

**Request for Proposal**  
**for**  
**Auction of license rights for a DDA land**  
**parcel located in Sector 36, Rohini, New Delhi**  
**For**  
**Development of a Warehouse Complex**



**Delhi Development Authority**  
**Office: Vikas Sadan, INA, New Delhi-110023**

<https://dda.gov.in/>

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**RFP No: DDA/ LD/ SLPC/Spl. Project RFP/ 2025/03**

**Date: July 02, 2025**

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## DISCLAIMER

- a) The information contained in this Request for Proposal document (the “**RFP**”) or subsequently provided to Bidder(s) (as defined hereinafter), whether verbally or in documentary or any other form, by or on behalf of the Authority (as defined hereinafter) or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.
- b) This RFP has not been filed, registered or approved in any jurisdiction. Its possession or use in any manner contrary to any Applicable Law (as defined hereinafter) is expressly prohibited. Bidders shall inform themselves of any applicable legal requirements in respect of this RFP and shall observe the same.
- c) This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in formulation of their application for qualification and making their technical and financial offers (**Bids**) pursuant to this RFP.
- d) This RFP includes statements for selection of a Selected Bidder (as defined hereinafter) for the Project (as defined hereinafter) and for no other purposes. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project (as defined hereinafter). Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require.
- e) This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents especially the Project Information Memorandum (as defined hereinafter), may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own diligence, investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.
- f) Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
- g) The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness,

completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this RFP.

- h) The Authority, its employees or advisors also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.
- i) The Authority may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.
- j) The issue of this RFP does not imply that the Authority is bound to select the Bidder or to appoint the Selected Bidder or Licensee (as defined hereinafter), as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reasons whatsoever.
- k) The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

## GLOSSARY

### Part I – Definition

|                              |   |
|------------------------------|---|
| ACI                          | As defined to in Clause 2.2.3(d)  |
| Appointed Date               | As defined in the Licence Deed  |
| Associate                    | As defined to in Clause 2.2.8   |
| Auction Process              | As defined to in Clause 3.8.1   |
| Authority                    | As defined to in Clause 1.1.1   |
| Bid                          | As defined to in Clause 1.2.1   |
| Bid Due Date                 | As defined to in Clause 1.1.7   |
| Bid Security                 | As defined to in Clause 1.2.7   |
| Bidders                      | As defined to in Clause 1.2.1   |
| Bidding Documents            | As defined to in Clause 1.1.7   |
| Bidding Process              | As defined to in Clause 1.2.1   |
| Change in Ownership          | As defined in the Licence Deed  |
| Conflict of Interest         | As defined to in Clause 2.2.1(c)  |
| Control                      | means, with respect to a person: (a) the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such person by operation of law, contract or otherwise, and the term 'Controlled' shall be construed accordingly. |
| Damages                      | As defined to in Clause 2.2.1 (c)   |
| DDA                          | Delhi Development Authority   |
| Financial Bid                | As defined to in Clause 1.2.1   |
| Financial Capacity           | As defined to in Clause 2.2.2 (A)   |
| Financial Close              | As defined in the Licence Deed  |
| Financial Quote              | As defined to in Clause 1.2.11  |
| Government                   | Government of India   |
| Highest Bidder               | As defined to in Clause 1.2.11  |
| Joint Bidding Agreement      | As defined to in Clause 2.2.4 (ii)(e)   |
| Lead Member                  | As defined to in Clause 2.2.4 (ii)(e)(iv)   |
| Licence Deed                 | As defined to in Clause 1.1.3   |
| Licensee                     | As defined to in Clause 1.1.3   |
| LOA                          | As defined to in Clause 3.8.9   |
| Member                       | Member of a Consortium  |
| Net Worth                    | As defined to in Clause 2.2.3 (b)   |
| PPP                          | Public Private Partnership  |
| Project                      | As defined to in Clause 1.1.1   |
| Re. or Rs. or INR            | Indian Rupee  |
| RFP or Request for Proposals | As defined to in the Disclaimer   |
| Selected Bidder              | As defined to in Clause 3.8.3   |
| SPV                          | As defined to in Clause 1.1.2 (v)   |
| Subject Person               | As defined to in Clause 2.2.1 (d)(i)(aa)  |
| Swiss Challenge Process      | means the bidding process for the identification of Technically Qualified Challenge Bid followed by forward e-auction using the Anchor Bid as the reserve price in accordance with Clause 3.8.11  |

|                               |                               |
|-------------------------------|-------------------------------|
| Technical Bid                 | As defined in Clause 1.2.1    |
| Technically Qualified Bidders | As defined in Clause 3.4.1    |
| Tie Bidders                   | As defined to in Clause 3.8.6 |

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein. The words and expressions (even in abbreviated form) beginning with capital letters and not defined herein, but defined in the Licence Deed, shall, unless repugnant to the context, have the meaning ascribed thereto herein.

## **Part II - Principles of Interpretation**

1. Throughout this Bidding Documents, unless indicated otherwise by the context, the singular also includes plural.
2. Any reference in this Bidding Documents to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision, and to all statutory instruments, orders and regulations for the time being made pursuant to it or deriving validity from it, as may be, from time to time, amended, modified, extended or re-enacted, whether before or after the date of this Bidding Documents.
3. The words "hereof," "herein", "hereunder" and words of similar import when used in this Bidding Documents shall refer to this Bidding Documents as a whole and not to any particular provision of this Bidding Documents. The words "include" and "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import.
4. The headings in this Bidding Documents are intended for convenience only and shall not, in any way affect the meaning or construction of any provision therein.
5. References to Sections, Clauses and sub-Clauses are, unless the context otherwise requires, references to Section, Clauses and sub-Clauses of this Bidding Document.
6. References to days, months and years are references to calendar days, calendar months and calendar years respectively.
7. References in this Bidding Documents to any consent or approval or permission or satisfaction or confirmation or certificate or agreement by any Person shall in each case mean in written form and signed, whether digitally or physically, by the authorized signatory of such person.

