection, manner and commissioning of the Project, including its maintenance and operations, shall be read as part of this Lease Deed and any violation thereof shall be ground for determination of this Lease.
- (c) The Lessee shall be obliged to obtain the Core Project Commissioning Certificate and Additional Facilities Commissioning Certificate in accordance with Article 6 of Appendix.
6. (a) The Lessee including its Lender or mortgagee, shall not, sell, transfer, assign or otherwise part with the possession of the whole or any part of the Demised Plot except with the previous consent in writing of the

Lessor which, he shall be entitled to refuse in his absolute discretion: Such consent, however, may be granted to the Lessee after he obtains completion certificate from the DDA / municipal authorities. Such consent may be granted:

- i. After issue of Additional Facilities Commissioning Certificate for the Additional Facilities and hotels not forming part of Core Project; and
- ii. After expiry of 10 years from Appointed Date for the Core Project.

Provided that restraint 6(a)(ii) above, shall not be applicable to Lenders.

PROVIDED FURTHER that, in the event of the consent being given, the Lessor may impose such terms and conditions as he thinks fit and the Lessor shall be entitled to claim and recover a portion of the unearned increase in the value, (i.e., the difference between the Lease Premium paid and the market value) of the Demised Plot at the time of sale, transfer, assignment or parting with the possession, the amount to be recovered being fifty percent of the unearned increase and the decision of the Lessor in respect of the market value shall be final and binding.

PROVIDED FURTHER that the Lessor shall have the pre-emptive right to purchase the whole of the Demised Plot or any part thereof that may be subject of sale, transfer, assignment or otherwise parting with possession as the case may be, after deducting fifty percent of the unearned increase as aforesaid.

PROVIDED FURTHER that immediately prior to the Lessee selling or transferring the floor space constructed on the Demised Plot after obtaining written consent of the Lessor, as aforesaid, the Lessee shall pay to the Lessor an amount of Rs. 100/- for each flat floor space for the first sale/transfer. For subsequent sale/transfer the Lessor may on payment of proportionate 50% of the unearned increase (i.e. the difference between the Lease Premium already paid by the purchaser/transferor and the market price at the time of sale/transfer towards the portion of the land) grant permission to the sub-Lessee/transferor for such subsequent sale/transfer of the floor space to be

transferred. Prior permission of the Lessor for such second and subsequent sale/transfer of floor space shall be subject to the conditions of getting the Deed of Apartment and the sub-lease (as defined under the Delhi Apartment Ownership Act, 1986) executed by the Lessee in favour of such floor space buyers/Transferee.

The grant of permission by the Lessor to the Lessee for transfer, assignment or otherwise parting with possession of the whole or any part of the Demised Plot to another Person, shall not absolve the Lessee from violation of the terms and conditions of the Lease. The Lessee for the period prior to the date of such transfer and thereafter purchaser shall remain bound with the terms and conditions of the Lease and the Lessee shall ensure to incorporate this condition in the transfer document. The Lessee shall also be responsible for making all arrangements as are necessary for maintenance of the building and common areas including but without limitation affecting the fire fighting system and the common services.

(b) Notwithstanding anything contained in sub-clause (a) above, the Lessee may, with the previous consent in writing of the Lessor, mortgage or charge the Demised Plot to Lenders as may be approved by the Lessor in his absolute discretion.

PROVIDED THAT mortgage permission may be granted, on handing over possession of the plot and on execution/registration of the Lease Deed for the purpose of construction of the Project Facilities in favour of the Scheduled/Nationalized banks, financial institutions and Government institutions which allow loan against mortgage in accordance with the permission granted by the Lessor to the Lessee.

PROVIDED FURTHER that in the event of the sale or foreclosure of the mortgaged or charged property, the Lessor shall be entitled to claim and recover fifty per cent of the unearned increase in the value of the Demised Plot as aforesaid and the amount of the Lessor's share of the said unearned increase, shall be a first charge, having priority over the said mortgage or charge. The decision of the Lessor in respect of the market value of the said Demised Plot shall be final and binding on all Parties concerned:

PROVIDED FURTHER that the Lessor shall have the pre-emptive right to purchase the mortgaged or charged property after deducting fifty per cent of the unearned increase as aforesaid.

- (c) The Lessor's right to the recovery of fifty per cent of the unearned increase and the pre-emptive right to purchase the property as mentioned here in before shall apply equally to an involuntary sale or transfer whether it be by or executing or insolvency court.
- (d) Notwithstanding the restrictions, limitations and conditions in sub-clause 6(a) above, the Lessee shall be entitled to sublet the whole or any part of the building that may be erected upon the Demised Plot for the said commercial purposes only on a tenancy as per prevalent law.
- (e) Whenever the title of the Lessee in Demised Plot or any part thereof is transferred in any manner, whatsoever the Transferee shall be bound by all the covenants and conditions contained herein and answerable in all respects thereof.
- (f) Whenever the title of the Lessee in the Demised Plot or any part thereof is transferred in any manner whatsoever the transferor and the Transferee shall, within three months of the transfer, give notice of such transfer in writing to the Lessor.
- (g) The Lessee shall time to time and at all times pay and discharge all rates, taxes, charges and assessments of every description which are now or may at any time hereafter during the continuance of this Lease be assessed, charged or imposed upon the Demised Plot hereby demised on any building to be erected thereupon or on the landlord or tenant in respect thereof.
- (h) All arrears of rent and other payments due in respect of the Demised Plot hereby demised shall be recoverable as arrears of land revenue.

- (i) The Lessee shall in all respects comply with and be bound by the building, drainage and other bye-laws of the proper municipal or other authority for the time being in force.
- (j) The Lessee shall not without the sanction or permission in writing of the proper municipal or other authority concerned erect any building or make any alteration or addition to such building on the Demised Plot.
- (k) The Demised Plot and building thereon or any part thereof shall not be used for the purpose other than for the Project. The Lessee and all other Persons claiming title shall not use or cause to be used the Demised Plot or part thereof for the purpose whatsoever other than those specified in this Lease Deed and not use or cause to be used any portion of the units in the Demised Plot in such a manner which may or is likely to cause nuisance or annoyance to the neighbours or occupiers of any other unit in the Demised Plot or to the owners and occupiers of any other adjoining and neighbouring property. No part of the Demised Plot or any unit thereof shall be used for any illegal immoral purposes or for any residential purposes.
- PROVIDED THAT, if the Lessee is desirous of using the said Demised Plot or building thereon for a purpose other than for the Project, the Lessor may allow such change of use only after completion of 20 years from the Appointed Date on such terms and conditions specified, including payment of additional Lease Premium and additional rent as the Lessor, may in his absolute discretion recommend.
- (l) The Lessee shall at all reasonable times, grant access of the Demised Plot to the Lessor or any other officer authorized by him for being satisfied that the covenants and conditions contained herein have been and are being complied with.
- (m) Lessee shall on the determination of this Lease peaceably yield up the said Demised Plot and the buildings thereon unto the Lessor.

