



DELHI METRO RAIL CORPORATION LIMITED

DRAFT LEASE AGREEMENT

(CPD-37R)

**For Property Development at Dwarka Sec-21 MRTS Station
of Line-3 & Airport Xpress Line**

Contents

1	ARTICLE 1	DEFINITIONS AND INTERPRETATION	6
2	ARTICLE 2	GRANT OF LEASE	12
3	ARTICLE 3	CONSIDERATION TO DMRC	15
4	ARTICLE 4	LEASED SPACE DEVELOPMENTS AND OPERATIONS	19
5	ARTICLE 5	RIGHTS AND OBLIGATIONS	25
6	ARTICLE 6	RESTRICTION AND CHANGES IN LESSEE AND SPECIAL PURPOSE COMPANY	29
7	ARTICLE 7	INSURANCE	30
8	ARTICLE 8	ACCOUNTS AND AUDIT	31
8	ARTICLE 9	INDEMNITY	32
10	ARTICLE 10	FORCE MAJEURE	33
11	ARTICLE 11	TERM AND TERMINATION	35
12	ARTICLE 12	DISPUTE RESOLUTION	39
13	ARTICLE 13	REPRESENTATIONS AND WARRANTIES, DISCLAIMER	41
14	ARTICLE 14	MISCELLANEOUS	43
15	SCHEDULE - A	PLANS/DRAWINGS OF THE LEASED SPACE(S) AND PROJECT SITE	48
16	SCHEDULE - B	PERFORMA FOR SECURITY DEPOSIT	49
17	SCHEDULE - C	PERFORMA FOR ESCROW AGREEMENT	52

[On non judicial stamp paper of appropriate value to be purchased in the name of the executants]

LEASE AGREEMENT

This Agreement is executed on this [•] day of [•] 2017 at New Delhi

BY AND BETWEEN

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

AND

M/s _____ Ltd.¹, a company incorporated under the provisions of the Companies Act, 1956/2013* as applicable, having its registered office at _____ (hereinafter referred to as the “**Lessee**” or “**Developer**” which expression shall unless repugnant to the context include the successors and permitted assigns) of the Other Part

OR

M/s _____, a Partnership firm, **registered** under the Indian Partnership Act, 1932 carrying on its business under the name and style as hereinbefore mentioned and having its principal office at _____ (*mention full address*) and having Registration No. _____ dt. _____ (hereinafter referred to as the “**Lessee**” or “**Developer**” which expression shall unless repugnant to the context include the successors and permitted assigns) of the Other Part.

OR

M/s _____, a Partnership **firm**, registered under the Limited Liability Partnership Act, 2008 carrying on its business under the name and style as hereinbefore mentioned and having its principal office at _____ (*mention full address*) and having Registration No. _____ dt. _____ (hereinafter referred to as the “**Lessee**” or “**Developer**” which expression shall unless repugnant to the context include the successors and permitted assigns) of the Other Part.

OR

M/s _____, a proprietary firm carrying on its business under the name and style as hereinbefore mentioned and having its principal office at _____ (*mention full*

¹ In case of a single company

address) (hereinafter referred to as the “**Lessee**” or “**Developer**” which expression shall unless repugnant to the context include the successors and permitted assigns) of the Other Part.

*In case Selected Bidder is a Consortium it is required to incorporate an SPC.

(DMRC and the Developer are hereinafter also individually referred to as a '**Party**' and collectively as '**Parties**').

WHEREAS:

- A. The DMRC has been established with the principal object of planning, designing, developing, constructing, maintaining operating and financing Mass Transit and other urban transport and people mover system of all types and descriptions in the National Capital Territory of Delhi and other areas of the National Capital region (hereinafter called the '**Territory**');
- B. The Delhi Metro Railway (Operation and Maintenance) Act, 2002 has been enacted by the Parliament to provide for the operation and maintenance, and to regulate the metro railway in the metropolitan city of Delhi and for matters connected therewith and incidental thereto;
- C. The DMRC has been mandated to develop real estate and other commercial facilities in the Metro Stations and standalone(other) places in the Territory and to generate revenues and with the aim of part supporting the project cost & subsidising the charges for the passengers and promoting the use of the Metro Rail;
- D. In pursuance of the above, DMRC decided to offer Package_____ (name of the package) of (Area) Sq. M. of space at (Name of the station MRTS station) to a Selected Bidder for development, operation, maintenance and management of the spaces (hereinafter referred to as “**Project**”) in return for payments specified in this Agreement. The area is more fully described and delineated in the plan attached hereto as Schedule A (hereinafter referred to as the '**Project Site**').
- E. DMRC proposed to grant to a Selected Bidder a Lease in the Project Site (hereinafter referred to as “**Leased Space(s)**” or “**Leased Area**”) for the purpose of development (to enable operations), operation, management, maintenance and sub- lease the use of the Leased Space(s) as per the terms contained herein.
- F. Accordingly, DMRC invited proposals for the Project on a competitive basis through the Bid notice dated _____ and after evaluation of the Bids received, DMRC has accepted the Bid of the Selected Bidder herein and has issued it/them a Letter of Acceptance ('LOA') bearing No. _____ dated _____, requiring, *inter alia*, the Selected Bidder to make payment of Upfront Fee & Security Deposit within 30 days of the issuance of the LOA and execute this Lease Agreement, within a period of 7 days from the date of such payment..

- G. {The Consortium has since promoted and incorporated the SPC as a limited liability company under the Companies Act 2013, and has requested DMRC to accept the SPC as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.}
- H. The Developer/SPC has represented that it has the requisite skill, financial, managerial & technical expertise and experience to undertake the Project. The Lessee further represents and warrants that it/they has/have duly fulfilled all the terms and conditions necessary for the execution of this Agreement as per the terms contained in the Bid Document and are in a position to implement the Project as envisaged in the RFP and this Agreement;
- I. The Lessee/ SPC has therefore, in pursuance of its obligations contained in the RFP and this Agreement has paid Rs ----- Crores as Upfront Fee including applicable GST on services and has also provided the requisite Security Deposit in the required format to DMRC.

NOW THEREFORE, in lieu of the mutual promise and consideration set out herein the Parties hereby agree as under:

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definition

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

“Advertisements” means display of any advertisement material including but not limited to pictures, printed material, electric / electronic media, smart posters, product display, holographic images, audio-visual display or any other innovative advertising media, etc. designed to sell goods, publicize an event, etc which are not objectionable or prohibited under various statutes, codes, policies, etc. as applicable from time to time.

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

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

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

“Bid/Bid Documents” means the documents in their entirety comprised in the bid, including all clarifications, addenda and revisions issued by DMRC to the Bidders, the Bid submitted by the successful Bidder (Lessee) in response to the Bid Notice in accordance with the provisions thereof.

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

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

Provided that Change in Law shall not include:

- (i) coming into effect after the date of signing this Agreement of any provision of a statute which is already in place as of the date of signing this Agreement; or

- (ii) any new law or any change in existing law under the active consideration of or in the contemplation of any Government as of the date of signing this Agreement, which is a matter of public knowledge.

“Commencement Date” means the date of signing of this Agreement. **The Commencement date remain fixed and shall not be extended in case of extension of moratorium etc.**

“Completion” in relation to the Leased Space(s) shall mean completion of building civil works and other infrastructure services thereof (in accordance with the applicable byelaws and rules in force and approvals and sanctions received) including utilities & services such as electricity, water supply, sewerage, HVAC, lifts & elevators, fire fighting, and other common amenities as duly certified by the grant of Occupancy Certificate by the competent authority.

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

“Damages” shall mean 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.

“Emergency” means a condition or situation that is likely to endanger the security of the individuals working for the Leased Space(s) or which poses an immediate threat of material damage to any of the facilities in the Leased Space(s).

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

“Fit-out Activities” means the activities such as the civil works, fit-outs, finishing works etc. required in order to make the Leased Space(s) ready for operations by the Lessee including construction of partition walls, floors in certain areas and all other related works.

“Moratorium Period” means the period of maximum **Eighteen months** from the Commencement Date provided by DMRC to the Lessee for carrying out Fit Out Activities in order to operationalize the Leased Space(s).

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

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

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

“Lease Period” means a period of fifteen years beginning from Commencement Date and ending on the Termination of this Agreement either by efflux of time or sooner determination in accordance with the terms of this Agreement or till the Leasehold rights subsist with DMRC in terms of the allotment of the Project Site to DMRC, whichever is earlier.