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## **Invitation for Proposal**

## Delhi Development Authority

### 1. INTRODUCTION

#### 1.1. Background

1.1.1. The Delhi Development Authority (the “**Authority**” or “**DDA**”) was created in 1957 under the provisions of the Delhi Development Act, 1957 "to promote and secure the development of Delhi". The DDA is responsible for planning, development and construction of housing projects, commercial lands, land management, land disposal, land pooling, land costing etc. DDA has played a vital role in the orderly-yet-rapid development of Delhi. As a part of its objective, the Authority has decided to auction a land parcel measuring approximately 23.2 acres (across two plots, as set out in Clause 1.1.2 iv and Appendix X: Project Information Memorandum) located on Plot Location on a license fee basis. The Selected Bidder will develop, build, finance, operate and transfer a Warehouse Complex, as specified in “**Development obligations**” by the authority in **Appendix XIV (“Project”)**.

“**Development**” shall mean, design, construction, redevelopment, repair, improvement, renovation, refurbishing, augmentation, upgradation, strengthening and other activities incidental thereto and as permitted under and in accordance with applicable laws and applicable permits, including such additional rights as may be granted from time to time to develop, finance, operate and manage the Project.

1.1.2. Brief particulars of the Project are as follows:

| S. No | Particulars            | Details  |
|-------|------------------------|--|
| i.    | Project Title          | Auction of license rights for a DDA land parcel located in Sector 36, Rohini, New Delhi on DDA land. The Selected Bidder will develop, build, finance, operate and transfer a Warehouse Complex according to “Development Obligations” as specified in Appendix XIV.   |
| ii.   | Authority              | Delhi Development Authority, Delhi   |
| iii.  | Plot Location          | Sector 36, Rohini, New Delhi<br>Google Map Link:<br><a href="https://maps.app.goo.gl/tGz45oCK5QH6VKhk8">https://maps.app.goo.gl/tGz45oCK5QH6VKhk8</a>  |
| iv.   | Plot Area              | Approximately 23.2 acres across two plots (Plot A : 10.43 Acres approximately & Plot B: 12.73 acres approximately)   |
| v.    | Project Implementation | The Selected Bidder (including in case of Consortium) shall be required to form an appropriate special purpose vehicle, incorporated on or after the date of issuance of the LOA under the Companies Act, 2013 (the "SPV"), for the execution of the Licence Deed and exclusive implementation of this Project as per the terms of the Licence Deed. |

| S. No | Particulars                       | Details  |
|-------|-----------------------------------|--|
| vi.   | Licence Period                    | 33 (Thirty-three) years from the Appointed Date  |
| vii.  | Construction Period               | 24 (Twenty-Four) Months starting from the Appointed Date, subject to the terms of the License Deed   |
| viii. | Non-Refundable Bid Processing Fee | <b>Rs. 25,000 (Rupees Twenty-Five Thousand) plus applicable Goods and Service Tax (GST)</b>  |
| ix.   | Bid Security                      | <b>Rs. 8,55,00,000/- (Rupees Eight Crores Fifty Five lakhs Only)</b>   |
| x.    | Upfront Payment                   | <b>Rs. 7,55,00,000 (Rupees Seven Crores Fifty Five Lakhs only)</b> plus applicable Goods and Service Tax (GST) to be paid in 03 (three) instalments as per the payment structure provided in article 18.2.1 of the Schedule I of the License Deed.   |
| xi.   | Annual Licence Fee                | An amount as determined based on the highest bid received at the end of the Auction Process which has been accepted by the Authority plus applicable Goods and Service Tax (GST).<br><b>The reserve price for the Auction Process has been set at Rs. 17,40,00,000 (Rupees Seventeen Crores Forty Lakhs only) per annum.</b> |
| xii.  | Performance Security              | The Performance Security will be equal to the H1 Bid value identified pursuant Bidding Process as set out in the Bidding Documents.  |

Additional site-specific information has been specified in Appendix X.

The Authority intends to award the Project through an open and competitive Bidding Process (defined hereinafter) in accordance with the procedure set out under the Bidding Documents.

- 1.1.3. The Selected Bidder shall incorporate a special purpose vehicle, incorporated on or after the date of issuance of the LOA, under Companies Act 2013, for execution of licence deed (the “**Licensee**”). The Licensee shall be responsible for undertaking the Development, finance, operation & maintenance and transfer of the Project in accordance with the provisions of a licence deed (the “**Licence Deed**”) proposed to be executed between the Licensee and the Authority in the form and manner as provided under the Bidding Documents.
- 1.1.4. [Not used]
- 1.1.5. The Selected Bidder is required to ensure that it shall prepare all the project documents and obtain all the requisite statutory permits, approvals and clearances, at its own cost and expense, with no liability to the Authority, whether financial or otherwise for the Project and performance of its obligations in accordance with the License Deed. The Authority will provide reasonable support to the Licensee in procuring such approvals and clearance required for the Project to the extent feasible and with no liability to the Authority. The details of a single point of contact (SPOC)

of the Authority (as may be updated by the Authority from time to time and communicated in writing to the Licensee) in relation to such support are as follows:

|   |   |
|---|---|
| <b>Name</b>   | Dr. Mannan Akhtar, IAS  |
| <b>Designation</b>  | Commissioner (Land Disposal)  |
| <b>Address</b>  | Room No. 107<br>Delhi Development Authority<br>A Block, 1 <sup>st</sup> Floor, Vikas Sadan<br>INA, New Delhi – 110023 |
| <b>Telephone No &amp; Email ID</b>  | + 91 11 2469 8350<br><a href="mailto:slpc.ld@dda.gov.in">slpc.ld@dda.gov.in</a>                                       |
| Note: The Authority can change the SPOC at any time during the duration of this tender process or the Licence Period. The bidders / the Licensee shall be notified about any such change. |   |