III. A Obligations of the Lessee

In addition to any of his other obligations under this Lease Deed, the Lessee shall have the following obligations:

- (a) The Lessee shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Lease Deed, in a timely manner.
- (b) The Lessee shall at all times abide by the Policy of DDA with regard to UIE (Unearned Income)
- (c) The Lessee shall at all times be in compliance with all Applicable Laws, follow Good Industry Practice and strictly adhere to Construction Requirements.
- (d) The Lessee shall keep on the Demised Plot two complete sets of this Lease Deed, Construction Documents, approvals given by the Lessor/ Project Engineer and any other communication given or issued under provisions hereof for inspection, verification and use by the Lessor, Project Engineer or any authority authorised by law to inspect the same or any of them.

III B. If the sum or sums payable towards the Lease Premium or the yearly rent hereby reserved or any part thereof shall at any time be in arrear and unpaid for one calendar month next after any of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it is discovered that this lease has been obtained by suppression of any fact or mis-statement, mis-representation or fraud or if there shall have been in the opinion of the Lessor, whose decision shall be final, any breach by the Lessee or by any person claiming through or under him of any of the covenants or conditions contained herein and on his part to be observed or performed, then and in any such case, it shall be lawful for the Lessor, notwithstanding the waiver of any previous cause or right of re-entry upon, the Demised Plot

hereby demised and the building thereon to re-enter upon and take possession of the Demised Plot and the buildings and fixtures and thereupon this lease and everything herein contained shall cease and determine and the Lessee shall not be entitled to any compensation whatsoever nor to the return of any Lease Premium paid by him.

PROVIDED that, notwithstanding anything contained herein to the contrary, the Lessor may without prejudice to his right of re-entry as aforesaid, and in his absolute discretion, waive or condone breaches temporarily or otherwise, on receipt of such amount and on such terms and conditions as may be determined by him and may also accept the payment of the rent which shall be in arrear as aforesaid together with interest at the **rate of ten percent per annum** or as decided by the Lessor.

IV. No forfeiture or re-entry shall be effected until the Lessor has served on the Lessee a Termination Notice in writing:-

- a) Specifying the particular breach complained of, and
- b) If the breach is capable of remedy, requiring Lessee to remedy the breach and the Lessee fails within such reasonable time as may be mentioned in the notice to remedy the breach, if it is capable of remedy, and in the event of forfeiture or re-entry the Lessor may, in his discretion relieve against forfeiture on such terms and conditions as he thinks proper.

Nothing in this clause shall apply to forfeiture or re-entry;

- a) for breach of covenants and conditions relating to sub-division or amalgamation, erection and completion of building within the time provided and transfer of the Demised Plot or
- b) In case this lease has been obtained by suppression of any fact, mis-statement, mis-representation or fraud.

V. The rent hereby reserved shall be enhanced from the first day of January Two thousand and _____ and thereafter at the end of each successive period

of thirty years, provided that increase in the rent fixed at each enhancement shall not at each such time exceed hundred percent of that immediately before the enhancement value of the site without building at the date on which the enhancement is due and such letting value shall be assessed by the Collector or Additional Collector of Delhi as may be appointed by the Lessor.

PROVIDED ALWAYS that any such assessment of the letting value for the purpose of this provision shall be subject to the same right on the part of the Lessee of appeal from the orders of the said Collector or Additional Collector and within such time as if the same were an assessment by a Revenue officer under the Punjab Land Revenue Act, 1887 (Act. XVII of 1887), or any amending Act, for the time being in force and the proceeding for or in relation to any such appeal shall be in all respects governed by the provisions of the said Act, in the same manner as if the same had been taken thereunder.

- VI. The Lessor shall not permit conversion of the Demised Plot from leasehold to freehold until completion of 10 years from the Appointed Date.
- VII. In the event of any question, dispute or difference arising under these presents, or in connection there with (except to any matters the decision of which is specially provided by these presents) the same shall be referred to the Vice Chairman of DDA for settlement. The Parties agree that all disputes arising between them in relation to the Project shall be settled by the Vice Chairman, whose decision shall be final and binding on the Parties.
- VIII. All notices, orders, directions, consents, or approvals to be given under this Lease shall be in writing and shall be signed by such officers as may be authorized by the Lessor and shall be considered as duly served upon the Lessee or any person claiming any right to Demised Plot if, the same shall have been served in accordance with the provisions of Section 43 of the Delhi Development Act, 1957.

All powers exercisable by the Lessor under this Lease may be exercised by the Lt. Governor. The Lessor may also authorize any other officer or officers to exercise all or any of the powers exercisable by him under the Lease.

- IX. In this Lease the expression “the Lieutenant Governor” means the Lieutenant Governor of Delhi for the time being or in case his designation is changed or his office is abolished, the officer who for the time being is entrusted, whether or not in addition to other functions, with the function similar to those of the Lieutenant Governor by whatever designation such officer may be called. This said expression shall further include such officer as may be designated by the Lessor to perform the functions of the Lieutenant Governor under this Lease.
- X. The expression “the Lessor” and “the Lessee” hereinbefore used shall where the context so admits include, in the case of the Lessor, his successors and assigns, and in the case of the Lessee, his heirs, executors, administrators or legal representatives and the person or persons in whom the lease-hold interest hereby created shall for the time being be vested by assignment or otherwise.
- XI. This Lease is granted under the Government Grants Act, 1895 in accordance with the terms and conditions of this Lease Deed.
- XII. The provisions of the Delhi Development Authority (Disposal of Developed Nazul Land, Rules 1981 shall, mutatis mutandis also apply in respect of matters not herein expressly provided for.

SCHEDULE

All that plot of and being the Demised Plot in the layout plan ofNew Delhi, sanctioned by the Standing Committee of the Municipal Corporation of Delhi/ New Delhi Municipal committee/Delhi Development Authority/Delhi Cantonment Board by Resolution No.....dated theday ofTwo Thousand andand measuring (Sq.mtrs.) with FAR(Sq.mtrs.) thereabouts bounded as follows:

NORTH.....
 EAST
 SOUTH.....
 WEST

And shown in the annexed plan and marked with its boundaries

Signed by Shri.....

.....(DDA's Official)

Lease Admn. Officer

For and on behalf of and by the order

And direction of President of India (Lessor) in the
 Presence of:

(Signature)

Shri.....

.....(DDA's Official)

(1) Signed by Shri/Smt.....

S/o, W/o.....

R/o.....

(Lessee)

(2) Shri/Smt.....

S/o, W/o.....

R/o.....

(Signature)

(3) Shri/Smt.....

S/o, W/o.....

R/o.....

(Signature)

(Witnesses)

1.

2.