“Leased Space(s)” or “Leased Area” means the specified area within the Project Site for commercial development as detailed in the Schedule A given on lease by DMRC to the Lessee under and in accordance with this Agreement. The Leased Space(s) is demarcated in the plan placed in Annexure 6 of the RFP.

“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;

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

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

“Specified Purpose” shall have the meaning as ascribed in Clause 2.1.1.

“Sub Lessee” means persons or entities with whom the Lessee has executed Sub Lease Agreement (as required under this Agreement) allowing the use of the Leased Space(s) on the terms and conditions as stated herein.

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

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

“Termination Date” means the date of Termination of this Agreement.

The terms appearing in capitals and not defined herein but defined in the RFP shall carry the same meaning as ascribed to them in the RFP.

1.2 Interpretation

1.2.1 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 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 “**development**” include, unless the context otherwise requires, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” 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 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 or period shall mean and include such date or period 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 a hundred thousand (100,000) and “crore” means ten million (10,000,000);
 - (p) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, lessee or document of any description shall be construed as reference to that agreement, deed, instrument, lessee 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 DMRC hereunder or pursuant hereto in any manner whatsoever;
 - (q) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
 - (r) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (s) 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 references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
 - (u) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Lessee to DMRC shall be provided free of cost and in Two copies, and if DMRC is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain a copy thereof.
- 1.2.3 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.
- 1.2.4 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.

1.3 Measurements and Arithmetic Conventions

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

1.4 Priority of contract documents and errors/discrepancies

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

- (i) This Agreement;
- (ii) Schedules to this Agreement;
- (iii) The Letter of Acceptance issued to the Lessee;
- (iv) The written clarifications and addenda issued to the Bidders;
- (v) The RFP including the Bid Document, Draft Lease Agreement and Annexures 1-11.

1.5 Law

The contract shall be dealt under the provisions of Indian Contract Act.

ARTICLE 2: GRANT OF LEASE

2.1 Grant of LEASE

- 3.7.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, and in particular subject to the due fulfillment of all the obligations assumed towards DMRC by the Lessee, DMRC hereby grants and authorizes the Lessee to the following (the “**Specified Purpose**”):
- (a) To have access to Leased Space(s) during the Lease Period, develop, finance, commission, operate, manage and maintain the Leased Space(s) during the Lease Period at the cost and risk of the Lessee. Any development made by the Lessee on the Leased Space(s) shall be deemed to be the property of DMRC and all the rights of the Lessee in the Leased Space(s) shall relinquish in the favour of DMRC.
 - (b) Subsequent to the Moratorium Period, to sub-lease, at its own costs and risk, the Leased Space(s) to Sub-Lessee only for carrying out activities stated at Clause 4.3.2 during the Lease Period on the terms and conditions stated herein and derive income from it in the form of lease fees, maintenance charges and other user charges etc.
- 3.7.2 The Lessee shall not be entitled to use or allow the use of the Leased Space(s) by the Sub- Lessee or any other person other than the purpose stated herein above.
- 3.7.3 DMRC may at its sole discretion, subject to availability and technical feasibility and if the same will not in any manner affect the operation of the other activities of DMRC, provide additional area to the Lessee on terrace of the Leased Area and/or on the ground floor for installation of utilities and services such as water tanks, air conditioning plants and generators etc. on commercial terms mentioned in this Agreement.
- 3.7.4 Nothing contained herein, including the act of granting permission to develop the Leased Space(s) and to sub-lease the use of the developed Leased Area or any part thereof shall vest or create any proprietary interest in the Leased Area or any part thereof including any permanent fixtures, fittings, etc. installed in the Leased Area in favour of the Lessee or any Sub-Lessee or any part thereof or any other person claiming through or under the Lessee or Sub-Lessee. The Lessee shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber or deal with the Leased Area in any manner except Sub- Lease the use of the Leased Area as provided under Clause 2.1.1 above. The Lessee acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement and shall duly bind the Sub-Lessee to whom any Lease or authorization is given for use of the Leased Area.

2.2 LEASE PERIOD

- 2.2.1 The LEASE is hereby granted in favour of the Lessee for a total period of 25 (Twenty Five) years from the Commencement Date subject to sooner determination of the Lease by the Lesser in its sole discretion at any point of time or Termination hereof.
- 2.2.2 At the end of the Lease Period or sooner determination of this Agreement for any reason whatsoever all rights given under this Lease Agreement shall cease to have effect and the Leased Area with all the furniture and fixtures and other assets permanently attached to the Leased Area shall revert to DMRC without any obligation on part of DMRC to pay or adjust any consideration or other payment to the Lessee. The Lessee voluntarily gives DMRC the right to seal the said Leased Space(s) and remarket the same as part on its discretion upon Termination of this Agreement. No claim, compensation or damages will be entertained by DMRC on this account

2.3 Restriction on sub-leasing the use of the Leased Area or any part thereof

- 2.3.1 Subsequent to Moratorium Period, the Lessee shall be entitled to allow the use of the Leased Area through a sub-leasing arrangement to Sub-Lessee/s subject to the terms and conditions contained in this Agreement, Sub- Leasing Agreement and subject to all Applicable Laws.
- 2.3.2 The Lessee shall be entitled to sub lease the use of the Leased Area, during the subsistence of this Agreement only with a clear stipulation that the leases granted to the Sub-Lesseees shall terminate simultaneously with the Termination of this Lease Agreement including on sooner determination of the Lease granted hereunder for any reason whatsoever. All contracts, agreements or arrangements with Sub-Lesseees shall specifically stipulate this covenant of Termination of the Sub-Lesseees rights and further that the Sub-Lessee shall not have any claim whatsoever against DMRC for any such Termination.
- 2.3.3 The Lessee shall prepare a draft standard format of the sub lease agreement or arrangement, which the Lessee will be required to sign with the Sub Lessee for the use of the Leased Area (hereinafter referred to as “**Sub-Lease Agreement**”), which shall capture all the terms of sub-leasing as stipulated in this Agreement. The Lessee shall furnish the draft of such agreement to DMRC for modification or suggestion and approval. DMRC shall be entitled to incorporate such clauses, as DMRC may consider appropriate to protect DMRC’s interest.
- 2.3.4 The Lessee shall enter into Sub-Lease Agreement strictly as per the draft approved by DMRC and the Lessee shall not incorporate or change the Sub- Lease Agreement that would have any adverse effect on the covenants incorporated by DMRC. In case of any deviation from the draft of the Sub-Lease Agreement in any particular circumstance, which supersedes or adversely affects DMRC’s terms and covenants, the prior written consent of DMRC shall be taken before entering into any such agreement with a Sub-Lessee.

- 2.3.5 The Sub-Lessee shall use the Leased Space(s) only for the permitted use and shall not subject or part with it in any manner whatsoever.
- 2.3.6 The Sub-Lessee shall not be entitled to further sub-sub-lease the use of the Leased Space(s).
- 2.3.7 Subject to Clause 1.4 of this Agreement, the terms and conditions of RFP shall also be deemed to be a part of this Lease Agreement.

ARTICLE 3: CONSIDERATION TO DMRC

3.1. Consideration

In consideration of the rights, privileges and interests granted by DMRC to the Lessee in terms of this Agreement, the Lessee will pay the following amounts to DMRC in addition to the due performance of all other obligations, responsibilities and liabilities assumed by the Lessee under this Agreement:

- (i) Upfront of Rs. 5,00,00,000/- (Rupees Five Crores Only), if opted for, (Along with GST on services as applicable extra) shall be paid by lessee. Lease Fee on quarterly basis for the Leased Space(s) area of Rs..... Lakhs (.....only) plus applicable GST on services payable from the day after the expiry of the Moratorium Period of **Eighteen months**, which shall be escalated at the rate of 20% every 3 years from the commencement date. The additional area on terrace, ground floor, concourse or basements if made available as specified under Clause 2.1.4 above for installation of utilities and services area the same will be charged at **half the pro-rata rates** of Lease Fee for the Leased Space(s) of approx. -----sqm and shall also be payable on quarterly basis from the day after the expiry of the Moratorium Period. The Upfront fee for utility area shall be charged @ 50% on pro rata basis. However, in cases where it is envisaged that DMRC will appoint a facility manager for the leased premise as per Section 2 of RFP, the maintenance charges shall be charged from the last date of submission of bid.
- (ii) Payment of charges for the energy, water and other utility services to the extent provided by DMRC in the facilities in the Leased Space(s). Parking area shall be charged @ 20% of the lease fee. The utility area shall be charged @ 50% of the lease fee. The area under mezzanine floor constructed by the lessee shall be chargeable equal to the lease fee.