- 1.1.6. The scope of work in relation to the Project will broadly include Development and financing of the Project as per the terms of the Licence Deed. The Project will be operated and maintained by the Licensee during the License Period in accordance with the terms of the Licence Deed. Upon expiry of the License Period or termination of the License Deed as per the terms of the License Deed, the Licensee shall handover the Project and site to the Authority as per the terms of the License Deed. The detailed terms and conditions of the license are set forth in the Licence Deed, including *inter alia* the scope of the services and obligations required to be undertaken by the Licensee.
- 1.1.7. The Authority will receive Bids in accordance with this RFP and other documents provided by the Authority (collectively the "**Bidding Documents**"). The Authority may modify, alter, amend, and clarify the Bidding Documents from time to time. All Bids must be prepared and submitted in accordance with the terms of the Bidding Documents on or before the date specified in Clause 1.3 (the "**Bid Due Date**").
- 1.1.8. The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Licensee as set forth in the Licence Deed or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the license to be awarded pursuant to the Bidding Document or the terms thereof or herein contained. Consequently, any and all omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claim on that account shall be entertained by the Authority.

## 1.2. Brief description of Bidding Process

- 1.2.1. The Authority has adopted an online, open and competitive bidding process (referred to as the “**Bidding Process**”) for selection of the Selected Bidder for award of the Project. The first part (the, “**Technical Bid**”) of the Bidding Process involves qualification (the Technical Qualification) of interested parties/ consortia who submit a Bid in accordance with the provisions of the Bidding Documents (the “**Bidder**”, which expression shall, unless repugnant to the context, include members of the Consortium). The second part of the process involves the evaluation of the Financial Bid (the “**Financial Bid**”) submitted by the Bidders who have qualified in the Technical Bid. The Technical Bid and Financial Bid shall collectively be referred as the bid (the “**Bid**”). In the third part, an online e-forward auction process as per Clause 3.8 below will be conducted among the Bidders whose Bid have qualified the Technical Bid stage and whose Financial Bid have been submitted in accordance with the provisions of the Bidding Document. Subsequent to the Auction Process, the Financial Bid of the Bidders would stand modified to the extent of change made by them in the Auction Process and the Bid would be construed accordingly.
- 1.2.2. The Financial Quote, as amended pursuant to the Auction Process, shall constitute the sole criteria for evaluation of Bids of the Technically Qualified Bidder. Subject to Clause 2.7, the Project will be awarded to the Technically Qualified Bidder quoting the highest Financial Quote pursuant to the Auction Process. For the avoidance of doubt, subsequent to the Auction Process, Financial Quote for any Bidder would mean the highest Financial Quote by that Bidder during the Auction Process.
- 1.2.3. In this RFP, the term “**Highest Bidder**” shall mean the Technically Qualified Bidder who has quoted the highest Financial Quote pursuant to the Auction Process. Subject to the provisions of Clause 3.8, the Project will be awarded to the Highest Bidder.
- 1.2.4. Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited to match the Financial Quote submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason.
- 1.2.5. If upon completion of the first attempt of the Bidding Process only 01(one) Bidder submits a qualified Technical Bid, or if for any reason only 01 (one) Bidder is determined to be technically qualified as per the Bidding Document, the Authority reserves the right to trigger the Swiss Challenge Process in accordance with Clause 3.8.11 below and other applicable terms of this RFP.
- 1.2.6. Prior to participation in the Bidding Process, the Bidder shall pay to the Authority, a non-refundable sum of Rs. 25,000 (Rupees Twenty Five Thousand) plus applicable Goods and Service Tax (GST) (as per the applicable GST rate) in the ‘e-payment’ link available on [www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com) as the cost of the Bidding Process (the “**Bid Processing Fee**”). The Bidder shall submit a proof of payment confirmation of the non-refundable Bid Processing Fee along with the Technical Bid. The Bidders

would be required to furnish all the information specified in under the Bidding Documents. The Bid shall be valid for a period of not less than 270 (two hundred and seventy) days from the Bid Due Date.

- 1.2.7. A Bidder is required to deposit, along with its Bid, a non-interest-bearing bid security of Rs. 8,55,00,000/- (Rupees Eight Crores Fifty Five lakhs Only) (“**Bid Security**”) as per Clause 2.21 below.
- 1.2.8. The Government of India has issued guidelines (see Appendix-VII of RFP) for qualification of bidders seeking to acquire stakes in any public-sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.
- 1.2.9. The Bidding Documents include the draft of the Licence Deed, which is provided as Appendix XIII. The Project Information Memorandum is also included as **Annexure X** (the “**Project Information Memorandum**” or “**PIM**”). Subject to the provisions of Clause 2.1.2, the aforesaid documents and any addenda issued subsequent to this RFP document, will be deemed to form part of the Bidding Documents.
- 1.2.10. Bidders are invited to examine the Project in greater detail, and to carry out, at their own cost, such studies or diligence as may be required for submitting their respective Bids. The Authority shall have no obligation to provide any document or facilitate or provide any support for such studies or diligence being undertaken by the Bidders.
- 1.2.11. (a) Bids are invited for **Annual License Fee (ALF)** (the “**Financial Quote**”) which should be greater than the **Minimum Annual License Fee (MALF) of Rs. 17,40,00,000 (Rupees Seventeen Crores and Forty Lakhs only) per annum**. The Financial Quote offered by a Bidder to the Authority shall be paid on a periodic basis throughout the License Period as escalated on a periodic basis in accordance with Article 18.3 of the Licence Deed. In addition to the ALF, the Selected Bidder is required to make payment of a fixed, non-refundable, one-time, upfront payment to be paid in instalments as set forth in this RFP as per article 18.2.1 of schedule 1 of the Licence Deed (the “**Upfront Payment**”) a sum of **Rs. 7,55,00,000 (Rupees Seven Crores and Fifty Five Lakhs only)**. The License Period is pre-determined, as indicated in the Licence Deed.
- 1.2.12. Any queries or request for additional information concerning this RFP shall be submitted in writing and by e-mail to the officer designated in Clause 2.13.6. The communication shall clearly bear the following identification/ title:

