



DELHI METRO RAIL CORPORATION LIMITED

**Draft Lease Agreement For Warehouse
Development at 43833 Sqm (approx) plot (35067
Sqm FAR) at Jasola Vihar Stabling Yard**

CONTRACT: CPD-45



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SECTION II

DRAFT LEASE AGREEMENT

CONTRACT CPD-45

This Agreement ('**Agreement**') is made and executed at New Delhi on this _____, 2017.

BY AND BETWEEN

Delhi Metro Rail Corporation Limited, a company incorporated under the Companies Act, 1956, having its registered office at Metro Bhawan, Fire Brigade Lane, Barakhamba road, New Delhi 110001, India (hereinafter referred to as "**DMRC**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the **ONE PART**;

AND

M/s _____ Ltd., 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**" 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. _____.

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. _____.



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 address**)

Hereinafter referred to as “the **{Lessee/SPC Company}**” (which expression shall, unless excluded by or repugnant to the context hereof, be deemed to mean and include its successors, administrators and permitted assigns) of the **SECOND PART**.

*in case Selected Bidder is a consortium it is required to incorporate an SPC under Companies Act, 2013. (DMRC and the Lessee are hereinafter also individually referred to as a '**Party**' and collectively as '**Parties**').

WHEREAS:

- A. DMRC has been established with the principal object of planning, designing, developing, constructing, maintaining, operating and financing Mass Transit and other urban transport and people mover system of all types and descriptions in the National Capital Territory of Delhi and other areas of the National Capital Region (hereinafter called the '**Territory**');
- B. The Delhi Metro Railway (Operation and Maintenance) Act, 2002 has been enacted by the Parliament to provide for the operation and maintenance, and to regulate the metro railway in the metropolitan city of Delhi and for matters connected therewith and incidental thereto;
- C. DMRC has been authorised to develop real estates in and around the metro stations and other places in the Territory and generate revenues there from, for the purpose of part funding of its capital expenditure and to supplement the fare box collection;
- D. In pursuance of the above, DMRC is desirous of raising funds for developing Delhi Mass Rapid Transit System by transfer of its rights of the allotted land to a Lessee for the purpose of Property Development of the same in return for Upfront Leasefee and annual lease fees specified in this Agreement. For this purpose DMRC has identified balance land parcel and property development area at Jasola Vihar Stabling Yard (Phase-III) measuring about approx.. 43833 Sqm (35067 Sqm FAR))at Jasola Vihar area as more specifically described in **Schedule-A** hereto and in the plan set out in Schedule-A hereto (hereinafter called the "**Project Site**");
- E. DMRC invited bids for the Project through open tender and after evaluation of the bids received and after approval of competent authority, DMRC has accepted the bid of the Selected Bidder/Consortium and has issued a Letter of Acceptance (hereinafter called the '**LOA**') bearing No. _____ dated _____, requiring *inter alia*, the Selected Bidder/Consortium to accept the LOA and deposited 25% of quoted Upfront Lease Fee i.e. Rs. _____ (in Words Rs. _____) within 30 days of issue of Letter of Acceptance and remaining



75% of quoted Upfront Lease Fee i.e. Rs. _____(in Words Rs. _____) within 90 days from the date of issue of LOA;

- F. {The Consortium has since promoted and incorporated the SPC Company as a limited liability company under the Companies Act 2013, and has requested DMRC to accept the SPC Company 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.}
- G. The Lessee/SPC Company has represented that it has requisite skill, financial, managerial & technical expertise and experience to design, develop, operate, finance & maintain a state-of the artProperty Development on the Project Site. 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 bidding documents and are in a position to implement the Project as envisaged in the bid and this Agreement;
- H. The Lessee/SPC Company has submitted the requisite Upfront Payment/ Lease Fee as per the Payment Schedule mentioned at Schedule [C] to this Agreement.
- I. Pursuant to acceptance of the Lessee's bid and submission of the Upfront Payment/ Lease Fee, the DMRC has agreed to enter into this Agreement with the {Lessee/SPC Company} for execution of the Project subject to and on the terms and conditions set forth hereinafterfor development of the Project Site;

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING AND THE RESPECTIVE COVENANTS AND AGREEMENTS SETFORTH IN THIS AGREEMENT, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:



ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this Agreement (including the recitals above, Annexure and Schedules attached hereto) except where the context requires otherwise, the following words and expressions shall have the following meaning:

- (i) **'Agreement'** means this Agreement, along with all Annexures and Schedules hereto, as amended from time to time in accordance with the provisions hereof;
- (ii) **'Applicable Law'** means all acts, rules and regulations in force and in effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including 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 Project and the Parties hereto;
- (iii) **'Applicable Permits'** means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Law, in connection with the "Project" during the subsistence of this Agreement and includes all applicable statutory, environmental or regulatory leases, authorisation, permits, consents, approvals, registrations and franchises from concerned authorities;
- (iv) **'Bid'** means the documents in their entirety comprised in the bid, including all clarifications, addenda and revisions issued by DMRC to the Bidders, the RFP Document submitted by the Selected Bidder (Lessee) in response to the letter no. and in accordance with the provisions thereof. The words "Bid" and "Tender" are used synonymously;
- (v) **"Commencement Date"** means the date of signing of this Agreement.
- (vi) **"Change in Law"** means the occurrence of any of the following after the date of financial bid submitted by the Lessee:
 - (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.

- (vii) **'Constructions'** means all buildings, Property Units, commercial units, infrastructure, superstructures and constructions of any nature whatsoever created by the Lessee on the Project Site;

- (viii) *"Completion Certificate" shall mean the completion certificate to be issued by the Nodal Officer of DMRC upon completion of the Project and receipt of all requisite approvals so issued by municipal / appropriate authorities in this regard.*

- (ix) *"Completion Date" shall mean the date on which the Completion Certificate is issued by the Nodal Officer of DMRC including but not limited to fire safety certificates etc. So issued by municipal / appropriate authorities.*

- (x) "Damages" shall mean any claim of DMRC against the Lessee for breach of this Agreement, including but not limited to, losses, dues, arrears etc. against which DMRC shall be entitled to claim and adjust the Performance Security.

- (xi) *"Drawings" shall mean the maps, drawings, plans and tracings or prints thereof annexed to the Bid Forms or approved subsequently by DMRC or competent local authorities.*

- (xii) *"Development Plan" shall mean the plan to be prepared and submitted by the Lessee to DMRC giving a stage wise description of the construction, development, operation, maintenance and Project Utilities of the Development Project.*

- (xiii) *"Emergency" means a condition or situation that is likely to endanger the security of the individuals working for the Project or which poses an immediate threat of material damage to any of the Project Facilities.*

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



- (xv) *“Governmental Agency” means Central or State Government or any ministry, department, commission, board, authority, instrumentality or agency, under the control of Central or State Government or any other local or municipal bodies or institutions having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.*
- (xvi) ‘Force Majeure’ or ‘Force Majeure Event’ means an act, event, condition or occurrence as specified in Article 11;
- (xvii) ‘Layout Plan’ means the detailed plan for the Project formulated by the Lessee, in accordance with the provisions as contained in **Article 6** of the agreement, norms and regulations prescribed under the Master Plan and Building Bye-Laws of Delhi and other conditions approved in writing by DMRC;
- (xviii) ‘Lease Period’ means a period of **30 (Thirty) years** from the **Commencement date** or till the Leasehold rights subsist with DMRC in terms of the allotment of the Project Site to DMRC, whichever is earlier;
- (xix) “Leased Space(s)” or “Leased Area” means the specified **floor area (FAR)** within the Project Site for **warehouse** 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.
- (xx) ‘Lease rent / Advance Lease fee’ shall means a certain amount of rent in exchange for use of a property.
- (xxi) “Moratorium Period” means the period of maximum 3 (Three) years from the Commencement Date provided by DMRC to the Lessee for carrying out construction activity in order to operationalize the Leased Space(s).
- (xxii) ‘Parties’ means the parties to this Agreement and "Party" means either of them, as the context may admit or require;
- (xxiii) ‘Payment Schedule’ means the schedule as set out in the **Schedule [C]** hereto for payment towards the Transfer Price / Upfront Lease fee and / Advance Lease fee;
- (xxiv) “Permits” shall mean and include all applicable statutory, environmental or regulatory licences, authorisation, permits, consents, approvals, registrations and franchises from concerned authorities.