APPENDIX

(ON NON-JUDICIAL STAMP PAPER)

Terms and Conditions of Tender (Article 5 (a) of the Lease Deed)

ARTICLE 1

DEFINITIONS & INTERPRETATIONS

1.1 Definitions

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

"Additional Facilities" means the facilities to be provided by the Lessee as set out in Schedule 3 and any other facilities, services and assets which the Lessee may build, provide, develop, modify, demolish, alter or procure within the Demised Plot for better utilisation of the Demised Plot, consistent with Good Industry Practice and the terms of this Lease Deed.

"Additional Facilities Commissioning Certificate" means the certificate issued by the Lessor in the manner set out in Article 6 of the Appendix.

"Allotment letter" means the letter No. _____ dated _____ issued by the Lessor to the Successful Bidder, a copy of which is placed at Schedule 2.

"Applicable Laws" means any statute, law, bye-law, rule, regulation, ordinance, judgment, order, decree, injunction, writs or orders of any court of record, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administrative order having the force of law of any of the foregoing, by any Government Agency having jurisdiction over the matter in question, whether in effect as of the date of this Lease Deed or thereafter.

"Applicable Permits" means all clearances, permits, authorisations, consents and approvals required to be obtained or maintained under or pursuant to Applicable Laws, including but not limited to permits those setout in Schedule 4, in order to implement the Project during the subsistence of this Lease Deed.

"Appointed Date" means the date of execution of this Lease Deed.

"COD" or "Commercial Operations Date" means the date on which the Additional Facilities Commissioning Certificate is issued to the Lessee in accordance with Article 6.2 of Appendix.

"Construction Documents" means all approved plans, manuals, drawings (including as built drawings), calculations, computer software (programs), samples, patterns and models prepared and used for construction of the Project Facilities.

"Completion Certificate" means completion certificate issued to the Lessee by the DDA/municipal authority on completion of Project Facilities.

"Consortium Members" means _____, _____, _____, _____, selected by the Lessor to implement the Project and in pursuance to the Allotment Letter issued by the Lessor, promoted and incorporated the Lessee.

"Construction Requirements" means the construction of the Project in accordance with the requirements set out in Schedule 5, including any modifications or alterations as may be mutually agreed by the Parties.

"Contractor" means any Person with whom the Lessee has entered into/ may enter into any of the Project Agreements.

"Core Project" means and includes development of the Convention and Exhibition Centre (C&EC) together with one hotel with a minimum 300 room inventory, of a 5 star categorization or above to be constructed, built, installed, erected or provided by the Lessee on the Demised Plot as set out in Schedule 3 to this Lease Deed.

"Core Project Commissioning Certificate" means the certificate issued by the Lessor in the manner set out in Article 6 of Appendix.

"Date of re-entry" means the date specified in the Termination Notice as the date on which Termination occurs.

"Defects Liability Period" means the period of 12 months commencing from the issue of Core Project Commissioning Certificate for the Core Project and 12 months commencing from the Additional Facilities Commissioning Certificate for Additional Facilities.

"Encumbrance" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Demised Plot.

"End Date" means the date(s) on which each of the Project Construction Milestones are to be achieved by the Lessee in accordance with Schedule 8.

"Equipment" means all machinery, equipment, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and

the remedying of any defects, but does not include Plant, Materials, or other things intended to form or forming part of the Permanent Works.

"Equity Documents" means collectively the documents evidencing subscription/commitment to subscribe to Lessee's equity/preference capital and includes documents relating to the funds in any other form committed by the Lessee as per the Means of Finance.

"Financial Close" means the date on which both the Financing Documents and the Equity Documents have been executed.

"Financing Documents" means collectively the documents evidencing Lenders' commitment to finance the Project.

"Force Majeure" or "Force Majeure Event" shall have the meaning ascribed thereto in Article 11 of the Appendix.

"Good Industry Practice" means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Lease Deed which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a project of the type similar to that of the Project.

"Implementation Period" means the period beginning from the Appointed Date and ending on COD.

"Lease Deed" means this Perpetual Lease Deed including the Appendix and schedules hereto, as of the date hereof as may be amended or supplemented in accordance with the provisions hereto.

"Lenders" means financial institutions, Government institutions, scheduled/nationalized banks, who provide or refinance the debt component of the cost of the Project (including guarantees, letters of credit, risk participation facility, take-out facility and other forms of credit enhancement) and includes subscribers to/trustee for the holders of debentures/bonds or other securities issued by the Lessee to meet the cost of the Project.

"Mandatory Facilities" means and includes the development of the Convention, and Exhibition Centre (C&EC) together with an aggregate hotel inventory of a minimum of 800 rooms, out of which at least one hotel with a minimum of 300 room inventory of a 5 star categorization or above, required to be constructed, built, installed, erected or provided by the Lessee on the Demised Plot as further set out in Schedule 3 to this Lease Deed.

"Materials" means things of all kinds (other than Plant) to be provided and incorporated in the Permanent Works by the Lessee, including the items which are to be provided, installed and set up by the Lessee as specified in the Lease Deed.

"Material Adverse Effect" means material adverse effect on (a) the ability of the Lessee to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Lease Deed and/or (b) the legality, validity, binding nature or enforceability of this Lease Deed.

"Material Breach" means a breach by the Lessee of any of its obligations under this Lease Deed which has or is likely to have a Material Adverse Effect on the Project and which the Lessee has failed to cure.

"O&M Requirements" shall mean the requirements as to operation and maintenance of the Core Project set forth in Schedule 6.

"Parties" means the parties to this Lease Deed and "Party" means either of them, as the context may admit or require.

"Performance Security" means the bank guarantee dated _____ from _____ (Name of bank) for an amount of Rs. [computed at 5% of the Premium], copy of which is at Schedule 7.

"Permanent Works" means the permanent works to be designed and executed in accordance with the Construction Requirements.

"Person" unless specifically provided otherwise, shall mean any individual, corporation, partnership, joint venture, trust or Government Agency or any other legal entity as the context may admit or require.

"Plant" means machinery and apparatus intended to form or forming part of the Permanent Works, including the supply-only items (if any), which are to be supplied by the Lessee as specified in the Lease Deed.

"Project" means development, design, financing, procurement, engineering, construction, operation, maintenance and marketing of the Project Facilities in accordance with the provisions of this Lease Deed.

"Project Agreements" means collectively this Lease Deed, construction contracts, operations and maintenance contracts and any other material contract (other than Financing Documents) entered into or may enter into by the Lessee in connection with the Project.

"Project Construction Milestones" means the milestones as set out in Schedule 8.

"Project Development Plan" means the development plan for the Project on the Demised Plot prepared by the Lessee in accordance with Schedule 9.

"Project Engineer" shall mean a reputed Person being a firm, company or a body corporate appointed in accordance with Article 3.1 for supervision and monitoring of compliance by the Lessee with the Construction Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in **Schedule 10**.

"Project Facilities" shall mean collectively the Mandatory and Additional Facilities provided by the Lessee on the Demised Plot.

"Scheduled Project Completion Date" or "SPCD" means a date 40 months subsequent to the Appointed Date.