**“Queries/Request for Additional Information: Auction of licence rights of land parcel in Sector 36, Rohini, New Delhi on license fee basis for Development of a Warehouse Complex”.**

1.2.13. The Official Website is: <https://dda.gov.in/tender>

Bidders are advised to visit this website regularly to keep them updated, for any changes/ modifications related to this RFP.

### 1.3. Schedule of Bidding Process

The schedule for the Bidding Process is as follows:

| Sl. No. | Event Description   | Date  |
|---------|---|---|
| 1.      | <b>Publication of the RFP (NIT)</b>   | Wednesday, 2 July, 2025   |
| 2.      | Site Visits   | Starting from Wednesday, 2 July, 2025 to Wednesday, 27 August, 2025                   |
| 3.      | <b>Pre Bid Meeting</b>  | Wednesday, 16 July, 2025  |
| 4.      | Last date for receiving queries   | Thursday, 17 July, 2025   |
| 5.      | Authority's response to pre-bid queries   | Tuesday, 29 July, 2025  |
| 6.      | <b>Bid Due Date and Time</b>  | <b>Thursday, 28 August, 2025<br/>[on or before 12:00 Noon (Indian Standard Time)]</b> |
| 7.      | Date for opening of Technical Bid   | Thursday, 28 August, 2025<br>[02:00 PM (Indian Standard Time)]                        |
| 8.      | Date for Announcement of Bidders whose Technical Bid have qualified as per the Bidding Document   | Wednesday, 10 September, 2025   |
| 9.      | Date of opening of Financial Bid  | Thursday, 11 September, 2025  |
| 10.     | <b>Start Date of Auction Process</b>  | Friday, 12 September, 2025  |
| 11.     | End date of Auction Process   | Friday, 12 September, 2025  |
| 12.     | <b>Issue of Letter of Award</b>   | T <sub>1</sub>  |
| 13.     | Acceptance of the Letter of Award   | T <sub>1</sub> + 7 days   |
| 14.     | <b>Payment of the first installment of the Upfront Payment &amp; Submission of Performance Security and execution of the Licence Deed</b> | T <sub>1</sub> + 30 days  |
| 15.     | Timelines in relation to Swiss Challenge Process, if applicable   | To be subsequently notified by the Authority  |

The Authority reserves the right to modify the above schedule at its discretion, which shall be binding on the Bidders.

## 2. INSTRUCTION TO BIDDERS

### A. GENERAL

#### 2.1. General terms of Bidding Process

- 2.1.1. The Authority intends to receive Bids under this RFP from technically and financially capable Bidders. No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid for the Project as a member of any other Consortium, as the case may be.
- 2.1.2. The Project Information Memorandum (as provided in **Annexure X**) of the Project is being provided only as a preliminary reference document and as an assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Notwithstanding anything contrary contained in this RFP, nothing contained in the PIM shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the PIM.
- 2.1.3. Notwithstanding anything to the contrary contained in this RFP, in the event of a contradiction between the RFP, other Bidding Documents and the Licence Deed, the detailed terms specified in the Licence Deed shall have overriding effect on the RFP and other Bidding Documents. For avoidance of doubt, any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to and not in derogation of its obligations under the Licence Deed.
- 2.1.4. Bidders are required to submit their Bids online at [www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com) in the specified format. The Technical Bid and Financial Bid should be furnished in the format at Appendix–I and Appendix–VI respectively along with all enclosures, duly signed by the Bidder’s authorised signatory. The Financial Bid shall clearly indicate the bid amount, in both figures and words, in Indian Rupees. The bid amount shall consist of **the Financial Quote** which should be greater than the **Minimum Annual Licence Fee (MALF)**, for the same to be considered valid for the Auction Process. In the event of any difference between figures and words in the Bid, the amount indicated in words in the Bid shall be taken into account. The Bidder shall submit only one Technical Bid and Financial Bid for the Project.
- 2.1.5. The Bidder shall deposit a Bid Security in accordance with the provision of Clause 2.21 below.
- 2.1.6. The Bidder is required to submit a Power of Attorney as per the format at Appendix-III authorizing the signatory of the Bid to commit the Bidder.
- 2.1.7. In case the Bidder is a Consortium, each of the Members thereof must furnish a Power of Attorney in favour of the signatory of the Lead Member in the format at Appendix-IV.

- 2.1.8. For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.
- 2.1.9. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal or official seal of all members of the executant(s) affixed in accordance with the required procedure.
- 2.1.10. The Bidder should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the relevant executant(s).
- 2.1.11. The Bidder(s) / members of the Consortium / Associate of foreign origin shall disclose the name and address of their agents/representatives in India, if any. Similarly, the Bidder(s) / Members / Associate of Indian nationality shall furnish the name and address of the foreign principals, if any.
- 2.1.12. The Bidder is required to submit a duly executed and stamped copy of the Integrity Pact as per the format at Appendix-XI, executed by the Bidder and by each of the Members (in case of Consortium).
- 2.1.13. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.14. The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the properties of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.14 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any bid document or any information provided therewith.