- (xxv) 'Person' means any individual, body corporate, association of individuals or bodies corporate, society or such entity as is capable of having rights and obligations under applicable law;
- (xxvi) 'Project' means the development and construction of the Property Units along with the accompanying access-ways, landscape green areas, utilities and services, telecom infrastructure, the Project Site in accordance with the Layout Plan;
- (xxvii) 'Project Agreements' means agreements entered into by the Lessee in relation to the execution and operation of the Project including but not limited to the agreements with sub-contractor, Property Purchasers, Sub-Lessees, etc.
- (xxviii) 'Project Facility' means the built up places and facilities (water, fire safety, electricity etc.), and includes all the amenities and facilities situated on the Project Site, as described in this document Schedule-[A];
- (xxix) Project Lessee shall mean the lessee of the property development project who have been selected by DMRC for execution of property development project for a given lease period.
- (xxx) *"Project Manager" shall mean an experienced and competent engineer nominated by the Lessee as the Project Manager for supervision of the Project.*
- (xxxi) 'Project Site' shall have the meaning ascribed to it in **Recital D** above;
- (xxxii) 'Property Units' means the Property units to be developed and constructed by the Lessee as part of the Project;
- (xxxiii) "Security Deposit" shall mean the security to be furnished by the Lessee as provided in Article 4 hereafter.
- (xxxiv) *"Site" shall mean the DMRC land or the air space above existing DMRC building / station/ track which has been leased out to the Lessee for the Project, as specified in the Schedules.*
- (xxxv) *"Specifications" shall mean the specifications for materials and works.*
- (xxxvi) 'Sub Lessee' means all persons who are allowed by the Lessee to use the built spaces and facilities in the Project Site;



- (xxxvii) *'Tax'* means and includes all taxes, fees, cesses, levies that may be payable by the Lessee under the Applicable Law to the Government or any of its agencies
- (xxxviii) "Termination" means termination of this Agreement by efflux of time or sooner determination in accordance with the provisions of this Agreement.
- (xxxix) "Termination Date" means the end of the concession period of **30 (Thirty) years** from the commencement date or date of sooner determination of the concession period in accordance with the terms of this Agreement whichever is earlier.

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 1-13.

1.5 Law

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



ARTICLE 2

2.0 TRANSFER PRICE/ LEASE FEE

- 2.1 This Agreement has been signed with the Lessee/SPC Company after receipt of Upfront **Lease Fee of Rs. 30,00,00,000** (In words Rupees **Thirty** Crores).plus applicable service tax extra.
- 2.2 The Lessee acknowledges that DMRC is allowing Property development (warehouse) on the Project Site and undertaking transfer of the leasehold rights in the same for the purpose of raising funds for its Delhi Mass Rapid Transit System.
- 2.3 Upon payment of the Upfront Lease Fee, the Lessee shall peacefully and quietly enter upon the Project Site only for the following purposes:
- pursue marketing in respect of the Project;
 - hold a temporary marketing office;
 - perform soil investigation/planning;
 - temporary construction of boundary wall/barricading around the Project Site.
- 2.4 The Lessee shall pay a sum of **Rs. _____ only on quarterly basis to the DMRC** towards Advance Lease fee for 43833 Sqm. (approx) Property Development area at Jasola Vihar Stabling yard (35067 Sqm **floor area (FAR) of** the Project Site.
- 2.5 Lessee shall make advance payments for above referred advance Lease Fee (mode of payment – quarterly) to DMRC within 7 days of commencement of respective quarter. All the taxes including the service tax, as applicable from time to time shall also be paid by the Lessee in addition to the amount of the quoted rate of the Lease Fee. The Lease Fee shall be payable from the day falling after the date of the completion of the Moratorium Period.

The advance lease fee / Lease Rent for a specified quarter shall be worked out by multiplying the **total floor area (FAR)** of leased space(s) with the per month quoted rate of Lease Fee and further multiplying it by **3 (Lease Fee = FAR Area X NN¹ X3)**.

- a) GST on Services as applicable will be borne solely by the Lessee.
 - b) All other statutory taxes, statutory dues, local levies, cess, duties including stamp duty, registration charges that may be applicable/levied in respect of the Project applicable shall be charged extra from the Lessee and shall have to be remitted along with the Lease Fee for onward remittance to the Government. Property tax of the leased area shall be borne by Lessee. The Lessee shall indemnify DMRC from any claims that may arise from the statutory authorities in connection with this Lease Agreement.
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NN¹ = Suppose NN is the amount quoted by the Successful Bidder on per square meter per month basis for total floor area (FAR).

- c) The advance Lease fee for the Leased Space(s) shall become payable from the day after the date of end of the Moratorium Period. **The advance Lease fee and other applicable charges such as security deposit shall be escalated @ 20% every 3 (three) year from the date of signing of lease agreement i.e. commencement date.**
- d) In case of extension of the Commencement Date or Moratorium Period or both, as the case may be, for whatsoever reason, the escalation on the maintenance fee (if applicable) and other charges if applicable, shall be counted **@ 20% every 3 year from the date of commencement.**
- d) The Lessee will make the payments for each quarter in advance within seven days of the commencement of the respective quarter.
- e) Any delay in payments shall attract penalty of interest **@ 20% per annum** on the amount outstanding (calculated on a per day basis), till the time the respective payments have been received by DMRC. The delays beyond 60 days of the due dates for the payment of the respective Advance Lease Fee shall be treated as 'Lessee Events of Default'. In such an eventuality the DMRC retains the right to en-cash the Performance Security and claim damages from the Lessee and even terminate the Lease Agreement as mentioned in the 'Performance Security' Clause of the Draft Lease Agreement.
- f) Upfront Lease Fee and Advance Lease Fee shall be adjusted on pro-rata basis if there is any variation in the area between that stated in the RFP document and actual area made available at the time of handing over the Project Site to the Selected Bidder. Lessee shall also pay for additional area charges for the additional area, which may be requested by the Lessee and made available by DMRC subject to availability/feasibility only for utilities equipment and services.
- g) Advance Lease fee and other recurring payments shall be made to DMRC through Escrow Account.

2.6 Extension of Date of Commencement / 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 Lessee shall immediately bring it to the notice of DMRC within 30 days of happening of such an event and



accordingly either Commencement Date or 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 works.

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 the Lease 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 Lease 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 whatsoever.

“In case of extension of moratorium period by DMRC, the escalation of rental will be counted from the commencement date only.”



ARTICLE 3 3.0 GRANT OF LEASE RIGHTS

- 3.1 On and from the Commencement Date and subject to the terms and conditions set forth in this Agreement, DMRC grants and authorizes the Lessee the right to develop, design, construct, complete, manage, operate and maintain the Project at its own cost, expense and risk for the Lease Period of **30 (Thirty) years**. The Lease entitles the Lessee the following benefits, privileges, authorizations and entitlements, to be exercised at its own cost, expense and risk in accordance with Applicable Laws:
- (i) To develop, design, engineer, finance, procure, construct, operate and maintain the Project, including the building, the paved access-ways, landscaped green areas, utilities and services, telecommunication infrastructure, etc. in conformity with the Layout Plan (as approved by DMRC in accordance with **Article 6.1**);
 - (ii) To market the Property development project and enter into agreements for transfer of leasehold rights of the project for a lease period which is coterminous with the Lease Period at any point of time.
 - (iii) The Lessee shall confine its operations to the Project Site. 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 adversely affecting the surrounding DMRC area and property, or otherwise cause any interference to the passengers, visitors, employees, representatives and agents of the DMRC. Any failure or default of the Lessee to comply with the provisions as above mentioned shall present DMRC with a right to issue a notice to Lessee to rectify such failure or default within a stipulated time. If the failure or default is not rectified within the stipulated time, a fine upto Rs. 10.0 lakh (Rupees Ten Lakh only) may be imposed by DMRC.
- 3.2 With effect from Commencement Date, the DMRC grants the leasehold rights to the Selected Bidder on the Project Site for the Lease Period, for development and construction of a Property development (warehouse) project. The Lessee hereby also agrees that it is acquiring the leasehold rights on the Project Site to develop the project only as specified under this Agreement. However, the ownership rights over the building constructed on the Project Site shall at all times vest with DMRC only.
- 3.3 For avoidance of doubt, it is clarified that the Lessee is exclusively responsible for the execution of the Project and it shall bear the financial, technical, commercial, legal and other risks in relation thereto regardless of any escalation in cost, Change in Law, other contingencies, circumstances and/or hazards that may be encountered (foreseen or not unforeseen) during the Lease Period.
- 3.4 **Right to Sub-Lease**



- 3.4.1 The Lessee (considering Bidder as lessee) shall be entitled to sub-Lease the built up site to any person or entity (the “Sub-Lessee”), only after adding the necessary structures and utility services. Leasing by a Sub- Lessee to sub-sub-lessee shall be permitted. Further leasing by a sub-sub-Lessee shall not be permitted. .
- 3.4.2 The sub-Lease shall however be for the use of the Site, during the subsistence of the Leased Period only with a clear stipulation that all such sub-Lease granted shall terminate simultaneously with the termination of the Lease Agreement, including on sooner determination of the Lease Period for any reason whatsoever. All contracts, agreements or arrangements with Sub-Lessee shall specifically stipulate this covenant of termination of the rights of the Sub-Lessee, and further that such Sub-Lessee shall not have any claim or seek any compensation from DMRC for such termination.
- 3.4.3 The Lessee shall prepare a draft standard format of the sub-Lease agreement, which will be required to be signed by the Sub-Lessee for use of the subject Site. Prior written approval of DMRC shall be obtained by the Lessee in respect of such standard draft. DMRC may specify certain covenants to be incorporated in the standard sub-Lease agreement draft to protect its interests. Only after such covenants are incorporated in the sub-Lease agreement, the Lessee will be entitled to enter into Sub-Lease agreement and shall be required to submit copies of each such Leases to DMRC for verification and record. In case of any deviation from the above-mentioned standard draft sub-Lease agreements, the Lessee shall obtain the prior written consent and approval of the DMRC before entering into an agreement with a Sub-Lessee. DMRC reserves the sole right not to give consent /approval to such a request and no compensation or claim on this account will be entertained in this regard.
- 3.4.4 At any point of time, the Lessee shall not enter or cause any of its Sub- Lessee to enter into any sub-Lease agreement with any person or entity for transfer of its rights which would adversely affect the interests of DMRC or is not available to the Developer in the first place. Any such act of the Developer or Sub-Lessee shall render the Lease Agreement liable for termination at the sole cost and expense of the Lessee.