The Upfront Fee and Lease Fee shall be adjusted on pro-rata basis if there is any variation in the area as stated in the Bid Document and actual area made available at the time of signing of this Agreement and / during the lease period

- 3.2. The Lease Fee as mentioned in **Clause 3.1(i)** and 3.1 (ii) shall become due and payable from the first day falling after the Moratorium Period notwithstanding that the Lessee has not been able to sub lease or otherwise put to use whole or any part of the Leased Area for any reason whatsoever except for Force Majeure as specified in Article 9 or for reasons solely attributable to DMRC without any contributory factor on the part of the Lessee.

In case of extension of moratorium Escalation rental shall be counted from commencement date.

- 3.3. The Lessee shall pay the Lease Fee under Clause 3.1(i) above for each quarter within seven days of commencement of the respective quarter.
- 3.4. The Lessee shall pay the charges under Clause 3.1 (ii) above as per the bills raised by DMRC based on actual consumption, within 15 (fifteen) days of receipt of such bills. The cost of any apparatus necessary for such determination of consumption including but not restricted to meters necessary for such determination of consumption and all other incidental charges & overheads shall be borne by the Lessee.
- 3.5. Any delay in payments of the amounts becoming due on the due dates shall constitute a wilful material default on the part of Lessee and in such case DMRC shall be entitled to **interest @20% per annum on the outstanding amount on daily basis, for each day of delay. Under said circumstances, without prejudice to its other rights and remedies hereunder or in law, the Lesser shall be entitled to encash and appropriate the relevant amounts from the Security Deposit as Damages.**

3.6 Security Deposit

- 3.6.1 The Lessee for the due and faithful performance of its obligations hereunder, shall prior to the Commencement Date, has provided to DMRC an irrevocable and unconditional Bank Guarantee in the format provided at Schedule B)/ Demand Draft / Pay Order from a branch in India of a scheduled foreign bank or from a scheduled commercial bank in India acceptable to DMRC, and payable at New Delhi for a sum equivalent to one hundred percent of first year's Lease Fee year's Lease Fee as per Clause 3.1 (i). The Security Deposit shall be kept valid on a rolling basis till the end of lease period plus 180 days. The Bank Guarantee for Security Deposit shall be renewed after every three years for a sum equivalent to one year's Lease Fee for that year (i.e. Lease fee + maintenance fee if any+ utility area if any) with a validity of three years.
- 3.6.2 Upon failure of the Lessee to perform any of its obligations under this Agreement, the Lesser shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Security Deposit as Damages for such defaults.
- 3.6.3 If the Lessee defaults in payment of Lease Fee for more than 60 days from the due date as per the provisions of this Agreement, DMRC shall be entitled to encash the entire Security Deposit without being liable in any manner whatsoever to the Lessee.
- 3.6.4 Upon encashment of the said Security Deposit , the Lessee shall within 7 (seven) days thereof, deposit such amounts with DMRC or replenish to its original amount or furnish a fresh Security Deposit, as the case may be. In case the Lessee fails to provide such amounts or replenish the Security Deposit within the stipulated time, DMRC shall be entitled to Terminate this Agreement in accordance with the provisions of Article 10, without being liable in any manner whatsoever to the Lessee and to appropriate the balance Security Deposit, if any.

3.6.5 In the event of default of Lessee in making payments of upfront premium, Lessee fee, maintenance charges (as applicable), charges for electric supply, air conditioning charges, taxes or any other dues towards DMRC in prescribed time, DMRC shall be entitled to discontinue / disconnect the service of electricity /air conditioning / water / sewer etc in leased premises and debar the Lessee from availing use of common areas / facilities (viz., use of stair case / lifts, etc). Apart from the said rights as stated, DMRC shall also have the rights including but not limited to restrict the access of Lessee in leased premises and recover all dues along with interest.

3.8 Payment Security & Escrow

3.8.1 DMRC shall at all times have the first and paramount charge over all receivables of any nature whatsoever that the Licensee is entitled to claim or receive from the sub-licensees for the use of the Licensed Area or from the operations of the Licensee in the Licensed Area. The Licensee shall not create any encumbrance, charge, lien or otherwise execute any instrument which would in any manner affect or prejudice the first charge over the receivables in favour of DMRC. The Licensee shall not create any charge over the receivables including the amounts in the Escrow Account and also the actionable claims in regard to the Licensed Space in favour of any person including in favour of the banks or lending institution over-riding or otherwise adversely affecting the interest of DMRC. Subject to the above and to the first and paramount charge, DMRC may allow the Licensee to create second charge over the receivables in favour of financial institutions.

3.8.2 The Licensee shall within 2 months from the date of signing of this Agreement identify a Nationalised/Scheduled Bank acceptable to DMRC and open an Escrow Account in terms of the Escrow Agreement to be signed between the Licensee, DMRC and the Bank as per the draft attached hereto as Schedule B. The Bank will act as the Escrow Agent for the purposes of receiving the receivables in terms of this Agreement.

3.8.3 The Licensee hereby unconditionally and irrevocably without demur agree to receive and deposit all receivables from sub-licensing the use of the built spaces or from the operations of the Licensee at the Licensed Area or otherwise from the Licensed Area at the Specified Area into the Escrow Account with the Bank. The amounts in cash, if any received by the Licensee shall be deposited in the Escrow Account within 24 hours of the receipt or the immediate next working day in case of a Bank holiday. The Licensee shall not give credit or make any adjustment against the receivables for any payment due from the Licensee. The Licensee shall ensure that no other person is authorised to utilize or appropriate any part of the receivables contrary to the above.

3.8.4 The Escrow Bank shall be given irrevocable instruction to remit to DMRC the amounts becoming due to DMRC under this Agreement as per the claims made by DMRC from time to time. So long as any amount is outstanding to DMRC from the Licensee, the amounts in the Escrow Account shall not be utilized for any purpose other than for payment to DMRC. After due discharge of all amounts outstanding to DMRC, the Escrow Bank shall be entitled to allow the amount to be utilized by the Licensee till such time further amounts become due from the Licensee to DMRC as per the claims made by DMRC. As soon as such claim is received from DMRC, the amounts lying in the Escrow Account including any amounts thereafter coming into the Escrow Account shall be used for payment to discharge the dues of DMRC as

mentioned above.

- 3.8.5 The Licensee hereby acknowledges and undertakes not to open or establish any other account other than the Escrow account with any Bank or Body Corporate for the receipt/ deposit of the receivables from the use of the Licensed Area in terms of this Agreement.
- 3.8.6 The Licensee shall instruct in unambiguous terms all its tenants/sub Licensees in the agreements signed with them, that all payments receivables to be made to the Licensee will be deposited in the said escrow account.
- 3.8.7 The Licensee will at all times maintain a minimum balance equivalent to one quarter of the recurring payment in the escrow account.
- 3.8.8 Copy of invoices would be sent to Escrow Agent periodically. The lease rentals due and the due dates as per the Concession Agreement is given in Annexure 'A'. Revision if any will be informed to Escrow Agent from time to time. The Escrow Agent within 5 days after the end of every quarter, shall send quarterly Account Statements to DMRC email id pdfinance@dmrc.org. The Escrow Agent shall provide to DMRC with user id/ password to view and download the account statements through internet banking.

ARTICLE 4: LEASED SPACE DEVELOPMENTS AND OPERATIONS

4.1 Entry to the Leased Space(s) for work

- 4.1.1 DMRC shall allow the Lessee access to the area earmarked for the Leased Area as detailed in Schedule A to the Lessee for undertaking the Project immediately from the date of execution of the Lease Agreement. In case such access to the Lessee gets delayed for Force Majeure or for reasons solely attributable to DMRC with no contributory factor on the part of the Lessee, the Moratorium period of the Lease shall be proportionately extended.
- 4.1.2 In the event that Force Majeure prevents access of the Lessee to the Leased Area and the same continues for period of more than 180 days as envisaged in Clause 4.1.1 above, either DMRC or the Lessee shall be entitled to terminate this Agreement. In such event, DMRC shall return the Upfront Fee on pro rata basis and the Security Deposit paid by the Lessee. There shall be no further liability or obligation of either party towards the other in case the Agreement is terminated in terms of this Clause.