"Temporary Works" means all temporary works of every kind (other than Equipment) required for the execution and completion of the Works and the remedying of any defects.

"Termination" means determination of this Lease Deed, pursuant to Termination Notice or otherwise in accordance with the provisions of this Lease Deed.

"Termination Notice" means the notice of Termination by the Lessor to the Lessee, in accordance with the applicable provisions of this Lease Deed.

"Termination Payment" means the amount payable by the Lessee, under this Lease Deed upon Termination.

"Tests" shall mean the tests to be carried out in accordance with the Construction Requirements or the O & M Requirements and if not expressly specified in either of the said requirements, as instructed by the Project Engineer.

"Transferee (s)" means the Persons to whom the Lessee may part with the possession of the whole or any part of the floor space/ Demised Plot in accordance with the applicable provisions of this Lease Deed.

"Works" means the Permanent Works and the Temporary Works or either of them as appropriate.

Interpretation

- (a) For the meaning of capitalized words such as Lease, Lease Deed, Lease Premium and similar words appearing in this Lease Deed, the definitions and interpretation provided in the Delhi Development Act, 1957 and Rules framed there under may be referred to. For the meaning of other capitalized words such as Additional Facilities Commissioning Certificate, Appointed Date, Commercial Operations Date, Completion Certificate, Core Project, Core Project Commissioning Certificate, Lenders, Project, Project Facilities, Termination Notice and so on, the Appendix hereto may be referred to.

- (b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (c) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Lease Deed;
- (d) the words "include" and "including" are to be construed without limitation;
- (e) any reference to day, month or year shall mean a reference to a calendar day, 30 days or 365 days respectively;
- (f) the Appendix and schedules to this Lease Deed form an integral part of this Lease Deed as though they were expressly set out in the body of this Lease Deed. In case of any discrepancy between the Appendix and the body of the Lease Deed, the latter shall prevail.
- (g) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (h) references to recitals, Articles, Appendix, sub-articles, clauses, or Schedules to Appendix in this Lease Deed shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, Appendix sub-articles, clauses and Schedules to Appendix of or to this Lease Deed;
- (i) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Lease Deed from or by the Lessee shall be valid and effectual only if it is in writing under the hands of its duly authorised representative in this behalf and not otherwise;
- (j) 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;

- (k) the damages payable by the Lessee to the Lessor as set forth in this Lease Deed, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Lessor and the Lessor is entitled to receive the same and are not by way of penalty.

ARTICLE 2

CONDITIONS ON WATER AND ELECTRICITY SUPPLY

- 2.1 The Lessee shall earmark within the Demised Plot, area/ basement space for construction of ground reservoir/booster pumping station and it will be his sole responsibility to construct reservoir and booster pumping station to supply water to the Project. The DDA/Municipal Corporation of Delhi (MCD) will supply the water at ground level only.
- 2.2 The Lessee shall also reserve a space for installation of electric sub station within the Demised Plot in consultation with the Delhi Vidyut Board (DVB) /BSES and the MCD/local authority concerned.

ARTICLE 3

3.1 Project Engineer

- (a) The Lessor shall have right to appoint a Project Engineer who shall have such powers and such duties as are set out in Schedule 10. Such appointment shall be made within 30 days from the Appointed Date.
- (b) The remuneration, cost and expenses of the Project Engineer shall be paid by the Lessor. One - half of such remuneration, cost and expenses shall be reimbursed by the Lessee to the Lessor within 15 (fifteen) days of receiving a statement of expenditure from the Lessor.
- (c) The initial term of the Project Engineer shall extend upto 5 (five) years from date of his appointment, after which, the term of the Project Engineer may be extended/renewed at the discretion of the Lessor.

- (d) The Project Engineer shall report to Lessor about their work, services, and activities pursuant hereto through regular periodic reports (at least once every month) as the situation may warrant. Such report of Project Engineer shall include but not be limited to the matters and things set forth in said Schedule 10.
- (e) The Parties may replace the Project Engineer for the time being in any of the following circumstances by giving a 30 day written notice:
 - (i) If Lessor or the Lessee has reason to believe that the Project Engineer has not discharged its duties in a fair, appropriate and diligent manner;
 - (ii) if the Parties decide not to renew the term of the Project Engineer;
 - (iii) if, in accordance with the terms of its appointment the Project Engineer resigns or notifies its intention not to continue as the Project Engineer;
 - (iv) any other circumstance which in the opinion of the Parties warrants replacement of the Project Engineer.
- (f) Subject to the attendant circumstances and unless the Parties otherwise agree, the procedure laid down in this Article shall, as far as possible, be adhered to for replacement of the Project Engineer, and the replacement shall be so effected as to maintain continuity in the supervision and monitoring of the Construction Requirements and O&M Requirements.
- (g) Replacement of the Project Engineer shall not be a reason for seeking delayed completion of the Project Facilities.

3.2 Specific Obligations of the Lessee

In addition to any of his other obligations under this Lease Deed, the Lessee shall have the following specific obligations:

- (a) The Lessee shall ensure and procure that each Project Agreement and Financing Documents are entered into on the basis of various conditions set out in this Lease Deed, more particularly those mentioned in this Lease Deed, including the Lessor's rights of pre-emption, termination of the Lease in the event of non-payment of Lease rentals/premium, conditions of Lease including that of sale, transfer, assignment or otherwise parting with the possession of the Demised Plot, conditions of mortgage, obligations of the Lessee and all other relevant conditions. Such documents shall include a covenant therein that whenever the mortgagee or Lender intends to deal with Demised Plot in any manner whatsoever, for recovery of loan from the Lessee,

the mortgagee or Lender shall seek prior permission from Lessor as envisaged in Clause II (6) (a) of the Lease Deed.

- (b) Simultaneously with the execution of the Project Agreements and Financing Documents, but not later than 7 days therefrom, the Lessee shall submit to the Lessor, attested copies thereof.
- (c) The Lessee shall achieve Financial Close within 180 days from the Appointed Date and inform to the Lessor forthwith about the same.
- (d) The Lessee shall complete the Project Facilities in accordance with the Project Construction Milestones as setout in Schedule 8 and duly secure the Core Project Commissioning Certificate and Additional Facilities Commissioning Certificate in accordance with Article 6.
- (e) The Consortium Members hold the following percentage shareholding in the Lessee as on the Appointed Date:

Shareholder³ A _____% (Lead Member)

Shareholder B _____%

Shareholder C _____%

The Lessee having been set up for the sole purpose to exercise the rights and observing and performing its obligations and liabilities under this Lease Deed, the Lessee hereby undertakes and agrees to comply with the following conditions -

- (i) Lead Member (Shareholder A) shall hold a minimum equity stake of 26% of the shareholding in the equity capital in the Lessee for at least 10 years from the Appointed Date
- (ii) Lead Member (Shareholder A) shall hold not less than the equity holding of any other Consortium Member in the Lessee for at least 10 years from the Appointed Date.