ARTICLE 4

Performance Guarantee (“Security Deposit”)

4.1 The Lessee shall, for the performance of its obligations hereunder shall prior to the Commencement Date i.e. date of execution of lease agreement, provide to DMRC, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to amount one hundred percent of one year Lease Fee for the said Leased Space(s) Rs. ***** crore (Rupees ***** Lakhs / Crore) for entire lease period for faithful completion of lease agreement in the form set forth in **Schedule-[B]** (the “Security Deposit / **Performance Guarantee/ Performance Security**”). Until such time the Performance Guarantee is provided by the Lessee pursuant hereto and the same comes into effect, the TENDER SECURITY shall remain in force and effect, and upon such provision of the Performance Guarantee pursuant hereto, DMRC shall release the TENDER SECURITY to the Lessee.

4.2 Appropriation of Performance Security

Upon the DMRC being of the view that the Lessee has committed any breach or default of this Agreement, DMRC shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as damages for such breach or default. Upon such encashment and appropriation from the Performance Security, the Lessee shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Lessee shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which DMRC shall be entitled to terminate this Agreement and forfeit the remaining amounts of the Performance Guarantee, if any.

4.3 Submission, Renewal and Release of Performance Security

4.3.1 The Lessee shall, for the due and faithful performance of its obligations, provide to DMRC cash deposit/ Bank Guarantee (format for bank guarantee is shown in Schedule B)/ Demand Draft / Pay Order from a scheduled commercial bank based in India, and payable at New Delhi for a sum equivalent to one hundred percent of first year’s Lease fee. This Performance Security shall be submitted along with the Transfer fee / Upfront Lease fee to DMRC. The Performance Security shall be kept valid on a rolling basis till the end of the 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.. Performance security for additional FAR will also be submitted the upfront for additional FAR.

4.3.2 The said Performance Securities shall be returned by DMRC after the expiry of the Lease Period subject to fulfillment of all handover requirements by the Lessee, to the satisfaction of DMRC and further subject to adjustment for all damages suffered by DMRC.



4.3.3 If the Lessee defaults in any recurring payment for more than 60 days from the due date as per the provisions of this agreement, DMRC shall be entitled to encash the Performance Security without being liable in any manner whatsoever to the Lessee and to appropriate the Performance Security as 'Damages', without prejudice to other rights and claims of the DMRC.

4.3.4 In case after submission of the fresh Performance Security, the **Lessee defaults a second time in recurring payment**, DMRC shall be entitled to terminate this Agreement in accordance with the provisions of Article 9, without being liable in any manner whatsoever to the Lessee and to appropriate the Performance Security as 'Damages'.

4.4 Payment Security & Escrow

4.4.1 DMRC shall at all times have the first and paramount charge over all receivables of any nature whatsoever that the Lessee is entitled to claim or receive from the sub-lessee for the use of the Leased Area or from the operations of the Licensee / Lease in the Leased Area. The Lessee 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 Lessee shall not create any charge over the receivables including the amounts in the Escrow Account and also the actionable claims in regard to the Retail / Leased 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 Lessee to create second charge over the receivables in favour of financial institutions.

4.4.2 The Lessee 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 Lessee, DMRC and the Bank as per the draft attached hereto as **Schedule E**. The Bank will act as the Escrow Agent for the purposes of receiving the receivables in terms of this Agreement.

4.4.3 The Lessee hereby unconditionally and irrevocably without demur agree to receive and deposit all receivables from sub-Lessee the use of the built spaces or from the operations of the Lessee at the Leased Area or otherwise from the Leased Area at the Specified Area into the Escrow Account with the Bank. The amounts in cash, if any received by the Lessee 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 Lessee shall not give credit or make any adjustment against the receivables for any payment due from the



Lessee. The Lessee shall ensure that no other person is authorised to utilize or appropriate any part of the receivables contrary to the above.

- 4.4.4 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 Lessee, 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 Lessee till such time further amounts become due from the Lessee 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.
- 4.4.5 The Lessee 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.
- 4.4.6 The Lessee shall instruct in unambiguous terms all its tenants/sub Lessee in the agreements signed with them, that all payments receivables to be made to the Lessee will be deposited in the said escrow account.
- 4.4.7 The Lessee will at all times maintain a minimum balance equivalent to one quarter of the recurring payment in the escrow account.



ARTICLE 5

Additional FAR

5.1 Leased Site

5.1.1 In case any additional FAR over and above the existing FAR or additional land area (the 'Additional Area') is available in future, the Additional Area may be allotted to the Lessee at the sole discretion of DMRC on the request made by the Lessee upon payment of additional Upfront Lease Fees **(at applicable rate at that time by increasing @20% every three year as done in the case of recurring payment)** and the Annual Lease rate of Lease Fee on the date of such request made by the Lessee on pro rata basis. The Lease Period of such Additional Area shall however be co-terminus with the Lease Agreement. All cost associated with the additional FAR including but not limiting to the FAR conversion charge will be bear by Lessee.

5.1.2 Additional FAR through possible implementation of TOD Norms

Benefit of TOD on this plot could not be availed as warehousing is non permissible activity under TOD. Also, the control norms of TOD are not feasible because the major portion of property development area is situated under viaduct and considering the security and safety of stabling yard, station, and viaduct, the development control norms of TOD is not feasible.

However,, advantage of increased FAR area due to TOD or any amendment in MPD 2021 or otherwise, if allowed in future, may be availed as "Additional Area" as per clause 5.1.1 of this document.



ARTICLE 6

6.0 PROJECT

6.1 LAYOUT PLAN AND SITE LIMITATIONS

6.1.1 Within two months from the date of total payment of Upfront Lease fee, the Lessee shall submit to DMRC for its approval, a Layout Plan for the Project, which shall be in conformity with the following conditions:

- (a) Planning of the development must take into account and provide for uninterrupted and easy movement of commuters into and out of the MRTS Station / Stabling Yard. The Lessee must provide for the full parking requirement for the development work scheduled to be undertaken by him.
- (b) If the Lessee's proposal in any way affects the DMRC structures and/ or related facilities other amenities, the Lessee will have to rehabilitate the same at its own cost and risk, to the complete satisfaction of DMRC.
- (c) The Lessee is required to plan for the parking requirement of its development as per the prevailing development norms.
- (d) The Layout Plan and the development of the Project Site in pursuance of the same shall be strictly in accordance with the existing master plan of Delhi and applicable building and municipal laws, applicable bye-laws or regulations as prescribed by the statutory authorities.
- (e) DMRC reserves the right to reject any Layout Plan submitted by the Lessee on any account whatsoever including without limitation, on account of the fact that the same does not adhere to the stipulations specified in this Article 6.1.1.
- (f) Lessee shall complete the Project in accordance with the Layout Plan as approved by DMRC.

6.1.2 Utilities and Services

- (a) The Lessee shall also make its own arrangement for providing all infrastructure (water, electricity, fire safety etc.), utilities and sewerage facilities required in proportion to the allotted area.
- (b) The Lessee would be required to make its own arrangements for obtaining necessary approvals, permits, clearances and sanctions from the competent authorities for all utilities such as water, electricity, sewerage, sanitation, fire safety etc. and as per applicable bye-laws and standards. It is to be clearly understood that all such clearances are to be obtained by the Lessee and the DMRC may only provide assistance wherever possible without any obligation. However, requisite approvals from local authorities will required to be taken by Lessee.



6.1.3 Site Safety and Security Measures

- (i) The Lessee is required to introduce and observe at all times, appropriate measures for safety, security and orderliness on the Project Site.
- (ii) The Lessee is required to make its own arrangement for fire fighting which shall confirm to the IS Code of Practice / Delhi Fire Services norms and all other applicable statutory bodies.
- (iii) The Lessee shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. During construction period of the Project, 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, laborers and public.
- (iv) The Lessee shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all plant and machinery, equipment, materials and other things required for the construction and operation and maintenance of the facilities.
- (v) Unless otherwise stated in this Agreement:
 - (a) The Lessee shall be responsible for keeping unauthorized persons off the Project Site, during the construction period.
 - (b) Authorized persons during the construction phase shall be limited to the employees of the Lessee, employees of subcontractors of the Lessee, and employees and persons authorised by DMRC.
- (vi) Employees/staff of the Lessee shall not be deemed or construed to be the employees of DMRC. The Lessee understands and undertakes that its employees/staff shall make no claim against the DMRC for any reason whatsoever, throughout the lease period. 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 development works, under this Agreement, throughout the lease period of **30 (Thirty) years**.
- (vii) If during the lease period, any loss of property and/or life takes place, the loss and account of the same shall be borne entirely by the Lessee and DMRC shall not be liable for any such claims. The Lessee would be responsible for the payments arising out of any third party claims. The Lessee is advised to procure insurance for meeting such liabilities at its own cost.
- (viii) The list of banned activity which may cause fire hazard and affect safety of station and stabling yard are enclosed under Annexure-13 of RFP and Schedule H of this Agreement. The storage and trade of goods & material mentioned under Schedule-G shall not be allowed.