4.2 Use of the Leased Space(s) and Peaceful Possession

- 4.2.1 The Lessee, subject to complying with the terms and conditions of this Agreement, shall be entitled to use the Leased Space(s) during the Lease Period in accordance with the terms of this Agreement and limited for the purposes mentioned in Article 2 above. The Lessee shall not use the Leased Space(s) for any other purpose except for the Purpose as mentioned in this Agreement.
- 4.2.2 The Lessee shall confine its operations to the Leased Space(s). The Lessee shall take all necessary precautions to keep persons and equipment within such areas, and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely the Project Site or otherwise cause any inconvenience to the passengers, visitors, employees, representatives and agents of the DMRC.
- 4.2.3 The Lessee acknowledges and accepts that the its Specified Purpose is subservient to the operations of DMRC and is to serve the interest of the commuters and accordingly the Lessee hereby agrees and undertakes to ensure that its activities related to the Specified Purpose as well as those of its Sub-Lesseees or any other person acting under or through them, does not cause any inconvenience to commuters and/or disturb/disrupt in any manner or create an impediment for the smooth functioning of the operations of DMRC as also envisaged in the Recitals hereinabove.
- 4.2.4 The Lessee hereby undertakes that it shall, at all times during the Lease Period, introduce and observe appropriate measures for safety, security and orderliness on the Leased Area.

4.3 Scope of Work

- 4.3.1 The Lessee shall, at its sole expense and risk, carry out the financing, procurement, management, operations and maintenance of the Leased Area in accordance with the provisions of this Agreement.
- 4.3.2 Activities allowed in the leased premise shall be governed by the extent provisions of Master Plan of Delhi or any activities permitted by the local authority under the administrative jurisdiction. Indicative nature of the activities and facilities that are allowed at the Leased Space(s) are as under:
- Shopping complex / shopping mall / shopping plaza
 - Departmental Store, Discount Store, Hypermarket
 - Restaurants, Fast Food Stalls, Kiosks, food court
 - Offices, Banks, lounge.
 - Educational Institutes
 - Computer Training Centres, IT centers
 - Showrooms for Consumer goods like Garments, Electronics / electrical Items, general utilities, automobiles etc.
- 4.3.3 The Lessee may use or allow the use of the Leased Area for other activities which are not envisaged in Clause 4.3.2 above, only after taking prior written approval of DMRC.
- 4.3.4 The Lessee shall carry out the designing and development of the Leased Area in strict compliance with all applicable laws, in particular, applicable building codes and standards and good industry practice, which shall not in any manner endanger the commuters or the Project Site. Further, it is agreed and understood by the Lessee that proprietary interest on all development carried out by the Lessee on the Leased Space(s) shall vest with the Lesser and the Lessee relinquishes all its rights in such development in favor of the Lesser. The guidelines for Fit-out Activities will be provided by DMRC and shall be followed strictly by the Lessee.
- 4.3.5 Subject to terms of this Agreement and approval of the DMRC, the Lessee shall be free to design the layout plan and undertake the subdivision and partitioning works, interior design works along with utilities like power supply, water supply, toilets, drainage, HVAC, fire fighting, and telecommunications. Provided that, (a) the Lessee, the Sub-Lessee(s) and their representatives, agents and other persons undertaking works shall duly adhere to the provisions of all Applicable Laws including and in particular the prevalent building bye-laws of the place where the Leased Space(s) is located and specified guidelines /requirements of other competent authorities; (b) the facilities and works being undertaken or installed shall not in any manner affect, hinder or interfere with the free movement of the passengers, DMRC's staff agents and representatives and visitors; (c) the width of passage and common area for movement of persons in the Leased Area shall be kept as per prevalent building bye-laws; (d) no material shall be stored or kept outside the Leased Space(s) or in the common area meant for movement of persons; (e) no surplus construction machinery and materials, including hazardous materials and wastes shall be left at any place in the Leased Space(s) or the station; and (f) the guidelines for Fit-out Activities shall be strictly followed..

- 4.3.6 Before applying to any other competent authority for sanction of the scheme/Leased Space(s) layout, the Lessee is required to primarily obtain DMRC's written approval on its proposed drawings and specifications with due consideration of accessibility for maintenance of existing utilities i.e. water supply, power supply, fire fighting, tele communication, bearing etc. to ensure that the proposed developments do not conflict with the DMRC's activities and functional requirements, structural aspects, utilities and all traffic movement requirements. It is agreed that DMRC shall not unreasonably interfere with the internal layout of the complex proposed by the Lessee. DMRC shall convey its decision within a maximum period of 30 (thirty) days after scrutinizing the submission. Delay by DMRC in communicating such decision beyond the 30 days period, shall not be construed as an approval. In case DMRC is not satisfied and raises any objections, the Lessee shall be required to appropriately amend/modify his scheme / Leased Space(s) layout within a reasonable time frame and seek DMRC's approval on the same. The Lessee shall approach any other competent authority for sanction of the design etc. only after receiving the written approval of DMRC. The Lessee shall use only standard materials including but not restricted to electrical materials as per standards prevalent in DMRC. In this connection the Lessee is required to get approval of all material from the concerned department of DMRC before commencement of works during the Moratorium Period.
- 4.3.7 Save as on account of Force Majeure or reasons solely attributable to DMRC with no contributory factor of the Lessee, the Lessee shall have to complete in all respects the Fit-out Activities within the Moratorium Period and DMRC may thereafter be entitled to restrict the development on the Leased Space(s). The liability of the Lessee to pay the consideration and other amounts to DMRC shall however commence from the Commencement Date as stated in Article 3 and the Lease Period shall be restricted to 25 years from the Commencement Date notwithstanding the time allowed for completion under this Clause.
- For delays on account of Force Majeure or reasons attributable solely to DMRC with no contributory factor of the Lessee, the due date for the first Lease Fee and Lease Period shall be extended accordingly by the 'period of delay' in the sole discretion of DMRC, however, no financial claims shall be entertained by DMRC on this account.
- 4.3.8 The Lessee acknowledges and accepts that the parking facility shall be as per the availability of the Project Site and no special arrangement or exclusive parking area shall be provided by DMRC.
- 4.3.9 The Lessee shall make its own fire-fighting arrangements for the Leased Area. Such fire-fighting arrangements shall conform to the IS Code of Practice / Delhi Fire Services norms. The Lessee shall ensure installation of automatic sprinkler systems, fire alarm & detection system as per the approval of DMRC and shall only commence the required activities on the Leased Space(s) only upon inspection and approval by the concerned department of DMRC. In this connection the Lessee will provide unfettered access to DMRC's officers for the purpose of inspection from time

to time and shall at own risk and cost install and complete works as may be instructed by the officers of DMRC.

- 4.3.10 The Lessee shall be solely responsible and liable for development of the Leased Area and implementation of the scheme/Leased Space(s) layout. DMRC shall not be responsible in any manner whatsoever to either the Lessee or its contractors or agents and Sub-Lessees for any default or failure by the Lessee to comply with statutory requirements, design and construction as per the Applicable Laws in particular building codes and good industry practice, observance of safety and security measures at Leased Space(s) etc.
- 4.3.11 It is the Lessee's sole responsibility to obtain all necessary clearances and sanctions from competent authorities for approval to the various safety measures such as fire alarm, detection & fighting, required to be installed at the Leased Area. DMRC shall only provide assistance wherever possible (without any legal and binding obligation) to facilitate such process.

4.4 Operations & Maintenance of the said Leased Area

- 4.4.1 During the Lease Period, the Lessee shall be solely responsible and liable, at its own cost and expense, for all maintenance, upkeep and repairs of the Leased Space(s) and all its components, including buildings, utilities and services and allied works as per best industry practices and Applicable Laws and Applicable Permits. The Lessee shall also carry out rectification of defects in the design or construction of any component of the works at its own cost.
- 4.4.2 DMRC shall not be liable to any Sub-Lessee or end-user or visitors for any laxity or default by the Lessee or the Sub-Lessee in proper upkeep and maintenance of the Leased Area or any of its components.
- 4.4.3 The Lessee shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there is minimal disruption of the operations of the Station.
- 4.4.4 DMRC may inspect the Leased Area at any time for its own assessment of the compliance by the Lessee with its maintenance obligations under this Agreement. The Lessee shall extend all reasonable assistance to the DMRC representatives during such inspection visits. The Lessee shall at its cost, carry out its own periodic inspections, and also assist DMRC or its nominee (whenever requested) to carry out any random or periodic inspection of any part or component of the works. The cost of any test, if required, shall be borne solely by the Lessee.
- 4.4.5 The Lessee shall provide unfettered access into the Leased Space(s) at all times to DMRC maintenance staff for carrying out maintenance works related to station utilities running through the Leased Space(s) or accessible only through the Leased Space(s).