## **2.2. Eligibility of the Bidder**

- 2.2.1. For determining the eligibility of Bidders for submission of Bids hereunder, the following shall apply:
  - (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder or other Consortium. The term Bidder used herein would apply to both a single entity and a Consortium.

- (b) Bidder may be the following entities or any combination of them with a formal intent to enter into a Joint Bidding Agreement or under an existing agreement to form a Consortium (a Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.4 below):.
- i. Resident Indian Citizen
  - ii. Non-Resident Indian
  - iii. Sole Proprietorship (resident Indian Citizen / Non-Resident Indian)
  - iv. Companies incorporated under the Companies Act 1956/2013
  - v. Companies incorporated in jurisdictions outside of India
  - vi. Registered Partnership Firms formed under the Indian Partnership Act 1932
  - vii. Limited Liability Partnership incorporated in India under the Limited Liability Partnership Act, 2008
- (c) The Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have any Conflict of Interest shall be disqualified<sup>1</sup>. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss likely to be suffered and incurred by the Authority and not by way of penalty for, *inter alia*, the time, cost and effort of the Authority, including consideration of such Bidder's proposal (the "**Damages**"), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Licence Deed or otherwise, under the law.
- (d) Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common Controlling shareholders or other ownership interest;
- Provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 25 (twenty-five) per cent of the subscribed and paid up equity share capital of such

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<sup>1</sup> The provisions of sub-Clauses (i), (iii) and (v) of Clause 2.2.1 (d) shall not apply to government companies.

Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is less than 25 (twenty five) per cent of the subscribed and paid up equity share capital thereof;

Provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013.

For the purposes of this Clause 2.2.1, indirect shareholding held through one or more intermediate persons shall be computed as follows:

(aa) where any intermediary is Controlled by a person through management control or otherwise, the entire shareholding held by such Controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such Controlling person in the Subject Person; and

(bb) subject always to sub-Clause (aa) above, where a person does not exercise Control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis;

Provided, however, that no such shareholding shall be reckoned under this sub-Clause 2.2.1(d)(i) if the shareholding of such person in the intermediary is less than 26% (twenty-six percent) of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) for Bidders other than companies under the Companies Act, 2013/1956, reference to shareholding under this Clause 2.2.1 shall mean ownership interest; or
- (iii) a constituent of such Bidder, is also a constituent of another Bidder; or
- (iv) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- (v) such Bidder has the same authorized signatory for purposes of this Bid as any other Bidder; or
- (vi) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each other's confidential information or to influence the Bid of either or each other; or

- (vii) any director or other key managerial personnel (as defined in the Companies Act, 2013) of a Bidder is or have been in the past 3 (three) years, a key managerial personnel of DDA; or
  - (viii) such Bidder, or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- (e) A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters relating to or incidental to the Project. For avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 30 (thirty) days prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after the execution of the Licence Deed.
- (f) None of the Bidders, its directors, promoters or Associate shall figure in any list of wilful defaulters maintained by the Reserve Bank of India, or have been convicted by a Court of law for any offence committed for any financial crimes or money-laundering activities.
- (g) Further, the Bidders, its directors, promoters or Associates must not have been blacklisted, debarred or suspended by any governmental authority in India, in relation to any public procurement works/contracts.
- (h) The Bidder or its promoters' should not have an account, which has been classified as a non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 as of the date of submission of the Bid.
- (i) None of the Bidders, its directors, promoters or Associate shall, as of the date of submission of the Bid, been declared fraud or a fraudulent account by any bank or financial institution.
- (j) No red corner notice shall have been issued in the name of the Bidders, its directors, promoters or Associate, as of the date of submission of the Bid.

For the avoidance of doubt, in the event of a Conflict of Interest that affects the Bidding Process between 2 (two) or more Bidders, all such Bidders shall be forthwith disqualified.

Explanation: In case a Bidder is a Consortium, then the term Bidder as used in Clause 2.2.1 shall include each Member of such Consortium.

2.2.2. To be eligible for Qualification, a Bidder shall fulfil the following conditions of eligibility:

- (A) **Financial Capacity:** The Bidder shall have a minimum Net Worth or in case the Bidder is an AIF it should have a minimum ACI at the close of the preceding financial year (the “**Financial Capacity**”) as provided in the table below:

| Parameter   | Value   |
|---|---|
| Financial Capacity<br>(Net Worth / ACI <sup>2</sup> ) | Rs. 61,00,00,000 only<br>(Rupees Sixty One Crores only) |

For the purpose of this RFP, the following terms shall have the meaning hereinafter respectively assigned to them:

- i. “AIF” shall have the meaning as ascribed to the term ‘Alternative Investment Fund’ under Regulation 2(1)(b) of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (as amended); and
- ii. “Foreign Investment Fund” shall mean any pooled investment vehicle or investment fund which is registered or recognised with a securities market/banking regulator of a ‘foreign jurisdiction’; and
- iii. “foreign jurisdiction” means a country, other than India, whose securities market regulator is a signatory to International Organization of Securities Commission’s Multilateral Memorandum of Understanding (IOSCO's MMOU) (Appendix A signatories) or a signatory to bilateral Memorandum of Understanding with the Securities and Exchange Board of India, and which is not identified in the public statement of Financial Action Task Force as a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply or a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

**(B) Technical Capacity:**

- (i) For demonstrating technical capacity or experience (the “**Technical Capacity**”), the Bidder shall over the last 3 (three) financial years preceding the Bid Due Date, have:
  - (a) Developed and owned OR Operated, maintained, and managed OR Developed, operated, maintained and managed, one (01) “**Functional Eligible Project**”

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<sup>2</sup> ACI is defined in Clause 2.2.3 (b)

with a project cost of at least Rs. 195,00,00,000 (Rupees One Hundred and Ninety Five Crores).