³ As many shareholders are there are members in the Consortium

(iii) All Consortium Members who hold more than 15% equity shall, in aggregate, continue to hold:

1. at least 76% shareholding in the equity capital of the Lessee till 5 years after the Appointed Date and, thereafter
2. at least 51% shareholding in the equity capital of the Lessee till 10 years after the Appointed Date

The Lessee agrees and acknowledges that, if any of the Consortium Member(s) intend to give up its shareholding in the Lessee, either in part or in full, such Consortium Member(s) shall be permitted to do so by the Lessor, subject to the above conditions only. In the interim period, such Consortium Member(s) may be permitted to dilute their shareholding in exceptional circumstances by the Lessor in its absolute discretion.

3.3 Compliance with Statutes, Regulations and Laws

The Lessee shall, in all matters arising in the performance of this Lease Deed, comply with, give all notices under, and pay all fees required by, the provisions of any national or state statute, ordinance or other law, or any regulation of any legally constituted public authority having jurisdiction over the Works. The Lessee shall obtain Applicable Permits as set out in Schedule 4 and all other permits, licenses or approvals required for execution of the whole or any part of the Works for otherwise fulfilling any of its obligations under this Lease Deed.

3.4 Designs and Drawings

- (a) The Lessee shall prepare the Construction Documents, which are necessary for the execution of the Works based on the Construction Requirements as set out in Schedule 5, and the same shall be strictly adhered to for execution of the Works.
- (b) Before commencing design, the Lessee shall satisfy himself regarding the Construction Requirements (including design criteria and calculations).

- (c) The Construction Documents shall be prepared in sufficient detail so as to satisfy all regulatory approvals, to provide suppliers and construction personnel sufficient instruction to execute the Works, and, where applicable, to describe the operation of the completed Works. The Project Engineer shall have the right to review the Construction Documents and ensure adherence of the same to the Construction Requirements.
- (d) The Lessee shall prepare the drawings of the Project Facilities, obtain Applicable Permits and submit the same to DDA.
- (e) The Lessee shall obtain in a timely manner approval from the DDA of the drawings, Project Development Plan and Construction Documents in accordance with Schedule 5 and only then commence Works.
- (f) The Lessee shall also prepare and submit to the Project Engineer "as-built drawings" of the Works, showing all Works as executed. The drawings shall be prepared as the Works proceed, and shall be submitted to the Project Engineer for inspection.
- (g) The Lessee shall be responsible for any errors in the Construction Documents at all times and shall correct/ rectify any defects or damage to the Works due to such error at his cost.

3.5 Execution of Works

The Works executed by the Lessee shall be wholly in accordance with the Construction Requirements and shall include any work, which may be inferred to be necessary for stability, completion and for the safe, reliable and efficient operation of the Works. The Lessee may carry out the Works either by itself or through a Contractor possessing requisite technical, financial and managerial expertise/ capability, but in either case, the Lessee shall be solely responsible for the construction to be carried in accordance with the Construction Requirements

- (a) The Lessee shall provide all superintendence, labour, Plant, Materials, Equipment, Temporary Works and all other things, whether of a temporary

or permanent nature, required in and for such design, execution, completion, remedying of defects and maintenance of the Works. During the execution of the Works, the Lessee shall provide access to the Project Engineer to inspect, examine and test the materials and workmanship, and check the progress in the construction activity. The Lessee shall give the Project Engineer full opportunity to inspect, examine, measure and test any work on Demised Plot or wherever carried out. Further, whenever such work is ready, before packaging, covering up or putting out of view, the Project Engineer shall be afforded the opportunity to either carry out the inspection, examination, measurement or testing without unreasonable delay, or notify the Lessee that it is considered unnecessary. If the Lessee fails to give such notice, he shall, when required by the Project Engineer, uncover such work and thereafter reinstate the same at his own cost.

- (b) The Lessee shall operate and maintain the Project Facilities in accordance with the O & M Requirements as set out in Schedule 6, by itself, or through a Contractor possessing requisite technical, financial and managerial expertise/capability, but in either case, the Lessee shall remain solely responsible for to meet O & M Requirements.
- (c) The Lessee shall be responsible for the acts, defaults and neglects of its agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Lessee, the Lessee's agents, servants or workmen. The Lessee shall not be relieved from any liability or obligation under the Lease Deed.
- (d) The Lessee shall bear all costs and charges for special or temporary rights of way required by him or access to the Demised Plot. The Lessee shall also provide, at his own cost, any additional facilities outside the Demised Plot required by him for the purposes of the Works.
- (e) The Lessee shall submit to the Lessor/ Project Engineer the programme for execution of the Works in accordance with the Construction Requirements and shall adhere to the same.

- (f) The Lessee shall submit such documents and reports as are reasonably required by the Project Engineer for issue of Core Project Commissioning Certificate and Additional Facilities Commissioning Certificate.
- (g) The Lessee shall make his own arrangements for adequate and timely supply of electricity, water, gas and other utilities required for execution of the Works and the Lessor shall in no manner be responsible for the same.
- (h) During the Implementation Period, the Lessee shall be responsible for keeping unauthorised persons off the Demised Plot.

3.6 Plant and Materials

- (a) Plant and Materials are to be supplied and installed as per the specifications set out in the Construction Requirements.
- (b) The Lessee shall be responsible for procurement, transport, receiving, unloading and safekeeping of all Plant, Materials, Equipment and other things required for the completion of the Works.

3.7 Inspection, Testing and Rejection

- (a) All Tests specified under Construction Requirements shall be carried out by the Lessee after giving prior adequate notice of at least 15 days to the Project Engineer.
- (b) The Lessee shall bear the costs of all Tests whether at Demised Plot or at any other location.
- (c) If, as a result of inspection, examination or testing, the Project Engineer decides that any Plant, Materials, Equipment, design or workmanship is defective or otherwise not in accordance with the Lease Deed, the Project Engineer may reject such Plant, Materials, Equipment, design or workmanship and shall notify the Lessee and the Lessor promptly, stating his reasons. The Lessee shall then promptly make good the defect and ensure that the rejected item complies with the Lease Deed.

- (d) Notwithstanding any inspection, examination, and testing procedures or failure to inspect, examine or test by or comments/observations of the Project Engineer or Lessor, the Lessee shall be solely responsible for the adequacy of the design and workmanship and their conformity with the specifications as stipulated in this Lease Deed, and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.