6.1.4 The Lessee shall be solely liable for the above mentioned obligations/responsibilities and in case any liability, on account of Lessee's failure to comply with the above, falls on DMRC, the Lessee shall fully indemnify DMRC.

6.2. REPORTING REQUIREMENTS

6.2.1 The Lessee shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there shall be minimal disruption of the operations of the nearby area and the MRTS Station/property.

6.2.2 DMRC may inspect the Project Site and Project Facilities 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.

6.2.3 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 by the Lessee.

6.2.4 The Lessee shall, upon request by DMRC, co-operate in the co-ordination of the works under this Project 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 the workmen of any public authority who may be employed in the execution on or near the site of any work not included in this Agreement, which DMRC may require.

6.2.5 USE OF THE PROJECT SITE AND PEACEFUL POSSESSION

6.2.5.1 The Lessee, subject to complying with the Terms and Conditions of this Agreement, shall have the use of the Site during the Lease Period in accordance with the terms of this Agreement and limited for the purposes mentioned in Article above. The Lessee shall not use the site or the Project Facility for any other purpose.

6.2.5.2 The Lessee shall confine its operations to the Project Site. 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 neighbouring / DMRC areas or otherwise cause any interference to the employees, representatives and agents of DMRC.

- (a) If any infringement as defined under this article occurs, as determined by DMRC, DMRC will issue a notice to rectify the infringement within a stipulated time. If the infringement is not rectified within the stipulated time, a fine upto Rs. 1.0 lakh (Rupees One Lakh Only) for each infringement will



be imposed by DMRC, alongwith additional time for rectification of such infringement.

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

6.3 OTHER OBLIGATIONS

6.3.1 The Lessee undertakes to complete the Project within **3 (Three years)** from the date of handing over of the Project Site.

The Lessee undertakes to pay all the municipal taxes, service tax, maintenance charges, statutory taxes, statutory dues, local levies and all other applicable taxes and charges, in respect of the Project Site from the day when the DMRC delivers possession of the same to the Lessee, in accordance with statutory provisions, rules and regulations. Property Tax of the leased area shall be paid by Lessee directly to the respective authority at applicable rates.

6.3.2 Lessee shall obtain all statutory clearances from DMRC and concerned agencies/authorities for tree cutting and other purposes etc.

6.3.3 The Lessee shall follow all prevailing norms of Property development mentioned under MPD-2021 including all corrections / revisions are required to be followed by the Lessee.

6.3.4 The Lessee shall make use of available ground coverage and floor area as permitted under MPD-2021.

6.3.5 It is clarified that the Lessee shall be solely responsible for the development, maintenance and operations of the Project and there shall be no obligation on DMRC in this regard. Accordingly, all responsibilities relating to the Project including without limitation, obtaining the requisite approvals/ sanctions for the Project from concerned local bodies etc., in strict compliance with all construction and municipal laws in relation to the Project, constructing, providing and maintaining necessary utilities and amenities including sewerage, sanitation, electricity and water connection, fire fighting and health safety, other civic amenities and obtaining necessary permissions from appropriate authorities for the same, construction and quality of the Project, safety of site equipment & machinery, staff and labourers etc. shall be to the sole and exclusive liability/ responsibility of the Lessee.

DMRC may agree without any liability thereof to assist the Lessee in obtaining the required approval/permits. In the event of delay or failure in obtaining the required approval/permits, the Lessee shall not be deemed absolved of its own responsibility and DMRC shall not in any way be liable for the approval/permits or for non receipt thereof for any reason whatsoever nor for any loss or damage arising in consequence of such delay or non receipt.



- 6.3.6 The Lessee shall ensure that no structural damage is caused to the existing buildings and other permanent structures in the surrounding area and on site as a result of its activities or any of its agents, contractors, tenants, etc.
- 6.3.7 The Lessee shall take all reasonable steps to protect the environment (both on and off the Project Site) and to limit damage and nuisance to people and property resulting from construction and operations, within guidelines specified as per Applicable Laws and Applicable Permits.
- 6.3.8 The Lessee shall 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.
- 6.3.9 The Lessee shall take all reasonable precautions for the prevention of accidents on or about the Project and provide all reasonable assistance and emergency medical aid to accident victims.
- 6.3.10 Lessee shall during execution of Works, keep the Project Site free from all unnecessary obstruction, and store the Equipment or surplus materials dispose of such equipment or surplus materials in a manner that causes least inconvenience to the Metro Station and Commuters or otherwise to DMRC's activities.
- 6.3.11 The Lessee shall within 30 (thirty) days of achieving 'Completion' of the said development in the Project Siteremove from the Project Site all surplus construction machinery and materials, including, without limitation, hazardous materials and wastes, and keep the Project Site in a neat and clean condition, and in conformity with the Applicable Laws; except that the Lessee shall be entitled to retain on any Project Site, 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 Agreement in respect of operation and maintenance of the Project.
- 6.3.13 Operational structures existing in the area, if any, will not be disturbed by Lessee. The setbacks should be planned in such a way that the existing structures should not be disturbed till the alternative one, if any, is not commissioned.
- 6.3.14 The operational structures of DMRC including station building, depot, ancillary buildings, commercial portion under occupation by DMRC's Lessee, and area under setbacks etc. will not be handed over to the Lessee at any time.
- 6.3.15 Lessee will provide safe access passage for station/depot commuters at all times. Passage shall be in accordance with requirements of DMRC during the Lease period.
- 6.3.16 Lessee shall provide unfettered access to the authorized representative of DMRC and its operation staff for the purpose of maintenance works, if



applicable, inside the specified area at all times during the concession period.

- 6.3.17 The Lessee will have to take statutory clearance from DMRC and other concerned government agencies for removal of existing trees, if any, from the site.
- 6.3.18 The Lessee shall plan the layout in such manner that it provides access to station / depot and ancillary buildings such as ASS room, Fire sump and pump room etc all the time, as well as meets the requirement of Bye laws enacted by local bodies.
- 6.3.19 The Lessee will not cordon off the metro station / depot, and fire access road from project site, by constructing any structure which restrict visibility and may cause obstruction to fire tender route / fire escape area. Lessee will also ensure visibility on the surroundings of metro station /depot from and to the project site.
- 6.3.20 The shifting of the existing operational structures and utilities, if found during excavation or otherwise, on the subject site shall be done by the Lessee within 6 month period under the supervision of DMRC.
- 6.3.21 Lessee shall plan the layout of the property development area as per provisions of Master Plan of Delhi-2021.
- 6.3.22 During the construction activities the Lessee shall strictly follow the guidelines issued by DMRC and DMRC's manuals on Safety, Health and Environment and Safety, Health and Occupational Hazard on construction sites (OHSAS Manual).
- 6.3.23 Lessee shall ensure the quality of the work and submit Audit Report on Quality of Construction and Material before and after commencing the construction work.
- 6.3.24 Lessee shall design the proposed Property development building for design life of 70 years or higher.
- 6.3.25 Lessee shall also indemnify DMRC against any damages / claims due to any loss of life or property due to construction / operation of the property development project.
- 6.3.26 Lessees shall strictly adhere to the extant bye laws, rules issued by the local authority during entire lease period.
- 6.3.27 Lessee shall study the Traffic Impact Assessment of the project and provide the amenities / service area / parking etc. to cater the additional demand generated due to commissioning of the Project.



- 6.3.28 The Lessee will have to satisfy himself for business prospects, development parameters and applicable norms, and certify that he has made site visit and conversant to the site proposed for property development before undertaking the bid submission process in the subject area. No compensation, claim or damages will be entertained by DMRC in this regard. The Lessee shall develop the project facilities and thereafter operate and maintain them throughout the Lease Period. The act of granting permission to develop the Project Facility at the Site and to Lease the use of the Project Facility or any part thereof shall not vest or create any proprietary interest in the Project Facility or any part thereof including any permanent fixtures, fittings, etc. installed in the structure of the Project Facility in favour of the Lessee or any Sub-Lessee.
- 6.3.29 The subject site located at **at Jasola Vihar Station and Stabling yard** shall be leased to the Lessee for the purpose of Property development (Warehouse) only.
- 6.3.30 The Lessee must note that they would be required to follow the FAR regulations, Ground Coverage regulations, minimum parking requirement, and other statutory rules/ regulations as per the Master Plan of Delhi and other prevalent applicable regulations.
- 6.3.31 Construction of RCC roof under footprint of stabling yard, viaduct and station shall not be allowed. The preferable roof material under the stabling yard and station area shall be industrial roof material such as Polycarbonate corrugated sheet. The height of the building (including roof top structures) outside the footprint of stabling yard, viaduct and station shall be restricted to maximum height of 7.5 m. only (i.e. 6.0 m building height and 1.5 m roof top structures). However, such building shall be constructed by Lessee after leaving sufficient setbacks from the stabling yard, viaduct, and elevated station building. Construction of basement is not allowed under the footprint of stabling yard, viaduct, and elevated station building and the area falling in the setback of stabling yard, viaduct, elevated station building and other operational structures.
- 6.3.32 The Lessee shall be solely liable for the above mentioned obligations/responsibilities and in case any liability, on account of Lessee's failure to comply with the above, falls on DMRC, the Lessee shall fully indemnify DMRC.