4.4.6 The Lessee shall comply with all requirements under the Metro Act and amendments thereto and also comply with all directives as may be issued by DMRC in this regard.

4.5 Reporting requirements

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

4.6 Leased Space(s) Safety and Security Measures

4.6.1 Within 30 days from the date of this Agreement the Lessee shall provide to DMRC details of its safety plan, site logistic plan, list of contractors & consultants, material movement route, debris yard, location and procedures for the works to be undertaken at the Leased Area. The Lessee shall comply with all safety regulations applicable, in its design, access arrangements and operations on Leased Space(s). Unless otherwise stated in this Lease Agreement, the Lessee shall, from the commencement of work on the Leased Space(s) until the expiration of this Lease Agreement, provide fencing, lighting, guarding and watching of the works and facilities. The Lessee shall be responsible for the operation of machinery and any other work and shall take all precautions to ensure safety of the staff, labourers and commuters.

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

4.6.3 Unless otherwise stated in this Lease Agreement:

- (i) The Lessee shall be responsible for keeping unauthorized persons off the Leased Space(s), during the Moratorium Period.
- (ii) Authorised persons during the Moratorium Period shall be limited to the employees of the Lessee, employees of sub-contractors of the Lessee, and employees and persons authorised by DMRC.

4.7 Co-ordination

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

- i) the workmen of DMRC;

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

4.8 Penalty clause

In case any infringement/default as defined under Clause 4.2.2, 4.2.3, 4.3.9 and 4.3.10 occurs, as determined by DMRC, it shall issue a notice to the Lessee to rectify such infringement/default within a stipulated time. If the infringement is not rectified within the stipulated time, a fine upto Rs. 1 Lakh (Rs. One Lakh only) shall be imposed by DMRC, along with the additional time for rectification of such infringement/default.

4.9 Extension of Date of Moratorium Period / Lease Period

If in event of, the progress of work being delayed by any act or neglect of DMRC or its employees or by other contractor / lessee employed by DMRC or in executing the works on which Lessee's performance necessarily depends or by reason of proceeding taken or threatened by or dispute with adjoining or to neighbouring owners or public authority arising otherwise through the Lessee's own default etc, then upon happening of any such event, the Lessee shall immediately bring it to the notice of DMRC within 30 days of happening of such an event and accordingly either Moratorium Period or Lease Period individually or in combination may be extended suitably, as in the opinion of DMRC are reasonable having regard to the nature and period of delay and the type and quantum of works affected thereby.

Apart from above, the Lessee shall not be eligible for any other compensation for works so carried forward to the extended period of time. In addition, Lessee shall also make constantly its best endeavours to bring down or make good the delay and shall do all that may be reasonably required to the satisfaction of DMRC to proceed with the its duties under this Agreement.

Any failure or delay by DMRC to provide the Lessee possession of the Leased Space(s), or to give the necessary permission or necessary drawings or instructions or any other delay caused by the DMRC due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate this Agreement or alter the character thereof or entitle the Lessee to any Damages or compensation.

Nevertheless, in the event of the delay being due to reasons being attributable to Lessee, or its failure to complete its obligations within specified time as per the Agreement, for the reasons other than the reasons attributable to DMRC, Lessee shall not be entitled for any extension of date of Commencement Date or Moratorium Period or Lease Period.

ARTICLE 5: RIGHTS AND OBLIGATIONS

5.1 The Lessee's Responsibilities and Duties

In addition to and without prejudice to other obligations under this Agreement, the Lessee's Responsibilities and Duties shall include the following:

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

- k) to duly supervise, monitor and control the activities of contractors/Sub-Lessees under their respective agreements as may be necessary;
- l) to make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Lessee's obligations under this Agreement;
- m) to obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice and furnish copies of the same to DMRC immediately;
- n) to take all reasonable precautions for the prevention of accidents on or about the Leased Area and provide all reasonable assistance and emergency medical aid to accident victims;
- o) not to permit any contractor or Sub-Lessee or other person, claiming through or under the Lessee, to create or place any encumbrance or security interest over all or any part of Leased Space(s) or the assets of the Leased Space(s), or on any rights of the Lessee therein or under this Agreement, save and except as expressly permitted in this Agreement;
- p) to ensure that such Leased Space(s) remains free from all encroachments, encumbrances and trespass during the entire Lease Period;
- q) during execution of works, to keep the Leased Space(s) free from all unnecessary obstruction, and store the equipment or surplus materials dispose of such equipment or surplus materials in a manner that causes least inconvenience to the Project Site and commuters or otherwise to DMRC's any other activities.
- r) within 30 (thirty) days of the expiry of the Moratorium Period, to remove from the 'Leased Space(s)' all surplus machinery and materials, including, without limitation, hazardous materials and wastes, and keep the 'Leased Space(s)' in a neat and clean condition, and in conformity with the terms of this Agreement and Applicable Laws; except that the Lessee shall be entitled to retain on any Leased Space(s), until the expiry of the Lease Period, such equipment, materials and temporary works as required by it for the purpose of fulfilling its obligations under this Lease Agreement in respect of operation and maintenance of the Leased Space(s).
- s) on expiry of Lease Period, within a maximum period of 30 days, to leave the Leased Area in a clean and safe condition to the satisfaction of DMRC. Provided that if the Lessee fails to clear the Leased Area and the facilities therein, DMRC may invoke the Security Deposit, and get the Leased Space(s) cleaned at the cost of Lessee.
- t) to provide all assistance to the independent consultant / expert / independent auditor / arbitrator as it may require for the performance of its duties and services;

- u) at all times, to afford access to the Leased Space(s) to the authorised representatives of DMRC, other persons duly authorised by any Governmental Agency having jurisdiction over the Leased Space(s), to inspect the Leased Space(s) and to investigate any matter within their authority and upon reasonable notice;
- v) to comply with the divestment requirements and hand over the Leased Area to DMRC upon Termination of this Agreement;
- w) Lessee shall comply with all application statutes, ordinances, rules and regulations of central, state government, municipal bodies, and all applicable laws with strict adherence; and
- x) to compulsorily register the instrument and pay stamp duty.

5.2 The Lessee shall be solely responsible to DMRC for observance of all the provisions of this Lease Agreement on behalf of its employees and representatives and further on behalf of the Sub-Lessees, their employees and agents and any person acting under or for and on behalf of the Lessee or the Sub-Lessees; as if they were the acts or defaults of the Lessee.

5.3 The Lessee shall be liable for and shall indemnify, protect, defend and hold harmless DMRC, DMRC's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments including third party claims arising out of the failure of the Lessee to discharge its obligations under this clause and to comply with the provisions of Applicable laws and Applicable Permits.

5.4 The Lessee shall acknowledge and recognize that time is the essence of this Agreement and that the performance of its obligations shall be construed accordingly.

5.5 **Assignability and Encumbrance**

5.5.1 Except for the sub-leasing the use of the Leased Area as per the terms of this Agreement, the Lessee shall not assign any of its rights, or interest in this Agreement in favour of any entity/person(s) at any time and for any reasons whatsoever.

5.5.2 Under no circumstance, shall the Leased Area including the facilities, constructions or installations therein, be mortgaged, charged or otherwise any lien (including negative lien), charge or encumbrance be created or agreed to be created in favor of any person, including Lenders / Financial Institution(s) / Banks.

Subject to prior written permission from DMRC, the Lessee / concessionaire can assign its rights under this concession agreement to a Special Purpose Company/Vehicle established for implementation of the project provided that the Lessee / concessionaire shall hold minimum 51% share capital of the Special Purpose Company/ Vehicle and be responsible for performance of all obligations under the Concession/Lease agreement.

- 5.5.3 That no tenancy / sub-tenancy is being created by Lesser in favour of Lessee under or in pursuance of this Lease Agreement and it is distinctly and clearly understood, agreed and declared by and between the Parties hereto that:
1. except to carry out the activities permitted over the Leased Space(s) under this Agreement, the Lessee shall not have or claim any right or interest in the said Leased Space(s) as a tenant/sub-tenant or otherwise.
 2. no right as a tenant/sub-tenant or otherwise is purported or is intended to be created or transferred by Lesser in favor of Lessee or in respect of the Leased Space(s).
 3. the rights, which the Lessee shall have in relation to the Leased Space(s), are only those set out in this Lease Agreement.
- 5.5.4 The lessee shall not be allowed to monetize the lease area, facilities, constructions or installation therein, through Real Estate Investment Trust (REITs)/Infrastructure Investment Trust/ etc. In exceptional circumstances however, and after considering the exigencies of circumstances, DMRC may consider granting such permission in some specific cases with such safeguards considered necessary. The decision of DMRC in this regard shall be final and binding upon the lessee.