**OR**

- (b) Developed and owned OR Operated, maintained, and managed OR Developed, operated, maintained and managed, two (02) **Functional Eligible Project(s)** with each of such Functional Eligible Project having a project cost of at least Rs. 146,00,00,000 (Rupees One Hundred and Forty Six Crores).

**OR**

- (c) Developed and owned OR Operated, maintained, and managed OR Developed, operated, maintained and managed 3 (three) **Functional Eligible Project** with each of such Functional Eligible Project having with a project cost of at least Rs. 98,00,00,000 (Rupees Ninety Eight Crores).

**Note: The project cost of the Functional Eligible Project will have to be reported without factoring in the land cost.**

- (ii) For the purpose of Technical Capacity, “**Developed**” shall mean:
- (a) In case the Functional Eligible Project is developed under a separate legal entity, the Bidder should have held a minimum of 26% (twenty six per cent) of the paid up and subscribed equity of such legal entity under which that Functional Eligible Project has been developed for the entire period for which “Developed” experience is being claimed,
- (iii) For the purpose of Technical Capacity, “**Functional Eligible Project**” shall mean the following:
- (a) The property was continuously operational for the last 3 (three) financial years.
- (b) During this period of operation, the property was being used as warehouse facility on a commercial basis and was not used for storing agricultural/ horticultural/ dairy produce.
- (iv) Even if the Bidder (either individually or along with a member of the Consortium) may have played multiple roles in a specific Functional Eligible Project, the experience of that Functional Eligible Project, for the purpose of Technical Capacity, will not be taken into account more than once.
- (v) The claim for Technical Capacity shall be accompanied by a certificate from the statutory auditor of the Bidder. In case the Bidder does not have a Statutory Auditor (e.g., when the Bidder is an individual entity), the claim for Technical Capacity, is required to be certified by a CAG empaneled Chartered Accountant.

2.2.3. The Bidder shall provide with its Bid, to be submitted as per the format at Appendix-I, complete with its Annexures, the following:

- (a) certificate(s) from its statutory auditors<sup>3</sup> stating the Functional Eligible Projects Developed and owner, OR, Operated, maintained, and managed, OR, Developed, operated, maintained and managed as the case may be, during the past 3 (three) years in respect of the projects submitted for evaluation of Technical Capacity as per Clause 2.2.2; and
- (b) certificate(s) from its statutory auditors<sup>4</sup> specifying the Net Worth / ACI of the Bidder, as per the specified requirement, and also specifying that the methodology adopted for calculating such Net Worth / ACI conforms to the provisions of this Clause 2.2.3 (b). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid-up equity share capital and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders. For entities other than companies, AIFs and Foreign Investment Fund, the Net Worth shall mean assets net of liabilities and calculated as per applicable accounting standards.
- (c) In case of foreign Bidder(s), a certificate from a qualified external auditor who audits the book of accounts of the Bidder as per the applicable law of the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the RFP. Any such certificate from a qualified external auditor provided in case of foreign Bidder(s), must report the Net Worth in Indian National Rupee. For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 85.4976 (Rupees Eighty Five Point Four Nine Seven Six only) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the date on which the RFP has been published.
- (d) An AIF or Foreign Investment Fund may also qualify on the basis of minimum investible funds (i.e. immediately available funds for investment and callable capital, net of estimated expenditure for administration and management of the fund) subject to the limits of investment in a single investee entity (in the relevant

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<sup>3</sup> In case the Bidder does not have a Statutory Auditor (e.g., when the Bidder is an individual entity), then the same shall have to be certified by a CAG-empaneled Chartered Accountant

<sup>4</sup> In case the Bidder does not have a Statutory Auditor, then the same shall have to be certified by a CAG-empaneled Chartered Accountant.

jurisdiction for a Foreign Investment Fund, or the maximum permissible investment limit for an AIF) (as per the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, as may be amended from time to time), as applicable (“**ACI**”).

- (e) In case of an AIF or Foreign Investment Fund using ACI, ACI would be considered as per the certificate issued by statutory auditor (or such other certificate as filed with the regulator in the relevant jurisdiction) not older than 3 (three) months prior to the Bid Due Date.
  - (f) The Bidder shall upload online scanned copies of the certificates as specified above along with the Bid while the original physical document shall be submitted within 3 working days from the Bid Due Date, failing which the Bidder shall be summarily rejected.
- 2.2.4. (i) The Selected Bidder shall be required to form the SPV, incorporated on or after the date of issuance of the LOA under the Companies Act, 2013, to execute the Licence Deed and implement the Project as per the terms of the Licence Deed.
- (ii) In case the Bidder is a Consortium, it shall comply with the following additional requirements:
- (a) Number of members in a consortium shall not exceed 4 (four);
  - (b) The Bid should contain the information required for each member of the Consortium;
  - (c) the Bid should include a brief description of the roles and responsibilities of individual members of the Consortium, particularly with reference to financial, technical and O&M obligations;
  - (d) an individual Bidder submitting the Bid under this RFP cannot, at the same time, be a member of a Consortium. Further, a member of one particular Consortium cannot be member of any other Consortium;
  - (e) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-V (the “**Joint Bidding Agreement**”), for the purpose of submitting this Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
    - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Licence Deed and subsequently perform all the obligations of the Licensee in terms of the Licence Deed, in case the Consortium is declared as a Selected Bidder;