3.8 Employees and Labour

- (a) The Lessee shall make his own arrangements for the engagement of the employees and labour engaged for execution of the Works.
- (b) The Lessee shall pay rates of wages, and observe conditions of labour, not less favourable than those established for the trade or industry and shall be obliged to follow all the statutory laws and rules applicable.
- (c) The Lessee shall comply with all the relevant labour laws applying to his employees, and shall duly pay and provide them all their legal rights. The Lessee shall require all such employees to obey all Applicable Laws and regulations concerning safety at work.
- (d) The Lessee shall provide and maintain all necessary accommodation and welfare facilities for his staff and labour. The Lessee shall not permit any of his employees to maintain any temporary or permanent living quarters within the structures forming part of the Works.
- (e) Precautions shall be taken by the Lessee to ensure the health and safety of his staff and labour. The Lessee shall, in collaboration with and to those requirements of the local health authorities, ensure that medical staff, and first aid facilities, are available at the Demised Plot at all times, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The Lessee shall maintain

records and make reports concerning health, safety and welfare of persons, and damage to property, as the Project Engineer may reasonably require.

- (f) The Lessee shall employ adequate number of appropriately qualified, skilled and experienced persons in order to execute the Works. The Project Engineer may require the Lessee to remove any person employed on the Demised Plot or Works, who in the opinion of the Project Engineer:
- (i) persists in any misconduct,
 - (ii) is incompetent or negligent in the performance of his duties,
 - (iii) fails to conform with any provisions of the Lease Deed, or
 - (iv) persists in any conduct which is prejudicial to safety, health, or the protection of the environment

The Lessee shall in such cases appoint suitable replacement(s).

- (g) The Lessee shall at all times take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour, and to preserve peace and protection of persons and property in the neighbourhood of the Works against such conduct.

3.9 Environment and Safety

- (a) The Lessee shall obtain all environmental clearances comply with all applicable safety regulations in his design, access arrangements and operations on Demised Plot.
- (b) The Lessee shall take all reasonable steps to protect the environment (both on and off the Demised Plot) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations. The Lessee shall ensure that air emissions, surface discharges and effluent from the Demised Plot, as a result of his operations, shall not exceed the values prescribed by law during the execution of the Works..

- (c) During the excavation of the Works, the Lessee shall keep the Demised Plot free from all unnecessary obstructions, and shall store or dispose of any surplus materials.
- (d) The Lessee shall in a timely manner clear away and remove from the Demised Plot any wreckage, rubbish or Temporary Works which are no longer required.
- (e) Prior to issue of Core Project Commissioning Certificate and Additional Facilities Commissioning Certificate, the Lessee shall clear away and remove from the Demised Plot all surplus material, wreckage, rubbish and Temporary Works and any equipment no longer required, to the satisfaction of the Project Engineer.

3.10 Project Development Plan

- (a) Lessee shall, subject to the Construction Requirements, within 6 months of the Appointed Date, submit to the Project Engineer and the Lessor, the requirements towards the under Project Development Plan in accordance with Schedule 9, together with the incorporation of the reasonable views and observations that would have been made by the Lessor on the preliminary submissions made by the Lessee, prior to the Appointed Date.
- (b) Within 15 (fifteen) days of receipt of the Project Development Plan, the Project Engineer shall review the same taking into account, inter alia, comments of Lessor, if any, thereon, and convey its comments/observations to the Lessee on the conformity of Project Development Plan with Construction Requirements. If the comments/observations of the Project Engineer indicate that the Project Development Plan are not in conformity with the Construction Requirements, such Project Development Plan shall be revised by the Lessee to the extent necessary and resubmitted to Project Engineer for further review. The Project Engineer shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised

Project Development Plan, which shall be taken into account by the Lessee while finalising the Project Development Plan.

- (c) If, within the period stipulated in the preceding sub-clause (b), the Project Engineer does not respond to the Project Development Plan submitted to it by the Lessee, the Lessee shall be entitled to proceed with the construction of the Project Facilities on the basis of such Project Development Plan submitted by it to the Project Engineer.
- (d) Notwithstanding any review or failure to review by or comments/observations of the Project Engineer or Lessor, the Lessee shall be solely responsible for the adequacy of the Project Development Plan and their conformity with the Construction Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- (e) The Lessee shall be responsible for delays in meeting the Construction Requirements caused by reason of the Project Development Plan not being in conformity with the Construction Requirements, and shall not be entitled to seek any relief in that regard from the Lessor.

ARTICLE 4

COMMENCEMENT, DELAYS AND SUSPENSION

- 4.1** Promptly after occurrence of Appointed Date, the Lessee shall commence the design and execution of the Works as soon as is reasonably possible and shall then proceed with due expedition and without delay, until completion.
- 4.2** The whole of the Project Facilities including all Tests specified in this Lease Deed shall be completed and the Lessee shall apply for 5 star categorisation for the hotel inventory of Core Project & star categorization for all hotels, on or before expiry of the Scheduled Project Completion Date.
- 4.3** If the Lessee intends to apply for an extension to the Scheduled Project Completion Date, the Lessee shall give notice to the Lessor of such intention as soon as possible,

together with adequate justification thereof. The Lessor, in consultation with the Project Engineer, shall consider such request and permit suitable, where appropriate, suitable extension.

Provided that, except as permitted in Article 5 and Article 11, the Scheduled Project Completion Date shall not, in aggregate, be extended beyond a period of 120 days. The Lessee shall forthwith provide the duly revised programme of construction to the Project Engineer in the said eventuality.

4.4 For any delay in achieving the End Dates, the Lessee shall pay to the Lessor liquidated damages to be calculated in the following manner:

- (i) Delay beyond each End Date at Rs. 1 00,000 (Rupees One Lakh Only) for each day upto a period of 90 days from the End Date.
- (ii) Delay beyond 90 days from each End Date at Rs 200000 (Rupees Two lacs only) for each day upto 120 days from the End Date.

4.5 The Lessor may either recover such damages from the Performance Security or demand payment thereof from the Lessee. The Lessee shall make such payment within 7 (seven) days of receiving such demand from the Lessor and any delay in making such payment shall attract interest @ SBI PLR plus two per cent.

4.6 Notwithstanding the above, in the event of delay beyond 120 days of any of the End Date, the Lessor shall be entitled to Terminate this Lease Deed.

ARTICLE 5 VARIATIONS

Where modification or alteration of the Construction Requirements (Variations) is mutually agreed upon between the Parties and results in additional expenditure to the Lessee, such additional expenditure shall be incurred by the Lessee. Suitable extension of time shall be granted to the Lessee.

ARTICLE 6

ISSUE OF COMMISSIONING CERTIFICATES

6.1 Core Project Commissioning Certificate

Upon completion of Works (including satisfactory completion of Tests) related to the Core Project in accordance with Construction Requirements in Schedule 5 and Project Construction Milestones as setout in Schedule 8, the Lessee may seek issue of Core Project Commissioning Certificate by the Lessor. The Lessor shall promptly, and in any case within 7 days from the date of request therefor, on being satisfied about such completion in accordance with the Lease Deed, issue such certificate.

6.2 Additional Facilities Commissioning Certificate

- (a) Upon completion of Works (including satisfactory completion of Tests) related to all of the Mandatory Facilities and related to the Additional Facilities in accordance with Construction Requirements in Schedule 5 and Project Construction Milestones as setout at Schedule 8, the Lessee may seek issue of Additional Facilities Commissioning Certificate by the Lessor. The Lessor shall promptly, in any case within 7 days from the date of request therefor, issue such certificate.