**ARTICLE 6: RESTRICTION AND CHANGES IN LESSEE AND SPECIAL
PURPOSE COMPANY**

- 6.1** In case the Lessee is an SPC incorporated as per the requirements of the RFP, the successful bidder is required to maintain 100% of the equity of the SPC throughout the subsistence of the Lease Agreement. There shall be no change in the shareholding structure of the SPC during the Lease Period without prior approval of DMRC.
- 6.2** The successful bidder shall be responsible and liable jointly and severally, for due performance of all the obligations and responsibilities assumed by the SPC under this Agreement.
- 6.3** in case of consortium the Lead Member shall hold not less than 51% (fifty one per cent) of the equity of the SPC during the subsistence of the Lease Agreement and that each member of the Consortium whose technical and financial capacity was evaluated for the purposes of award of the Project shall hold at least 26% (twenty six per cent) of such Equity during the subsistence of the Lease Agreement. Replacement of the Lead Member shall not be allowed at any time during the subsistence of the Lease Agreement. Any deviation from the above shareholding structure shall expressly be with the prior written consent of DMRC. Further, any change proposed in the equity shareholding pattern of the Consortium in the Special Purpose Company during the Lease Period, within the prescribed limits shall be subject to prior permission of DMRC.

ARTICLE 7: INSURANCE

INSURANCE

7.1 The Lessee shall, at its cost and expense, purchase and maintain during the Lease Period insurance to cover against:

- (a) Loss, damage or destruction of the Leased Area, at replacement value;
- (b) The Lessee's general liability arising out of this Agreement;
- (c) Liability to third parties;
- (d) The risks that may devolve on DMRC as a consequence of any act of negligence or omission by the Lessee, Sub-Lessee or their employees, agents, contractors etc.; and

Any other insurance that may be necessary under and in accordance with the financing documents, Applicable Laws to protect the Lessee and its employees, including all Force Majeure Events that are insurable, and not otherwise covered in items above.

7.2 The aggregate of the maximum sums insured under the insurance taken out by the Lessee pursuant to this Article 7 are herein referred to as the "Insurance Cover".

7.3 The Lessee shall, immediately upon obtaining any insurance policy as per the requirement of this Agreement, provide to DMRC copies or appropriate endorsements, certifications or other satisfactory evidence of insurance including copies of all premium payment receipts or renewals of all such insurance policies.

7.4 Such insurance shall not be cancelled, changed or terminated until the expiration of at least 45 (forty five) days after written notice of such cancellation, change or Termination has been given to DMRC in writing.

7.5 If at any point of time the Lessee fails to maintain in force and effect any or all of the insurance policies required under this Agreement, DMRC may, at its option, purchase and maintain such insurance at the cost and expense of the Lessee. All sums incurred by DMRC thereon shall be reimbursed by the Lessee forthwith on demand, failing which the same shall be recovered by the DMRC from the Security Deposit of the Lessee.

7.6 In the event of default i.e. failure of the Lessee to maintain the Insurance Cover, the Lessee agrees and undertakes to indemnify and hold the DMRC harmless against any and all liabilities, losses, damages, claims, expenses suffered by the DMRC.

ARTICLE 8: ACCOUNTS AND AUDIT

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

ARTICLE 9: INDEMNITY

- 9.1** The Lessee hereby undertakes to indemnify, defend, save and hold harmless the Lesser and its officers, servants, agents, (hereinafter referred to as the “**Lesser Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Lessee of any of its obligations under this Agreement or any related agreement or Applicable Laws or from any negligence of the Lessee under contract or tort or on any other ground whatsoever.
- 9.2** The Lessee hereby undertakes to indemnify and hold Lesser Indemnified Persons harmless against all costs, damages, liabilities, expenses arising out of any third party claims including Sub-Lessee, relating to non- completion of the Fit-Out Activities; quality of the Fit-out Activities, the activities related to development and operations of the Leased Space(s).
- 9.3** The Lessee hereby undertakes to indemnify Lesser Indemnified Persons against all losses and claims in respect of death or injury to any person or loss or damage to any property which may arise out of or in consequence of the execution and completion of works and remedying defects therein and against all claims, proceedings, damages, costs charges and expenses whatsoever in respect thereof or in relation thereto.
- 9.4** The Lessee hereby indemnifies Lesser Indemnified Persons against any loss or damage to Project Site or otherwise for any act and omission of the Sub-Lessee including for breach of Sub-Lease Agreement or any Applicable Law by Sub-Lessee as the case may be.
- 9.5** The Lessee hereby undertakes that Lesser Indemnified Persons shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of Lessee or Sub-Lessee or any of its contractors / sub contractors. The Lessee shall indemnify and keep indemnified Lesser Indemnified Persons against all such damages and compensation, all claims proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 9.6 Survival on Termination**

The provisions of this Article shall survive Termination.

ARTICLE 10: FORCE MAJEURE

10.1 Force Majeure Event

Any of the following events which has materially impaired the performance of this Agreement shall constitute a Force Majeure Event:

- a) Earthquake, flood, inundation, landslide;
- b) Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- c) Fire caused by reasons not attributable to the Lessee;
- d) Acts of terrorism;
- e) War, hostilities (whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war;
- f) Strikes or boycotts, other than those involving the Lessee, Sub-Lessee, its contractors or their employees, agents, etc.;
- g) Any other similar act / things beyond the control of the Parties; and
- h) any judgment or order of any court of competent jurisdiction or statutory authority made against the Lessee in any proceedings for reasons other than (i) failure of the Lessee to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the DMRC;

10.2 Notice of Force Majeure Event

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

- a) The nature and extent of the Force Majeure Event ;
- b) The estimated period for which the Force Majeure Event is expected to last;
- c) The nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
- d) The measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and

- e) Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

10.3 Performance of Obligations

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

- a) Due notice of the Force Majeure Event has been given to the other party as required by the preceding Clause 10.2;
- b) The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c) There shall be no Termination of this Agreement due to Force Majeure Event except as provided in Clause 10.4;
- d) Where the Lessee is the Affected Party, the various deadlines set forth in this Agreement and the Lease Period shall be extended by the period for which such Force Majeure Event shall subsist.
- e) Where the Lessee is the Affected Party, it has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the facilities in the Leased Space(s) as a result of the Force Majeure Event and to restore the facilities in the Leased Space(s) , in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- f) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- g) The Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- h) Any insurance proceeds received by the Lessee shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice, unless otherwise agreed to by DMRC.

10.4 Termination due to a Force Majeure Event

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

ARTICLE 11: TERM AND TERMINATION

11.1 Term

This Agreement shall continue to operate and be binding on the Parties for the Lease Period of 15 years commencing from the Commencement Date, unless terminated earlier in accordance with the provisions of this Article 11.

11.2 Termination by DMRC

DMRC, in its sole discretion, may terminate this Agreement due to any of the following events of default by the Lessee (hereinafter called the “**Lessee Event of Default**”):

- a) The Lessee has failed to perform or discharge any of its obligations in accordance with the provisions of this Agreement, unless such event has occurred because of a Force Majeure Event, or due to reasons solely attributable to DMRC without any contributory factor of the Lessee;
- b) If at any time during the Lease Period, any payment, assessment, charge, lien, penalty or damage herein specified to be paid by the Lessee to DMRC, or any part thereof, shall be in arrears and unpaid for a continuous period of 180 days;
- c) The Lessee has failed to submit security deposit for renewed amount six months before the date of the expiry of existing Security Deposit.
- d) Any representation made or warranties given by the Lessee under this Agreement is found to be false or misleading;
- e) The Lessee has engaged or knowingly has allowed any of its employees, Sub Lessee, agents, contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement;
- f) The Lessee has been adjudged as bankrupt or become insolvent;
- g) The Lessee has created any encumbrance, charges or lien in favour of any person or agency, over the Leased Area, save and except as otherwise expressly permitted under this Agreement;
- h) A resolution for voluntary winding up has been passed by the shareholders of the Lessee;
- i) 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 DMRC, 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 Agreement;

- j) The Lessee has abandoned the Project;
- k) The shareholding pattern of the SPC (being the Lessee) has been changed without obtaining prior written consent of DMRC.
- l) In case the Lessee or its Sub Lessee had entered into any Sub Lease Agreement without the prior written consent of DMRC;

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

In the event of default under sub-clauses (c) to (l), above, the Lessor shall be entitled to terminate this Agreement at any point of time in its sole discretion by giving 30 days notice period to the Lessee. This Agreement shall thereafter automatically stand terminated notwithstanding any further action by either Party. The Lessee shall incorporate these termination clauses in the agreement of sub-lessees. All such sub-lease agreements will stand terminated once this contract is terminated.