- (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
  - (iii) commit the minimum equity stake to be held by each member as per the terms of this RFP;
  - (iv) members of the Consortium shall nominate one member as the lead member (the "Lead Member"), who shall have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity capital of the SPV until the expiry of the 5<sup>th</sup> (fifth) anniversary of the Project COD. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III and Appendix-IV, signed by all the other members of the Consortium;
  - (v) Each of the Member of the Consortium, whose Technical Capacity or Financial Capacity is being used to qualify under this RFP, shall have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity capital of the SPV until the expiry of the 5<sup>th</sup> (fifth) anniversary of the Project COD.
  - (vi) members of the Consortium undertake that they shall collectively hold at least 51% (fifty-one per cent) of the subscribed and paid up equity capital of the SPV at all times until the 5<sup>th</sup> (fifth) anniversary of the commercial operation date of the Project; and
  - (vii) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Licensee in relation to the Project until Appointed Date is achieved in accordance with the Licence Deed;
- (f) Except as provided under this RFP and the Bidding Documents, members of the Consortium shall not undertake any amendment to the Joint Bidding Agreement without the prior written consent of the Authority.

2.2.5. In case of Selected Bidder being a sole Bidder, the Selected Bidder undertakes that

- (a) From the date of the submission of the Bid and until the execution of the License Deed, the Selected Bidder shall not undertake any Change in Ownership without the express written approval of the Authority.
- (b) It shall hold at least 51% (fifty one per cent) of the subscribed and paid up equity capital of the Licensee at all times until the 5<sup>th</sup> (fifth) anniversary of the commercial operation date of the Project.

2.2.6. Any entity which has been barred by the Central/ State Government, or any entity Controlled by it, from participating in any project, and the bar subsists as on the date of the Bid, would not be eligible to submit the Bid, either individually or as member

of a Consortium. Further, entities that have been declared bankrupt, insolvent or has pending against it, any litigation or proceedings, before any court or authority, in relation to liquidation, dissolution or winding-up, would not be eligible to submit the Bid, either individually or as member of a Consortium.

2.2.7. A Bidder, including any Member or Associate, should, in the last 3 (three) years, have neither failed to perform any contract, as evidenced by judicial pronouncement or arbitral award against the Bidder, Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity or have had any contract terminated by any public entity for breach of contract by such Bidder, Member or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.7 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

2.2.8. In computing the Technical Capacity and Financial Capacity under Clause 2.2.2 and Clauses 2.2.3 of the Bidder/ Members, the Technical Capacity and Financial Capacity of their respective Associates as on the date of the RFP would also be eligible hereunder. It is clarified, for the avoidance of doubt, that Technical Capacity and Financial Capacity of only such Associates will be considered who are ‘Associates’ as on the date of the RFP.

For the purpose of this RFP, Associate means, in relation to the Bidder or a Member, a person who Controls, or is Controlled by, or is under the common Control of the same person who Controls the Bidder or Member, as the case may be (“**the Associate**”).

2.2.9. The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Appendix and Annexures is insufficient; alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;

- (c) in responding to the qualification submissions, Bidders should demonstrate their capabilities in accordance with Clause 3 below; and
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the pre-qualification requirements to the extent specified herein.

2.2.10. Bidding is open to all including entities of foreign origin as per the applicable law including but not limited to extant foreign exchange management norms. However, restrictions under Rule 144 (xi) of General Financial Rules, 2017, pursuant through circular no. F.No.6/18/2019-PPD of Ministry of Finance, Department of Expenditure, dated 23<sup>rd</sup> July 2020, as amended from time to time, shall apply. Further,

- (a) Where, on the date of the Bid, 25% (twenty -five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is Controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty -five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or Control, by persons resident outside India, in or of the Bidder or its Member;

then the qualification of such Bidder or in the event described in sub-Clause (b) above, the continued qualification of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive, and binding on the Bidder. The holding or acquisition of equity or Control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or Control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition. The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.2.11. Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 3 (three) years for Technical Capacity and 1 (one) year for Financial Capacity, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

- 2.2.12. This RFP is not transferable and cannot be assigned by the Bidder.
- 2.2.13. Any award of the Project to the Selected Bidder pursuant to this RFP shall be subject to the terms of the Bidding Documents.

### **2.3. Change in Ownership and Change of Composition**

#### **2.3.1. Change in Ownership**

By submitting the Bid, the Bidder acknowledges that it will be evaluated and short-listed on the basis of its Technical Capacity and Financial Capacity and in case of Consortium, on the basis of Technical Capacity and Financial Capacity of its Members.

The Bidder acknowledges and undertakes that on and from the date of submission of the Bid till the execution of License Deed, there shall be no Change in Ownership other than with express written consent of the Authority. The Bidder further acknowledges and undertakes that on and from the date of execution of the Licence Deed, there shall be no Change in Ownership in contravention of the terms of the Licence Deed.

The Bidder further acknowledges and agrees that it shall fulfill the aforesaid obligations and a breach hereof shall, notwithstanding anything to the contrary contained in the Licence Deed, be deemed to be a breach of the Licence Deed and dealt with as such thereunder.

#### **2.3.2. Change in Composition**

By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in Control of a Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with the RFP or in the event such an entity ceases to be an 'Associate' of the Bidder, the Bidder shall be deemed to have knowledge of the same and shall be required to obtain prior written consent of the Authority along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. If such an event occurs after execution of the Licence Deed but prior to completion of 5<sup>th</sup> (fifth) anniversary of the Project COD without the prior written consent of the Authority, it would, notwithstanding anything to the contrary contained in the Licence Deed, be deemed to be a breach of the Licence Deed, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Licensee. In such an event, notwithstanding anything to the contrary contained in the Licence Deed, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or Contract and/ or the Licence Deed or otherwise. Notwithstanding anything to the contrary contained in this RFP and/or the

Licence Deed, the above restriction shall not apply to the change in Control on account of any initial public offering.