PROVIDED that the Additional Facilities Commissioning Certificate shall not be issued until the issue of Core Project Commissioning Certificate.

ARTICLE 7

PROCESS OF RE-ENTRY

- 7.1** In the event of determination of the lease for any reason whatsoever, during the Implementation Period or thereafter, the Lessor shall re-enter and take possession of the Demised Plot as provided hereunder:

- (a) On the Date of re-entry the Lessee shall peacefully vacate the Demised Plot, handover to Lessor, the original Construction Documents, certificates, manuals, instruction booklets, guarantees/ warranty cards in respect of Plant, Material and Equipment included as part of the Works.
- (b) Lessor shall not as a consequence of re-entry, Termination or other wise have any obligations whatsoever including continuance or regularisation of employment, compensation for loss of employment with respect to any person in the employment of or engaged by the Lessee. The Lessee shall ensure that the completed Works shall be free from any such obligation.

ARTICLE 8 DEFECTS LIABILITY

- 8.1. If any defect appears or damage occurs, and is noticed by the Lessor/ Project Engineer in any of the Works (including the Plant and Material) during the Defects Liability Period, the Project Engineer shall promptly notify the Lessee in writing of the same and require him to rectify, repair or remedy such defect or damage.
- 8.2. On receipt of such notice, the Lessee shall promptly rectify, repair or remedy such defect or damage at his own cost and risk.
- 8.3. If the defect or damage is such that it cannot be remedied expeditiously on the Demised Plot, the Lessee may, with the consent the Project Engineer, remove from the Demised Plot for the purposes of repair such part of the Works which is defective or damaged.
- 8.4. In case such damage or defect is not rectified, repaired or remedied within 30 days, the Lessor shall have the right to himself rectify, repair or remedy such defect or damage and recover the cost thereof by deducting/ appropriating to the extent necessary the same from the Performance Security.

ARTICLE 9
RISK AND RESPONSIBILITY

9.1. Indemnity by Lessee

The Lessee shall indemnify and hold harmless the Lessor, the Project Engineer, and their employees from and against all claims, damages, losses and expenses arising out of or resulting from Lessee's negligence or breach in execution of the Works and any activity incidental thereto.

9.2. Lessee's Care of the Works

The Lessee shall take full responsibility of the Project related risks and for the care of the Works from the **Appointed Date** until the Date of re-entry.

If any loss or damage occurs to the Works, during the period for which the Lessee is responsible for the Project, the Lessee shall rectify such loss or damage, at his cost, so that the Works conform with the Construction Requirements. The Lessee shall also be liable for any loss or damage to the Works caused by any operations carried out by the Lessee after the date of issue of the Core Project Commissioning Certificate and Additional Facilities Commissioning Certificate.

ARTICLE 10
INSURANCE

10.1 Insurance

The Lessee shall, throughout the Implementation Period, at its cost and expense, purchase and maintain by due re-instatement or otherwise all the necessary insurances required for the Works including but not limited to the following;

- Construction All Risks cover
- Third Party Liability Cover (for a sum assured to be mutually agreed)
- Employees Sickness and workmen's compensation cover
- Transit Insurance

10.2 General Requirements for Insurance

- (a) Each insurance policy shall be consistent with the general terms set out as part of the Construction Requirements.
- (b) The Lessee shall, on demand, submit to the Project Engineer/ Lessor:
 - (i) evidence that the insurances described in this Article have been effected, and
 - (ii) copies of the insurance policies
- (c) When each insurance Premium has been paid, the Lessee shall submit copy of the receipts to the Lessor. The Lessee shall, when providing such evidences/ copies of receipts to the Lessor, simultaneously notify the Project Engineer of the same.
- (d) The Lessee shall comply with the conditions stipulated in each of the insurance policies. The Lessee shall make no material alteration to the terms of any insurance without the prior approval of the Lessor.
- (e) If the Lessee fails to effect and keep in force any of the insurances required under the Lease Deed, or fails to provide satisfactory evidence, policies and receipts in accordance with this Article, the Lessor may, without prejudice to any other right or remedy, effect insurance for the coverage relevant to such default. Such payments shall be recoverable from the Lessee by the Lessor and/ or may be deducted by the Lessor from the Performance Security.
- (f) The proceeds from all insurance claims, except life and injury, subject to its obligations under the Financing Documents, shall be applied by the Lessee for the purposes of repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Works.
- (g) Nothing in this Article shall limit the obligations, liabilities or responsibilities of the Lessee or the Lessor, under the other terms of the Lease Deed or

otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Lessee.

ARTICLE 11 FORCE MAJEURE

11.1 Force Majeure Event

Any of the following events resulting in Material Adverse Effect shall constitute Force Majeure Event:

- (a) earthquake,
- (b) flood,
- (c) cyclone and
- (d) landslide.

11.2 Notice of Force Majeure Event

- (a) As soon as practicable and in any case within 7 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Lessee shall notify Lessor of the same setting out, inter alia, the following in reasonable detail:
 - (i) the nature and extent of the Force Majeure Event;
 - (ii) the estimated Force Majeure Period;
 - (iii) the nature of and the extent to which, performance of any of its obligations under this Lease Deed is affected by the Force Majeure Event;
 - (iv) the measures which the Lessee has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - (v) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Lease Deed.

11.3 Performance of Obligations

If the Lessee is rendered wholly or partially unable to perform any of its obligations under this Lease Deed because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- (a) due notice of the Force Majeure Event has been given to Lessor as required by the preceding Article 11.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Lessee has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Demised Plot as a result of the Force Majeure Event and to restore the Demised Plot, in accordance with the Good Industry Practice and its relative obligations under this Lease Deed;
- (d) when the Lessee is able to resume performance of its obligations under this Lease Deed, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Lessee shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Lease Deed;
- (f) any insurance proceeds received shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice, unless otherwise agreed to by Lessor.

11.4 Not Used**11.5 Liability for other losses, damages on a Force Majeure Event**

Save and except as expressly provided in this Article, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event. The Performance Security, if any subsisting, shall be returned to the Lessee upon such termination.

ARTICLE 12**LESSEE EVENT OF DEFAULT AND TERMINATION****12.1 Event of Default**

In addition to the conditions set out hereunder, under Clause III of the Lease Deed and sub Article 3.2 of the Appendix, any of the following events shall constitute an event of default by the Lessee ("Lessee Event of Default") unless such event has occurred as a result of a Force Majeure Event or for reasons other than any breach, default or lapse on the part of the Lessee:

- (i) The Lessee has failed to adhere to Construction Requirements and such failure, in the reasonable estimation of the Project Engineer/Lessor, is likely to delay achievement of COD.
- (ii) The Lessee has failed to complete the Project Facilities within 120 days of the SPCD or such extended SPCD.
- (iii) The Lessee is in Material Breach of any of its other obligations under this Lease Deed at any time during the Lease Period,
- (iv) the Lessee has failed to adhere to the O&M Requirements and has failed to remedy the same within 60 days;
- (v) The Lessee has abandoned the Demised Plot.