6.4 INSURANCE

- 6.4.1 The Lessee shall ensure full insurance cover as per the standard practice in the industry, covering all the applicable risks in respect of the Project and the Constructions.
- 6.4.2 The Lessee shall ensure the timely payment of the premium of the policies taken by it, at its own cost. The Lessee will submit the copy of the receipt of the payment of premium to DMRC as and when requested by DMRC.



6.5. TREASURES / FOSSILS

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

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

6.6 Structure Design and Quality Assurance of Development Project

6.6.1 Before start of construction of the Development Project, the Lessee shall prepare a Development Plan specifying different phases in which the Lessee proposes to construct the Development Project. The Development Plan shall be in accordance with applicable laws and lease agreement. The Development Plan and any subsequent modifications therein should be submitted to Nodal Officer for approval and no works shall be undertaken at site without approval of Nodal Officer of DMRC.

6.6.2 The Lessee shall at all times, obtain and maintain all applicable Permits, which are required by applicable law, to undertake the Project.

6.6.3 The Lessee shall prepare drawings for the proposed developments at the Site complying with the requirements of the agreement, applicable laws and applicable permits and prior to submitting the same to the concerned Government Authority for obtaining applicable permits, the lessee shall submit the drawings of the development project to the Nodal Officer for his approval. The Nodal Officer shall either approve the Drawings or ask for more details within 30 (thirty) days of submission of the Drawings. Once approved by the Nodal Officer, the Lessee shall not be entitled to make any alterations or additions to the approved drawings without prior approval in writing of the Nodal Officer by following the above procedure.

6.6.4 The structural design and preparation of structural drawings of the project shall be got done by lessee through a competent and reputed structural engineer, name of which shall be got approved from Nodal Officer of DMRC in advance, before assigning the design work to him. Further, the proof check of design and drawing shall be got done from IIT, NIT, or any other reputed Agency / institution of repute the name of which shall be got approved from Nodal Officer of DMRC in advance.

In addition, DMRC may demand structural design or any drawing at any stage of project for review and scrutiny.

6.6.5 The lessee during the project development stage shall furnish to DMRC all specifications, guidelines, standards and design criteria to be adopted by them along with any changed or new applicable specifications for approval of DMRC.

6.6.6 The approval of plans / drawings by the Nodal Officer in terms of clauses above, shall however in no event amount to certifying the conformity of drawings with



applicable law or discharge the lessee from its responsibility of complying with the requirements of the agreement, applicable laws and applicable permits. After obtaining the applicable permits the lessee, shall submit a certified copy of such applicable permits to the Nodal officer within 7 days.

- 6.6.7** The Lessee shall, appoint a Project Manager who shall supervise and be overall in-charge of all construction activities being undertaken by the Lessee at the Site during the Construction Period. The Project Manager shall be the site representative of the Lessee for interaction with the authorised representatives of DMRC visiting the Site during the Construction Period. In case the Project Manager is not available at the Site, he shall ensure that its authorised agent is available for the Project, who shall, present himself to the Nodal officer or Nodal officer's representative and orders given by the Nodal officer or the Nodal officer's representative to the authorised agent shall be deemed to have the same force as if they had been given to the Project Manager.
- 6.6.8** The Lessee shall not commence any work upon the Site, except securing the Site through fencing/boundary wall until approval of requisite plans from the Nodal Officer of DMRC and the Government Authorities. Within 15 (fifteen days) of receipt of right of access of the Site, the Lessee shall secure the Site with steel hoarding of height not less than 1.8 meter on all sides with access controlled gate in a manner approved by the Nodal Officer. The steel hoarding should have smooth painted surface with a pre approved design bearing names and logo of Project, DMRC, and the Lessee. No construction debris, equipments, material should be kept outside the enclosed Site without specific permission of DMRC. Any activity related to construction shall not block the adjacent roads in the Circulating area at any time and shall not hinder passenger or vehicle movement or cause congestion.
- 6.6.9** Adherence to Specifications and Drawings: The whole of the work shall be executed in perfect conformity with the Specifications and approved drawings. If Lessee performs any works in a manner contrary to the Specifications and approved Drawings or any of them and without such reference to the Nodal Officer, it shall bear all the costs arising or ensuing there from and shall be responsible for all loss to DMRC.
- 6.6.10** The Lessee shall undertake the Project using due care and diligence in a professional manner, using sound engineering design and project management principles and supervisory procedures in accordance with best industry practices and for that it shall retain, engage and consult qualified and experienced professionals and consultants with good credentials and experience in relation to a project similar to the Project, which is the subject matter of the Agreement.
- 6.6.11** The Lessee will ensure that all materials, equipment, machinery etc. installed and/or used at the Site will be of sound and high quality, that all workmanship shall be in accordance with best industry practices applicable at the time of installation, construction or repair and that each part of the construction will be fit for the purpose for which it is required.



- 6.6.12** Nodal Officer of DMRC or his representative shall be entitled to, but not obliged to do so, without being required to give prior written notice to the Lessee, inspect the Site. The Nodal Officer and the Nodal Officer's representative shall also at all times have free access to every part of the works and to all places at which materials for the works are stored or being prepared. The lessee shall provide all necessary assistance including accompanying the DMRC's representative during such inspections, providing information, plans and other details of the Project as asked for by the DMRC's representative. Based on such inspections, DMRC may, without being obliged to do so, issue, if found necessary, instructions to the lessee for addressing the deficiencies noted at the site in terms of the agreement. The Lessee shall comply with such instructions within 30 (thirty) days of receipt of such instruction.
- 6.6.13** The lessee shall keep one copy of drawings and specifications and such other documents as may be required by DMRC at the site, in good order for Nodal Officer or his representative
- 6.6.14** Quality assurance: The Lessee shall arrange to have a quality assurance system and engage PMC / Independent Engineer to audit adherence to prescribed codes/manuals guidelines applicable for the specific project. The names of PMC / Independent Engineer shall be got approved from Nodal officer of DMRC in advance. Lessee shall also make available to DMRC all reports of their PMC/ Independent Engineer regarding quality audit and the compliance thereof. Compliance of the Quality Assurance system shall however not relieve lessee of his overall duties and responsibilities for executing the works as per prescribed standards.

Nodal Officer of DMRC or his representative however shall also be entitled to audit any aspect of the works and their observations shall be binding on the lessee.

- 6.6.15** Ownership of drawings and specifications:- All drawings and specifications and copies thereof approved by DMRC shall be deemed to be the property of DMRC and shall not be used on other works without express approval of DMRC.
- 6.6.16** Upon completion of construction of the project and receipt of applicable permits for commercial operation/usage, the lessee shall apply for a Completion Certificate by submitting the certified copies of all such applicable permits together with completion Drawings of assets to the Nodal Officer of DMRC. The Nodal Officer shall, within 30 (thirty) days of such request either issue the Completion Certificate or convey the shortcomings to the Lessee, which the Lessee shall rectify and send fresh request to the Nodal Officer.

However, such completion certificate issued by the Nodal Officer shall in no event amount to certifying the conformity with the approved drawings, applicable law or discharge the lessee from its responsibility of complying with the requirements of the agreement, applicable laws and applicable permits.

- 6.6.17** Compliance to Nodal Officers Instruction:- The Nodal Officer of DMRC or his representative shall have the right to instruct the lessee for rectifying defects in



materials, equipments workmanship, housekeeping, quality or the temporary or permanent works at any time.

- 6.6.18 The Lessee shall be obliged to comply with such instructions. No alteration in or additions to or omissions or abandonment of any part of works shall be deemed authorized, except under instruction from the Nodal Officer.

6.7 ASSIGNABILITY AND ENCUMBRANCE

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

Subject to prior written permission from DMRC, the Lessee / concessionaire can assign its rights under this Lease / 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.