11.3 Termination for Force Majeure

The Agreement may be terminated for Force Majeure reasons as specified in Clause 10.4.

11.4 Consequences of Termination

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon Termination:

- i) the Lessee or Sub-Lessee shall cease to have any access to the Leased Space(s). However, DMRC at its own discretion may allow the Sub-Lessees/ end users to continue to have access on mutually negotiable terms & conditions.
- ii) surrender all its rights on the Leased Space(s). Transfer all its rights, titles and interest in or over the assets comprised in the Leased Space(s) which are required to be transferred to DMRC in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.

- iii) The Leased Space(s) shall have been renewed and cured of all defects and deficiencies as necessary so that the Leased Space(s) is in accordance with the specifications & standards as per the terms of this Agreement.
- iv) Hand over to DMRC all documents including as-built drawings, manuals and records relating to development, operation and maintenance of the Leased Space(s) and a certificate from his statutory auditors certifying zero financial encumbrance on the Leased Space(s);
- v) At its cost remove from the Leased Space(s) all such moveable assets, which are not taken over by or transferred to the DMRC.
- vi) At its own cost, immediately terminate the Sub-Leasing Agreements entered into with Sub-Lessees, without any liability of the DMRC. However, DMRC may in its discretion, instruct the Lessee to assign the Sub-Leasing Agreement in favour of the DMRC, if the DMRC considers appropriate to continue to provide access to the Sub-Lessee on the Leased Space(s).
- vii) The Lessee shall, at its cost, transfer to DMRC all such Applicable Permits, which the DMRC may require and which can be legally transferred.

It is hereby agreed between the Parties that the Lessee or the Sub-Lessee or any other person acting through or under them shall not remove any of the facilities at Leased Space(s) including all equipment and other fixtures attached to the Leased Space(s) and shall remove only movables which can be removed without causing any damage to the structure of the Leased Area.

Both Parties shall at least 6 (six) months prior to the expiry of the normal Lease Period of 25 (twenty-five) years or sooner determination as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid consequences of Termination.

Each Party shall pay the other Party the various payments due as on the date of Termination in accordance with this Agreement.

The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Agreement on the Termination in entirety, and unless otherwise provided in this Agreement, the cost involved in transfer contemplated shall be shared by the respective Parties.

11.5 Rights of DMRC on Termination

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

3.8.9 In cases of termination of lease agreement due to default of lessee, DMRC shall have the exclusive rights to cut water supply, electricity, sewerage connection to the leased area and also start process for eviction of lessee from DMRC property.

11.6 Right to re-market the said Leased Space(s) on Termination

Notwithstanding anything contained in this Agreement, DMRC shall have right to re-market the Leased Space(s) on Termination of this Agreement for any reasons whatsoever.

ARTICLE 12: DISPUTE RESOLUTION

12.1 Amicable Resolution

- 12.1.1 Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the “**Dispute**”) shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in the clauses below.
- 12.1.2 Except where otherwise provided for in the Agreement, all questions and disputes arising between the Parties pertaining to or directly or indirectly connected with this Agreement shall in the first place be referred to a sole conciliator who shall be an official of DMRC of the rank of deputy and above (the “**Conciliator**”).
- 12.1.3 Upon conciliation as above, in case the Parties reach an agreement, the Conciliator shall make the settlement agreement and give an authenticated copy thereof to each of the Parties (the “**Settlement Agreement**”). The Settlement Agreement shall be final and binding on the Parties. The Settlement Agreement shall have the same status and effect as arbitration award.
- 12.1.4 The views expressed, or suggestions made or the admissions made by either Party in the course of conciliation proceeding shall not be introduced as evidence in any arbitration proceedings. The cost of conciliation shall be borne by both the Parties equally.
- 12.1.5 Any dispute that cannot be settled through conciliation procedure shall be referred to arbitration in accordance with the procedure under Clause 12.2 below.

12.2 Arbitration

- 12.2.1 If the efforts to resolve all or any of the disputes through amicably resolution fails, then such disputes or differences, whatsoever arising between the parties shall be referred to Arbitration in accordance with the following provisions:
- a. Matters to be arbitrated upon shall be referred to a sole Arbitrator if the total value of the claim is upto Rs.5 million and to a panel of three Arbitrators if total value of claims is more than Rs.5 million. DMRC shall provide a panel of three arbitrators which may also include DMRC officers for the claims upto Rs.5 million and a panel of five Arbitrators which may also include DMRC officers for claims of more than Rs.5 million. The lessee/ concessionaire/ licensee shall have to choose the sole Arbitrator from the panel of three and/or one Arbitrator from the panel of five in case three Arbitrators are to be appointed. The DMRC shall also choose one Arbitrator from this panel of five and the two so chosen will choose the third arbitrator from the panel only who shall act as the Presiding Arbitrator. The Arbitrator(s) shall be appointed within a period of 30 days from the date of receipt of written notice/ demand of appointment of Arbitrator from either party. Neither party shall be limited

in the proceedings before such arbitrator(s) to the evidence or arguments put before DMRC for the purpose of obtaining his decision. No decision given by DMRC in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. The arbitration proceedings shall be held in Delhi only. The language of proceedings, that of documents and communication shall be English.

- b. DMRC at the time of offering the panel of Arbitrator(s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrator nominated in the panel along with their professional experience, phone nos. and addresses to the contractor.
- c. The award of the sole Arbitrator or the award by majority of three Arbitrators as the case may be shall be binding on all parties.

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

12.2.3 The cost of arbitration shall be borne by the respective parties. The cost shall, inter alia, include the fees of the Arbitrator(s) as per rates fixed by the DMRC from time to time.

12.2.4 Where recourse to a Court is to be made in respect of any matter, the court at Delhi/ New Delhi shall have the exclusive jurisdiction to try all disputes between the parties.

12.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

ARTICLE 13: REPRESENTATIONS AND WARRANTIES, DISCLAIMER

13.1 Representations and Warranties of the Lessee

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

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

- k) 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 DMRC shall not be liable for the same in any manner whatsoever to the Lessee; and
- l) The Lessee shall make its own arrangements in engagement of its staff and labour and shall at no point represent to or claim that the staff, labour are being recruited for and on behalf of DMRC. The Lessee shall at all times comply and represent to the staff and labour employed / engaged by them the requirement for complying with Applicable Laws and Applicable Permits, particularly in relation to safety and environmental regulations.

13.2 Obligation to notify change

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

ARTICLE 14: MISCELLANEOUS

14.1 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at the rate of 20% per annum from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

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

14.2 Governing Law and Jurisdiction

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

14.3 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 Agreement:

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
- b) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
- c) shall not affect the validity or enforceability of this Agreement 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 Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

14.4 Survival

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

of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

14.5 Amendments

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

14.6 Notices

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

If to **DMRC**

The Managing Director
Delhi Metro Rail Corporation Ltd.
Metro Bhawan,
Fire Brigade Lane Barakhamba Road ,
New Delhi 110 001
Fax No. +91 11 23418311

If to the **Lessee**

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

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

14.7 Severability

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

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

14.8 No Partnership

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

14.9 Language

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

14.10 Exclusion of Implied Warranties etc.

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

14.11 Counterparts

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

14.12 Employees of Lessee

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

14.13 Encroachment

The Lessee shall have no exclusive rights for using the Common Areas and restrict its operation to within the Leased Area. The Common Areas shall not be allowed to be encroached or used for any other purpose and any encroachment of Common Area shall be construed as breach of the Lease Agreement inviting action as applicable for breach of the Lease Agreement.