- (vi) A resolution has been passed by the shareholders' of the Lessee for voluntary winding up of the Lessee.
- (vii) Any petition for winding up of the Lessee has been admitted and liquidator or provisional liquidator has been appointed or the Lessee has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of Lessor, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Lessee under this Lease Deed;
- (viii) The Lessee has unlawfully repudiated this Lease Deed or has otherwise expressed an intention not to be bound by this Lease Deed;
- (ix) A default has occurred under any of the Financing Documents and the Lenders has recalled its loan and demanded payment of the amounts outstanding and such default by the Lessee or action by the Lenders is prejudicial to the interests of the Lessor, if any;
- (x) The Lessee has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the carrying out of his business by the Lessee in the Demised Plot and such attachment has continued for a period exceeding 60 days.
- (xi) The Lessee has created any Encumbrance on the Project Facilities in favour of any Person save as otherwise expressly permitted under this Lease Deed.
- (xii) The Lessee has failed to comply with the conditions specified in Article 3.2 (c) of the Appendix.
- (xiii) The Lessee has failed to adhere to Project Construction Milestones, and such failure, in the reasonable estimation of the Project Engineer/Lessor, is likely to delay achievement of COD
- (xiv) The Lessee has failed to adhere to Shareholding restrictions as provided in the RfP and in Article 3.2 e of the Appendix.

12.2 Termination due to Lessee Event of Default

Without prejudice to any other right or remedy which Lessor may have in respect thereof under this Lease Deed, upon the occurrence of a Lessee Event of Default, Lessor may terminate this Lease Deed by issuing Termination Notice.

12.3 Termination Notice

If the Lessor, having become entitled to terminate this Lease Deed pursuant to the preceding sub article, it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Date of re-entry which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof; and,
- (iv) any other relevant information.

A copy of the Termination Notice shall be endorsed to the Lenders.

12.4 Obligation of Lessee

Following issue of Termination Notice, the Lessee shall promptly take all such steps as may be necessary or required to ensure that;

- (i) until Termination the Lessee shall, to the fullest extent possible, discharge its obligations so as to maintain the continued operation of the Project Facilities,
- (ii) the Demised Plot is free from any Encumbrance on the Date of re-entry and make any payment that may be due to the Lessor.

12.5 Withdrawal of Termination Notice

(a) Notwithstanding anything inconsistent contained in this Lease Deed, if the Lessee after the receipt of Termination Notice cures the underlying Event of Default to the satisfaction of the Lessor at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Lessor.

(b) Other Conditions

- (i) During the continuance of notice period, the Parties shall discharge their respective obligations so as to continue utilisation of the Demised Plot,
 - (ii) Termination Payment, if any, shall be paid at the end of notice period;
 - (iii) the Lessor shall re-enter the at the end of the notice period
 - (iv) the Lessee shall ensure that the Demised Plot is free from Encumbrances and make any payment that may be due by the Lessee to Lessor; and
- (c) Upon Termination of this Lease Deed the Lessor in addition to other conditions set out in this Lease Deed, shall be entitled to appropriate the Performance Security, if any subsisting.

12.6 Rights of Lessor on Termination

- (a) Upon Termination of this Lease Deed for any reason whatsoever, Lessor shall have the power and authority to:
 - (i) Re-enter and take possession and control of the Demised Plot along with the structure forthwith;
 - (ii) prohibit the Lessee and any person claiming through or under the Lessee from entering upon Demised Plot/ dealing with the Project ;
- (b) Notwithstanding anything contained in this Lease Deed, Lessor shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-

employment on any ground, in relation to any person in the employment of or engaged by the Lessee in connection with the Project, and the re-entry by the Lessor shall be free from any such obligation.

12.7 Not Used

ARTICLE 13

LESSEE'S OBLIGATION ON TERMINATION

- 13.1** On termination, the Lessee shall remove himself, Equipment, employees and labour, all debris and waste from the Demised Plot and shall peacefully vacate the Demised Plot together with the Works as completed..
- 13.2** The Lessee shall cease all further work, except for such work as may be necessary and instructed by the Project Engineer for the purpose of making safe or protecting those parts of the Works already executed, and any work required to leave the Demised Plot in a clean and safe condition.

ARTICLE 14

REPRESENTATIONS AND WARRANTIES, DISCLAIMER

14.1 Representations and Warranties of the Lessee

The Lessee represents and warrants to the Lessor that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Lease Deed and to carry out the transactions contemplated hereby;
- (b) it has the financial standing and capacity to undertake the Project;
- (c) there are no actions, suits, proceedings or investigations pending or to the Lessee's knowledge threatened against it at law or in equity before any court

or before any other judicial, quasi judicial or other authority, the outcome of which may constitute Lessee's Default or which individually or in the aggregate may result in Material Adverse Effect;

- (d) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (e) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Lessee to any person to procure the lease.
- (f) Without prejudice to any express provision contained in this Lease Deed, the Lessee acknowledges that prior to the execution of this Lease Deed, the Lessee has after a complete and careful examination made an independent evaluation of the Demised Plot and the information provided by Lessor, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Lessee in the course of performance of its obligations hereunder, such examination/ review having included but not limited to the following:
 - (a) the form and nature or the Demised Plot, including the sub-surface conditions,
 - (b) the hydrological and climatic conditions,
 - (c) the extent and nature of the work and Materials necessary for the execution and completion of the Works, and the remedying of any defects, and
 - (d) the means of access to the Demised Plot

The Lessee also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that Lessor shall not be liable for the same in any manner whatsoever to the Lessee.

14.2 Obligation to notify change

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



ARTICLE 15
MISCELLANEOUS

15.1 Assignment and Charges

The Lessee shall not assign in favour of any person this Lease Deed or the rights, benefits and obligations hereunder save and except with prior written consent of Lessor.

15.2 Interest and Right of Set Off

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

Provided the stipulation regarding interest for delayed payments contained in this Article 15.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

15.3 Governing Law and Jurisdiction

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

15.4 Waiver

Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Lease Deed:

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

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

15.5 Amendments

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

15.6 Notices

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

If to Lessor

Fax No. -----

If to the Lessee

Fax No. -----

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

15.7 Severability

If for any reason whatsoever any provision of this Lease Deed is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more

provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided that failure to agree upon any such provisions shall not be subject to dispute resolution under this Lease Deed or otherwise.

15.8 No Partnership

Nothing contained in this Lease Deed shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

15.9 Language

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

15.10 Exclusion of Implied Warranties etc.

This Lease Deed 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 any Party not contained in a binding legal agreement executed by the Parties.