ARTICLE 7

7.0 REPRESENTATIONS AND WARRANTIES

7.1 REPRESENTATIONS AND WARRANTIES OF THE LESSEE

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

- (i) It is duly organized, validly existing and in good standing under the laws of India;
- (ii) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) It has the financial standing and capacity to undertake the Project;
- (v) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (vi) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire Memorandum and Articles of Association or any Applicable Law or any covenant, agreement, understanding, decree or order to which the Concessionaire is a party or by which Concessionaire or any of its properties or assets are bound or affected;
- (vii) 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 Material Adverse Effect;
- (viii) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any government authority which may result in Material Adverse Effect;
- (ix) It has complied with all Applicable Law and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (x) No representation or warranty by the 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; and



- (xi) 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.
- (xii) 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.

7.2 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 8

8.0 RESTRICTION AND CHANGES IN LESSEE AND SPECIAL PURPOSE COMPANY

- 8.1 In case the Lessee is an SPC incorporated as per the requirements of the RFP, the members of Consortium shall be 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.
- 8.2 The members of Consortium of the SPC shall be responsible and liable jointly and severally, for due performance of all the obligations and responsibilities assumed by the SPC under this Agreement.
- 8.3 **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 9

9.0 INDEMNITY

- 9.1 The Lessee hereby undertakes to indemnify and hold DMRC harmless against all costs, damages, liabilities, expenses arising out of any third party claims relating to non-completion of Project; quality of the Project and the Construction / construction activities, sale/ agreement to sell entered into between the Lessee and end user.
- 9.2 The Lessee hereby undertakes to indemnify DMRC against all losses and claims in respect of death or injury to any person or loss or damage to any property which may arise out of or in consequence of the execution and completion of works and remedying defects therein, and against all claims, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 9.3 The Lessee hereby undertakes that DMRC shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Lessee or any of its contractors/sub contractors. The Lessee shall indemnify and keep indemnified DMRC against all such damages and compensation; all claims proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.
- 9.4 The Lessee hereby undertakes to indemnify, defend, save and hold harmless the DMRC and its officers, servants, agents, etc. (the “**DMRC Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from PropertyPurchasers and /or Sub-Lessees 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 on account of any defect or deficiency in the provision of services by the Lessee to any PropertyPurchasers and /or Sub-Lessees or from any negligence of the Lessee under contract or tort or on any other ground whatsoever.

9.5 Survival on Termination

The provisions of this Article shall survive Termination.



ARTICLE 10 TERM AND TERMINATION

10.1 Term

This Agreement shall continue to operate and be binding on the Parties for the Lease Period of **30 (Thirty)** years commencing from the Commencement Date, unless terminated earlier in accordance with the provisions of this Article 10.

10.2 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 stands 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.

10.3 Termination for Force Majeure

The Agreement may be terminated for Force Majeure reasons as specified in Clause 12.5.

10.4 Consequences of Termination



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

10.4.2 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.



10.4.3 Both Parties shall at least 6 (six) months prior to the expiry of the normal Lease Period of **30 (Thirty)** 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.

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

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

10.5 Rights of DMRC on Termination

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

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.

10.6 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 11

11.0 GOVERNING LAW, DISPUTE RESOLUTION & ARBITRATION

11.1 GOVERNING LAW

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

11.2 Amicable Resolution

11.2.1 Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the “**Dispute**”) shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in the clauses below.

11.2.2 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**”).

11.2.3 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.

11.2.4 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.

11.2.5 Any dispute that cannot be settled through conciliation procedure shall be referred to arbitration in accordance with the procedure under Clause 11.3 below.

11.3 Arbitration

11.3.1 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 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.

11.3.2 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.

11.3.3 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.

11.3.4 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.

11.3.5 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 12

12.0 MISCELLANEOUS

12.1 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:

Address:

Facsimile:

If to Lessee:

Address:

Facsimile:

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.

12.2 ASSIGNMENT

The Lessee shall not assign its rights and obligations in whole or in part hereunder without the prior written approval of DMRC.

12.3 VARIATION

Any variation of this Agreement shall be mutually agreed in writing and executed by or on behalf of each of the Parties.

12.4 WAIVER

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

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

12.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall



be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

12.5 FORCE MAJEURE

12.5.1 Force Majeure Event

Any of the following events resulting in material effect on the execution of the Project despite all efforts and prudence by the Lessee, shall constitute a Force Majeure Event

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

12.5.2 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 details:

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

12.5.3 Performance of Obligations

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

- (i) Due notice of the Force Majeure Event has been given to the other party as required by the preceding Article **12.5.2**;
- (ii) The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;



- (iii) There shall be no termination of this Agreement on account of Force Majeure except as provided in Article **12.5.5**;
- (iv) 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 subsists;
- (v) 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 Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (vi) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (vii) The Affected Party shall continue to perform such obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- (viii) Any insurance proceeds received by the 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.

12.5.4 Cost for remedying Force Majeure Event

Upon occurrence of a Force Majeure Event, the Lessee shall as soon as possible, take all necessary actions to cure the Force Majeure Event at its own cost and expense.

12.5.5 Termination due to a Force Majeure Event

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

12.6 SEVERABILITY

In the event of any one or more of the provisions contained in this Agreement being waived, modified or altered, none of the other provisions hereof shall in any way be affected or impaired thereby. If any of the provisions of this Agreement become invalid, illegal or unenforceable in any respects under any Applicable Law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. Where the provisions of such Applicable Law may be waived they are hereby waived by the Parties to the full extent permitted



so that this Agreement shall be deemed to be valid and binding and enforceable in accordance with its terms. If any provisions of this Agreement become invalid, the Parties agree to substitute for such invalid provision a new provision that serves the purpose of the invalid provision to the furthest possible extent.

12.7 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.

12.8 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.

12.9 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.

12.10 EMPLOYEES OF CONCESSIONAIRE

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

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed in 4 (Four) counterparts by their duly authorized representatives as of the date and year first above written.

<p>For and on behalf of Delhi Metro Rail Corporation Limited</p> <p>_____</p> <p>[_____] Authorised Signatory Witness:</p> <p>1. _____</p> <p>2. _____</p>	<p>For and on behalf of [_____] Lessee</p> <p>_____</p> <p>[_____] Authorised Signatory Witness:</p> <p>1. _____</p> <p>2. _____</p>
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SCHEDULE - A

(Ref: Clause 1.1.3 to 1.1.5)

DESCRIPTION OF PROJECT SITE

The site for Delhi Metro's warehouse development is located at balance land parcel and property development area at Jasola Vihar Stabling Yard (Phase-III) admeasuring about approx.. 43833 Sqm (35067 Sqm FAR) at Jasola Vihar area. The 43833 Sqm. Property development area **is a portion of Jasola Vihar Stabling Yard and Jasola Vihar metro Station. The proposed site is bifurcated in three parts by a access road to Jamia Nagar, Abul Fazal Enclave, Shaheen Bagh Residential area and Multi Modal Integration of Jasola Vihar Station as described in the layout plan.** The Project Site, identified is situated between Agra Canal and Jasola Vihar Residential area. The dimensioned plan of site is enclosed with this agreement.



SCHEDULE-B

FORMAT OF PERFORMANCE BANK GUARANTEE

(To be issued by a Scheduled Commercial Bank in India, on non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO. _____ **dated** _____

This Deed of Guarantee made on this day of(month & year)
by:

_____ (Name and address of Bank) of the one part (hereinafter referred to as the “**Bank**” or “**Guarantor**”, which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns)

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 the DMRC has accepted the bid of M/s _____ (hereinafter referred to as the “**Bidder**”, 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 Bidder under the terms of the RFP document 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 full amount of _____ (amount in figures and words) 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, will pay on the same day to DMRC the aforementioned guaranteed amount 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 Bidder or any other person and irrespective of whether the claim of DMRC is



disputed by the Bidder or not, merely on the first from DMRC stating that the amount claimed is due to DMRC by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the RFP document. Any such demand made by DMRC will 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 Bidder 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 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 Bidder and notwithstanding any security or other guarantee that the DMRC may have in relation to the Bidder'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 RFP Document or Lease Agreement or by extension of time granted to the Bidder or due to any postponement/non-exercise/delayed exercise of any of its rights by DMRC against the Bidder or omission on the part of DMRC or any indulgence by DMRC to the Bidder 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 Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf 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/yyyy.
 - 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/yyyy.



IN WITNESS WHEREOF I on behalf 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 _____



SCHEDULE C

Payment Schedule

- I. The Selected Bidder shall follow the following time lines:

Stage of Activity	Time Period
Payment of Upfront Lease Fee.	25% Within 30 days of issue of Letter of Acceptance (LOA) and remaining 75% within 90 days from the date of issue of LOA.
Performance Security to DMRC	Within 30 days of issue of Letter of Acceptance
Signing of Lease Agreement	Within 7 days after payment of Upfront Lease Fee and Performance Security.
Payment of Advance Lease Fee for every year to DMRC by Lessee.	Within 7 days after end of moratorium period. Delay in payment of advance Lease fee shall attract interest @ 20% on outstanding balance on due date

- II. Payment schedule in case of payment of the Lease Upfront Fee in instalments:

- Upfront payment of 25% of the Lease Upfront Fee within 30 days of the issuance of LOA
- *Balance 75% of the Lease upfront fee within 90 days from the date of the issuance of LOA*



SCHEDULE D

DRAFT LEASE AGREEMENT

This Agreement ('Agreement') is made and executed at New Delhi on this _____, 2017.