14.14 Signage and Advertisements:

- a) The Lessee shall have the right to display signage(s) of suitable size for displaying its generic name of each Space. The signage may be illuminated or non-illuminated at the Lessee's option, however it shall need to confirm to all governmental laws, regulations or ordinance relevant thereto. The Lessee shall also need to obtain a written approval from DMRC before putting up any form of signage and DMRC reserves the right to refuse or to suggest an alternation to the same. The size, shape, location, etc. of signage are subject to architectural controls to be issued by DMRC. Signage should be used only for the business being run by the Lessee in the leased premises. In addition, the Lessee shall also be required standard materials as per standards prevalent in DMRC, for which he shall seek necessary approval from DMRC.
- b) Space for 1 totem pole shall be provided by the DMRC without any additional lease fee at a suitable location. Totem pole will be provided on the Ground/ Concourse floor admeasuring 15 feet by 4 feet. The totem pole shall be backlit. The installation cost, electricity consumption charges, taxes etc. (if any) shall be borne by the Lessee.
- c) No advertisement in any format shall be permitted on the outer surface of the Leased Space. However, the lessee shall be allowed to use interior of the leased spaces for display of advertisement only about the business / commodity being run / sold by the Lessee in the Leased space(s). In addition, advertisement area up-to 8' x 6' shall also be provided for each PD floor at designated places in the circulating area of station on charges @ half of the Lease fees.
- d) The Lessee shall need to obtain a written approval from DMRC by way of a notice before putting up any form of signage/ advertisement within/outside their premises and DMRC reserves the right to refuse or to suggest an alternation to the same. The signage/ advertisement shape and location etc are subject to architectural controls to be issued by DMRC.
- e) Placement of signage/ advertisement without the permission of DMRC or placement in non approved locations shall attract a penalty of Rs.5000/- per signage/ advertisement on the first occasion and Rs.50,000/- per signage/ advertisement on the second occasion. In case of persistence default, DMRC reserve the right to terminate the agreement with forfeiture of the (interest free) security deposit and advance lease fee paid in its favour.

- f) DMRC shall not unreasonably interfere with the signage/ advertisement plan. If DMRC is not satisfied and raises any objections, the lessee shall be required to appropriately amend/ modify his scheme within a reasonable timeframe and seek DMRC approval once again.

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

SIGNED SEALED AND DELIVERED

For and on behalf of DMRC by:

For and on behalf of the Lessee by:

In the presence of:

1)

1)

2)

2)

SCHEDULE A
Plans/Drawings of the Leased Space(s) and Project Site

**SCHEDULE B
PERFORMA FOR SECURITY DEPOSIT**

(To be issued by a Scheduled Commercial Bank in India, 'except Regional Rural Banks(RRB's) & Local Area Banks (LAB's)' acceptable to DMRC,

on non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO. _____ dated _____

This Deed of Guarantee made on this day of(month & year) by M/s _____, a financial institution incorporated under the _____ Act and having its registered office at _____ and Corporate office at _____ and Branch/Zonal office at _____ (Name and address of Bank) (hereinafter referred to as "**the Bank**" or "**the Guarantor**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns)) of the one part

In favour of

The Delhi Metro Rail Corporation Limited (hereinafter called "**DMRC**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns), having its registered office at Metro Bhawan, Fire Brigade Lane, Barakhamba Road, New Delhi-110001 of the other part;

Whereas DMRC has accepted the Bid of M/s.....(hereinafter referred to as **the "Lessee"**, which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) having its registered office at..... for the work of.....(Name of work).

And Whereas the Lessee under the terms of Lease Agreement is required to furnish an unconditional irrevocable Bank Guarantee for an amount of **Rs. _____/- (Rupees _____ only)** as Performance Security and has thus requested the Bank to issue the said Bank Guarantee in favor of the DMRC.

And Whereas, accordingly the Bank has agreed to guarantee to DMRC the obligations of the Lessee under the terms of the Lease Agreement, on the terms and conditions stated herein.

NOW THIS GUARANTEE HEREBY WITNESS:

1. The Bank, as primary obligor, on receipt of a written demand from DMRC, shall pay on the same day to DMRC the aforementioned amount of Security Deposit or part thereof, without demur, reservation, contest, recourse whatsoever and without need for ascribing any reason to the demand and without any reference to the Lessee. Any such demand made by DMRC shall be conclusive, final and binding on the Bank and the Bank shall pay the amount so demanded without demur notwithstanding any dispute/disputes raised by the Lessee in any suit or proceedings pending before any

Court, tribunal or arbitrator/s relating thereto and the liability of the Bank under this guarantee shall be absolute and unequivocal.

2. This Guarantee shall be valid upto dd/mm/yyyy till the entire Lease Period and for a period of 1 (one) year thereafter against any dues payable by the Lessee to the DMRC and shall not be revoked by the Bank at any time without DMRC's prior consent in writing. Further the Bank shall be liable to pay the guaranteed amount or part thereof under this guarantee only and only if DMRC serves upon the Bank a written claim or demand on or before dd/mm/yyyy.
3. This Guarantee is unconditional and irrevocable till such time DMRC discharges this guarantee by issuing a letter to the Bank in this behalf.
4. The Bank undertakes to pay the amount mentioned herein as principal debtor and not a surety and the DMRC at its option, shall be entitled to enforce this guarantee during its currency against the Bank, as a principal debtor in the first instance, without proceeding against the Lessee and notwithstanding any security or other guarantee that the DMRC may have in relation to the Lessee's liabilities.
5. The Bank shall not be relieved from its obligations under this Bank Guarantee on account of any variations in the terms and conditions of the Lease Agreement or by extension of time granted to the Lessee or due to any postponement / non-exercise / delayed exercise of any of its rights by DMRC against the Lessee or omission on the part of DMRC or any indulgence by DMRC to the Lessee to give such matter or thing whatsoever, which under the law relating to sureties would, but for this provision, have effect of so relieving the Bank.
6. The expression "Lessee", " Bank" and "DMRC" hereinbefore used shall include their respective successors and assigns. Also the Guarantee shall not be affected by any change in the constitution of the Lessee or of the Bank.
7. Notwithstanding anything contained herein:
 - a) The Bank liability under this bank guarantee shall not exceed Rs.....(Rupees in words).
 - b) This Bank guarantee shall be valid upto dd/mm/yy
 - c) The Bank is liable to pay the guaranteed amount or part thereof only and only if the DMRC serves upon the Bank a written claim or demand on or before dd/mm/yy. (1 year)

IN WITNESS WHEREOF I/We of the Bank have signed and sealed this guarantee on the..... day of..... month and year being herewith duly authorized.

For and on behalf of the _____ Bank.

Signature of Authorized Bank Official:

Name _____

Designation _____

Stamp/Seal of the Bank : _____

Signed, sealed and delivered for and on behalf of the Bank by the above named

In the presence of:

Signature _____

Name _____

Address _____

Signature _____

Name _____

Address _____

Notes:

1. The stamp papers of appropriate value shall be purchased in the name of the Bank, who issues the 'Bank Guarantee'.
2. The 'Bank Guarantee' shall be from the Scheduled Commercial Bank based in India, acceptable to Employer.

SCHEDULE C

PERFORMA FOR ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made on the _____ day of _____ 20xx among

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

AND

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

OR

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

and

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

RECITALS

- A. WHEREAS** DMRC and the Licensee have entered into a LICENSE Agreement dated _____ 20xx (hereinafter referred to as "**LICENSE Agreement**") pursuant to which DMRC has granted to the Licensee LICENSE to develop, procure, finance, construct, manage, maintain and License the use of the built up spaces and facilities in the Specified Area for specified purposes at **Dwarka Sector 21 MRTS station**, a copy of the LICENSE Agreement signed between DMRC and the Licensee is attached to this Agreement.
- B. AND WHEREAS** to provide security to DMRC and to have the first and paramount charge over all the receivables that the Licensee is entitled to claim or receive from the Sub licensee, appointed in terms of the said License Agreement, from the use of the Licensed Space Facilities built up space, etc. in the specified area, the Licensee has agreed to open the Escrow Account in terms of this Escrow Agreement.

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

NOW THIS AGREEMENT WITNESSETH AS UNDER

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

21. The Escrow Agent hereby agrees to send the monthly statement of the Escrow Account to email id pdfinance@dmrc.org, and/or other id as may be communicated by DMRC.
the Escrow Agent hereby agrees to provide facility to DMRC to view the Escrow Account online.
22. The rights of the DMRC under this Agreement shall be in addition and without prejudice to all other rights DMRC has under the LICENSE Agreements.
23. All terms used in this agreement not expressly defined herein shall have the meaning assigned thereto in the LICENSE Agreement.

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

SIGNED SEALED AND DELIVERED

For and on behalf of DMRC by:

(Signature)

(Name)

(Designation)

For and on behalf of the Licensee by:

(Signature)

(Name)

(Designation)

For and on behalf of theBank:

(Signature)

(Name)

(Designation)

In the presence of:

- 1)
- 2)
- 3)