BY AND BETWEEN

Delhi Metro Rail Corporation Limited, a company incorporated under the Companies Act, 1956, having its registered office at Metro Bhawan, Fire Brigade Lane, Barakhamba road, New Delhi 110001, India (hereinafter referred to as " **DMRC**", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the **ONE PART**;

AND

M/s _____ Ltd., 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**" 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. _____.

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. _____.

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 address**)

Hereinafter referred to as "the **{Lessee/SPC Company}**" (which expression shall, unless excluded by or repugnant to the context hereof, be deemed to mean and include its successors, administrators and permitted assigns) of the **SECOND PART**.

*in case Selected Bidder is a consortium it is required to incorporate an SPC under Companies Act, 2013. (DMRC and the Lessee are hereinafter also individually referred to as a '**Party**' and collectively as '**Parties**').

**WHEREAS:**

- A. DMRC has been established with the principal object of planning, designing, developing, constructing, maintaining, operating and financing Mass Transit and other urban transport and people mover system of all types and descriptions in the National Capital Territory of Delhi and other areas of the National Capital Region (hereinafter called the '**Territory**');
- B. The Delhi Metro Railway (Operation and Maintenance) Act, 2002 has been enacted by the Parliament to provide for the operation and maintenance, and to regulate the metro railway in the metropolitan city of Delhi and for matters connected therewith and incidental thereto;
- C. DMRC has been authorised to develop real estates in and around the metro stations and other places in the Territory and generate revenues there from, for the purpose of part funding of its capital expenditure and to supplement the fare box collection;
- D. In pursuance of the above, DMRC is desirous of raising funds for developing Delhi Mass Rapid Transit System by transfer of its rights of the allotted land to a Lessee for the purpose of Property development of the same. For this purpose DMRC has identified 43833 Sqm. (approx) PD area at Jasola Vihar Stabling yard (35067 Sqm FAR) as more specifically described in Schedule-A hereto and in the plan set out in Schedule A hereto (hereinafter called the "**Project Site**");
- E. DMRC invited bids for the Project through open tender and after evaluation of the bids received and after approval of competent authority, DMRC has accepted the bid of the Selected Bidder/Consortium and has issued a Letter of Acceptance (hereinafter called the '**LOA**') bearing No. _____ dated _____, requiring *inter alia*, the Selected Bidder/Consortium to accept the LOA and to deposit **25%** of the Upfront Lease Fee within 30 (thirty) days of the issuance of the LOA and remaining **75%** of Upfront Lease Fee within 90 days of the issuance of the LOA as per payment schedule under Schedule-C.;
- F. {The Consortium has since promoted and incorporated the SPC Company as a limited liability company under the Companies Act 2013, and has requested DMRC to accept the SPC Company 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.}
- G. The Lessee/SPC Company has represented that it has requisite skill, financial, managerial & technical expertise and experience to design, develop, operate, finance & maintain a state-of the art Property development on the Project Site. 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 bidding documents and are in a position to implement the Project as envisaged in the bid and this Agreement;



- H. The Lessee/SPC Company has submitted the requisite Upfront Payment/ Lease Fee as per the Payment Schedule mentioned at Schedule -C to this Agreement.
- I. Pursuant to acceptance of the Lessee's bid and submission of the Upfront Payment/Transfer Fee, the DMRC has agreed to enter into this Agreement with the {Lessee/SPC Company} for execution of the Project subject to and on the terms and conditions set forth hereinafterfor development of the Project Site;

NOW THEREFORE IN CONSIDERATION OF THE FOREGOING AND THE RESPECTIVE COVENANTS AND AGREEMENTS SETFORTH IN THIS AGREEMENT, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

IN WITNESS WHEREOF the **Parties** hereto have caused this **Agreement** to be executed in Four (4) counterparts by their duly authorized representatives as of the date and year first above written.

For and on behalf of Delhi **Metro Rail Corporation Limited**

For and on behalf of [] **Lessee**

[]
 Authorised Signatory
 Witness:

[]
 Authorised Signatory
 Witness:

1. _____

1. _____

2. _____

2. _____



SCHEDULE-E

Draft Bid Application Form For Warehouse Development At Jasola Vihar Stabling Yard

Form No: _____

DELHI METRO RAIL CORPORATION LIMITED

Application for the “Warehouse Development at Jasola Vihar Stabling Yard”, New Delhi.

A. PARTICULARS OF BIDDER:

1. Name (In block letters) of individual bidder (s)/Firm/Lead Member of the consortium :
2. Name of consortium members if any :
(1)
(2)
3. Status of the bidder/firm/Lead Member :
of consortium whether Public Ltd./Pvt. Ltd.
/partnership/Sole proprietorship etc.
4. i) Year of establishment of bidder/firm/Lead Member of :
consortium
ii) Year of establishment of other members: a)
of Consortium b)
5. Name of the authorised Signatory of the :
firm/LeadMember of consortium & his designation
6. Official Address of authorized signatory :

7. Official address of consortium members:
i) _____

ii) _____



SCHEDULE-F
CONSORTIUM AGREEMENT / MEMORANDUM OF AGREEMENT
[On non judicial stamp paper of appropriate value to be purchased in the name of the executants]

This Consortium Agreement/Memorandum of Agreement is executed at New Delhi on this _____ day of _____, year.

BETWEEN

M/s. _____, a Company incorporated under the Companies Act, 1956 and having its Registered Office at _____ acting through its Managing Director, _____ duly authorized by a resolution of the Board of Directors dated ____ (hereinafter referred to as the '**Lead Member**' which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors in interest, legal representatives, administrators, nominees and assigns) of the ONE Part;

AND

M/s. _____, a Company incorporated under the Companies Act, 1956 and having its Registered Office at _____ and Office at _____, acting through its Managing Director, _____, duly authorized by a resolution of the Board of Directors dated _____ (hereinafter referred to as '**Participant Member 1**' which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors in interest, legal representatives, administrators, nominees and assigns) of the SECOND PART'

AND

M/s. _____, a Company incorporated under the Companies Act, 1956 and having its Registered Office at _____ and Office at _____, acting through its Managing Director, _____, duly authorized by a resolution of the Board of Directors dated _____ (hereinafter referred to as '**Participant Member 2**' which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors in interest, legal representatives, administrators, nominees and assigns) of the THIRD PART'

(hereinafter collectively referred to as "**Consortium**" or "**Parties**")

WHEREAS Delhi Metro Rail Corporation Limited (hereinafter referred to as '**DMRC**') has invited tenders for the "**Warehouse Development on 43833 Sqm. (approx) Property Development area at Jasola Vihar Stabling yard (35067 Sqm FAR)**" ("**Project**") in terms of the RFP document issued for the said purpose and as per the conditions stipulated by DMRC for participating in the bid by the Consortium for executing the Project for which the tender has been floated by DMRC.

AND WHEREAS in terms of the bid document the Parties are interested for participating in the bid process by forming a Consortium between themselves.



AND WHEREAS the Parties hereto have discussed and agreed to form a Consortium for participating in the aforesaid bid and have decided to reduce the agreed terms to writing.

AND WHEREAS it is necessary for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with submission of the Bid.

NOW THIS CONSORTIUM AGREEMENT / MEMORANDUM OF AGREEMENT HEREBY WITNESS:

- A. That in the premises contained herein the Parties having decided to pool their technical know-how, working experiences and financial resources, have formed themselves into a Consortium to participate in the tender process for “**Warehouse Development on 43833 Sqm. (approx) Property Development area at Jasola Vihar Stabling yard (35067 Sqm FAR)**” in terms of the tender invited by Delhi Metro Rail Corporation Ltd., (DMRC).
- B. That the Parties have represented and assured each other that they shall abide by and be bound by the terms and conditions stipulated by DMRC for awarding the Project to the Consortium so that the Consortium may undertake the Project in case the Consortium turns out to be the Selected Bidder in the bid being invited by DMRC for the said purpose.
- C. That the Parties have satisfied themselves that by pooling their technical know-how and technical, managerial and financial resources, the Consortium fulfills the pre-qualification/eligibility criteria stipulated for a bidder, to participate in the bid for the said tender process for executing the Project.
- D. That the Parties have agreed to nominate _____ as the Lead Member who shall be authorized to represent the Consortium for all intents and purposes for dealing with the DMRC or its representatives and for submitting the bid as well as doing all other acts and things necessary for submission of bid, which shall be legally binding on all the members of the Consortium who shall be jointly and severally responsible for the performance and obligations in relation to the bid submitted to DMRC and execution of the Project.
- E. The Consortium further authorizes the Lead Member to represent the Consortium for all correspondence and communications with the DMRC and any notice or communication served upon the Lead Member shall be deemed to be notice or communication to the Consortium.
- F. That the shareholding of the members of the Consortium for this specified purpose shall be as per the Lease Agreement and at present the proposed shareholding shall be as follows:-
 - (i) The Lead Member shall have _____ percent (___%) of share holding with reference to the Consortium for the Project.
 - (ii) The Participant Member 1 shall have _____percent (___%) of share holding with reference to the Consortium for the Project.
 - (iii) The Participant Member 2 shall have _____percent (___%) of share holding with reference to the Consortium for the Project.



SCHEDULE G

BANNED ACTIVITIES

1. Any product / Service the sale of which is unlawful /illegal or deemed unlawful under any Indian act or legislation.
2. Any product the storage and sale of which may lead to or be considered as a fire hazard; such as fire crackers, industrial explosives, chemicals etc.
3. Storage of sale of tobacco and tobacco products.
4. Storage and sale of radioactive material which may lead to or be considered as health hazard.
5. Coal based cooking is strictly prohibited. Gas Based Cooking shall also be permitted as per DMRC's extant Policy / guidelines.



SCHEDULE H
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 Metro Bhawan, Fire Brigade Lane, Barakhamba Road , New Delhi 110001 (hereinafter referred to as “DMRC” which expression shall unless repugnant to the context include its successors and assigns) of the First Part,

AND

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

OR

(in case of consortium) Messrs _____ Ltd., a company incorporated under the provisions of the Companies Act, 1956/2013, having its registered office at _____; Messrs _____ Ltd., a company incorporated under the provisions of the Companies Act, 1956/2013, having its registered office at _____; and Messrs _____ Ltd., and a company incorporated under the provisions of the Companies Act, 1956/2013, having its registered office at _____; who form a consortium for the purposes of this Agreement and Project to be implemented under this Agreement (hereinafter collectively referred to as the “Concessionaire” which expression shall unless repugnant to the context include their respective successors and permitted assigns of the Second Part

and

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

RECITALS

- A. **WHEREAS** DMRC and the Concessionaire have entered into a Lease/Concession Agreement dated _____ 20XX (hereinafter referred to as “Lease/Concession Agreement ”) pursuant to which DMRC has granted to the



Lessee/Concessionaire, Lease to develop, procure, finance, construct, manage, maintain and licence the use of the built up spaces and facilities in the Specified Area for specified purposes at Name of the Project ; a copy of the Lease/Concession Agreement signed between DMRC and the Lessee/Concessionaire is attached to this Agreement.

- B. **AND WHEREAS** to provide security to DMRC and to have the first and paramount charge over all the receivables that the Lessee/Concessionaire is entitled to claim or receive from the sub Lessee/Concessionaire from the use of the Project Facilities built up space, etc. in the specified area, the Lessee/Concessionaire has agreed to open the escrow account.

- C. **AND WHEREAS** it is provided in the Lease/Concession agreement dated _____ 20XX that that the Lessee/Concessionaire shall, within 2 months from the date of signing of this agreement shall identify a nationalized/scheduled bank acceptable to DMRC and open an account in terms of the Escrow Agreement to be signed between the Lessee/Concessionaire, DMRC and the Bank and that the Escrow Agent shall be instructed to remit to DMRC the amounts becoming due to DMRC under the Lease/Concession Agreement as per the claims made by DMRC from time to time.

- D. **AND WHEREAS DMRC** and the Lessee/Concessionaire have agreed to appoint _____ Bank _____ (the Escrow Agent) and the said bank has agreed to act as the Escrow Agent to hold and administer monies deposited in the Escrow Account and to transfer such monies in accordance with the terms of this Agreement read with the Lease/Concession Agreement.

NOW THIS AGREEMENT WITNESSETH AS UNDER

- 1. At the instance of the Lessee/Concessionaire, the Escrow Agent has opened a Escrow Account being Account No. _____ with _____ (branch) solely for the proposes of this Agreement and to duly secure the interest of DMRC. DMRC and the Lessee/Concessionaire hereby appoint _____ Bank _____ (address) and _____ Bank hereby accepts the appointment as the Escrow Agent in respect of the amounts deposited in the Escrow Account and to hold and administer the proceeds in the said Escrow Account in accordance with the terms and conditions contained herein.

- 2. The Lessee/Concessionaire hereby unconditionally and irrevocably agree to receive and deposit all receivables of whatsoever nature from sub-leasing the use of the built-up spaces or otherwise the Project Facility at the Specified Area into the Escrow account with the Escrow Agent.



3. The Lessee/Concessionaire agrees to deposit the amounts received in cash at the Escrow Account within 24 hours from the receipt thereof or the immediate next working day in case of a Bank holiday.
4. The Lessee/Concessionaire shall not give credit or make any adjustment against the receivables for any payment due from the Lessee/Concessionaire.
5. The Lessee/Concessionaire hereby acknowledges and undertakes not to open or establish any another account other than the Escrow Account with any Bank or Body Corporate for the receipt/ deposit of the receivables from sub-leasing the use of the built-up space or otherwise from the facilities at the Specified Area.
6. The Lessee 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 Lessee/Concessionaire to DMRC under the Lease/Concession Agreement as per the claims made by DMRC from time to time (Copy of invoices would be sent to Escrow Agent periodically).
8. So long any amount is outstanding to DMRC from the Lessee/Concessionaire as per the Claims made by DMRC, the amounts in the Escrow Account shall not be utilized for any other purpose other than for making outstanding payments to DMRC. After due discharge of all the amounts outstanding to DMRC, the Escrow Agent shall allow the amount to be utilized by the Lessee/Concessionaire only till such time further amount becomes due from Lessee/Concessionaire to DMRC as per the claims made by DMRC.
9. The Lessee/Concessionaire 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 the banks or lending institution over-riding or otherwise adversely affecting the interest of DMRC.
10. The Escrow Agent shall compute and maintain records of all the transactions and the copies of such records shall be made available to DMRC as sought from time to time.

The Escrow Agent within 5 days after the end of every quarter, shall send quarterly Account Statements to DMRC E Mail 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.

11. Names and specimen signatures of the officials of DMRC and the Lessee/Concessionaire authorized to issue notices under this agreement duly attested are annexed. Changes, if any, in the said authorization will be advised to the Escrow Agent from time to time.



12. The DMRC and the Lessee/Concessionaire both declare that notwithstanding anything to the contrary herein, this agreement is neither intended nor shall be construed, as an amendment or modification to the Lease/Concession Agreement .
13. Except as otherwise expressly provided elsewhere in this Agreement, all notices and/ or communications which are required and remitted to be in writing shall be sufficient if delivered by Registered Post/ Speed post/ courier/ telegram and addressed on the addresses given hereunder:
 - (i) DMRC The Managing Director,
Metro Bhawan, Fire Brigade Lane ,Barakhamba
Road, New Delhi 110001
 - (ii) Concessionaire The Managing Director,
_____ (Name & address of the
Lessee/Concessionaire)
 - (iii) Escrow Agent The Chief Manager,
_____ (Name & address of the Bank
Branch)
14. All the parts of this Agreement shall be governed and construed in accordance with the Indian Laws and the parties hereby irrevocably submit to the exclusive jurisdiction of the Courts in Delhi.
15. No variation of this agreement shall be valid or effective unless agreed to in writing by all the parties.
16. The Lessee/Concessionaire shall obtain, maintain and comply with all authorisation, licences and consents for operation of the Escrow Account at its own cost and pay any taxes, fees, charges or duties including stamp duty or registration fees as may be required from time to time without raising any debit in the Escrow Account.
17. The Lessee/Concessionaire shall indemnify the Escrow Agent against any financial liability, which may arise while the Escrow Agent discharges his duties and functions as per the Tripartite Agreement to be signed with the Escrow Agent.
18. This agreement to be effective on the date of execution of this agreement, however the obligation of the Parties hereto shall commence from _____ (date). This agreement shall be co-terminus with the Lease/Concession Agreement dated _____ 20XX, unless otherwise terminated with the mutual consent of the Parties; save and except that all dues of the DMRC should have been fully paid/ discharged. No variation of this Agreement shall be valid or effective unless agreed to in writing by all the parties.
19. As full compensation of its services, the Escrow Agent shall be paid by Lessee/Concessionaire Rs./- per month. The Lessee/Concessionaire shall be liable and responsible to pay the charges to the Escrow Agent and the Escrow Agent shall not have any claims against DMRC for the same.



20. The Lessee/Concessionaire, DMRC and the Escrow Agent hereby agree and undertake not to disclose any information relating to the provisions of this Agreement to any third party or use the information for any purpose not related to the Project except with the prior written consent of the other parties.
21. The rights of the DMRC under this Agreement shall be in addition and without prejudice to all other rights DMRC has under the Lease/Concession Agreements.
22. All terms used in this agreement not expressly defined herein shall have the meaning assigned thereto in the Lease/Concession Agreement .

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

For and on behalf of DMRC by:

(Signature)
(Name)
(Designation)

For and on behalf of the Lessee/Concessionaire by:

(Signature)
(Name)
(Designation)

For and on behalf of the _____ Bank :

(Signature)
(Name)
(Designation)

In the presence of:

- 1)
- 2)
- 3)



ANNEXURE-A

Details of due amount and due date

Note :

1. The above amounts are excluding GST.
2. Electricity, water charges etc, are not included in the rentals and these charges will be intimated separately.