### 2.3.3. Change in composition of the Consortium

(i) It is further clarified that where the Bidder is a Consortium, change in composition of the Consortium may be permitted by the Authority during the Bid Stage, only where:

- (a) the Lead Member continues to be the Lead Member of the Consortium;
- (b) the substitute is at least equal, in terms of Technical Capacity or Financial Capacity, to the Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Bidder; and
- (c) the new Member(s) expressly adopt(s) the application already made on behalf of the Consortium as if it were a party to it originally and is not a Bidder/Member/ Associate of any other Consortium bidding for this Project.

(ii) Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing. In the event of change in composition of the Consortium after the submission of the Bid prior to the Bid Due Date, the Consortium must submit its application for change in composition no later than 10 (ten) days prior to the Bid Due Date.

(iii) The modified/ reconstituted Consortium shall submit a revised Joint Bidding Agreement and a Power of Attorney, substantially in the form at Appendix-IV and Appendix-V, prior to the Bid Due Date.

(iv) The option of change in composition of the Consortium which is available under Clause 2.3.3 may be exercised by any Bidder who is either a Consortium or a single entity. In the case of a single entity Bidder adding a Member at the Bid Stage, the single entity Bidder shall be the Lead Member of the Consortium, provided that the single entity meets the eligibility criteria to act as the Lead Member of the Consortium. Provided, however, that no member of such Consortium shall be a Bidder or the member of a Consortium which has been pre-qualified.

(v) The Authority shall have the right to seek such additional information and documents as may be required by the Authority in its discretion before approving any Change in Ownership or change in composition of the Consortium or of a single Bidder converting into a Consortium as per the terms of this RFP.

## 2.4. Number of Bids and costs thereof

2.4.1. No Bidder shall submit more than 1 (one) Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.

2.4.2. The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

## **2.5. Site visit and verification of information**

2.5.1. Bidders are encouraged to submit their respective Bids after visiting the Plot Location and ascertaining for themselves the site conditions, location, surroundings, feasibility, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.5.2. Site visits to the Plot Location may be undertaken on the dates mentioned in the Schedule of Bidding Process specified in Clause 1.3 and with prior written approval of the Authority.

2.5.3. The Bidders may undertake the site visit to the Plot Location at their own expense, cost, liability and risk to ascertain for themselves the site conditions, area, location, facilities, and any other matters considered relevant by them. The Bidder shall not take any samples of any kind or remove any building material or any other material from the Plot Location, during such site visits.

2.5.4. This Bidding Document does not however give an unconditional or unrestricted right to access the Plot Location to the Bidders.

2.5.5. In the event a Bidder undertakes a site visit, then such Bidder shall be liable towards any loss or damage caused to the Plot Location, on account of any act or omission of such Bidder or its employees, authorised representatives, agents, advisors etc.

## **2.6. Acknowledgement by Bidder**

2.6.1. It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Project, the Bidding Documents and the Plot Location;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5 herein above necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance

of any of the matters referred to in Clause 2.5 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Licence Deed by the Licensee;

- (f) acknowledged that it does not have a Conflict of Interest;
- (g) acknowledge that the Plot Location would be handed over on as-is-where-is-basis by the Authority and the Bidder shall not have no claim whatsoever on the Authority in this regard; and
- (h) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.6.2. The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error, inaccuracy or mistake therein or in any information or data given by the Authority.

## **2.7. Right to accept or reject any or all Bids**

2.7.1. The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification including such additional information or document as may be requested by the Authority from the Bidder. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.7.2. The Authority reserves the right to reject any Bid and appropriate the Bid Security if:

- (a) at any time, a material misrepresentation by the Bidder is discovered; or
- (b) the Bidder is in breach of the terms of this RFP or the Bidding Documents; or
- (c) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid,

Such misrepresentation / improper response shall lead to disqualification of Bidder. If the Bidder is a Consortium, then the Authority reserves the right to disqualify or reject the entire Consortium and each Member of the Consortium.

2.7.3. If such disqualification/ rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the Authority reserves the right to:

- (i) invite the remaining Bidders to match the Highest Bidder in accordance with the RFP; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

- 2.7.4. In case it is found during the evaluation or at any time before signing of the Licence Deed or after its execution and during the period of subsistence thereof, that one or more of the qualification conditions set out under the RFP have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information or materially breached the terms of the RFP or the Licence Deed, the Bidder shall be disqualified forthwith if not yet appointed as the Licensee either by issue of the LOA or entering into the Licence Deed, and if the Selected Bidder has already been issued the LOA or entered into the Licence Deed, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Bidder or the Licensee, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Licensee, as the case may be. In such an event, the Authority shall be entitled to reject/ disqualify the Bidder and forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Licence Deed, or otherwise.
- 2.7.5. The Authority may, in its sole discretion and on grounds of reciprocity, disqualify a Bidder, if any or all of its constituents are entities incorporated in a country where an entity incorporated in India does not have similar rights of bidding for contracts contemplated hereunder.

## **B. DOCUMENTS**

### **2.8. Contents of the RFP**

- 2.8.1. This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below and will additionally include any addenda issued by the Authority in accordance with Clause 2.10:

#### **Invitation for Bids**

- Section 1. Introduction
- Section 2. Instruction to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

#### **Appendices**

- I. Letter comprising the Bid, including Annexures.
- II. Bank Guarantee for Bid Security
- III. Power of Attorney for signing of Bid
- IV. Power of Attorney for Lead Member of Consortium
- V. Joint Bidding Agreement for Consortium

- VI. Financial Quote
- VII. Guidelines for the Department of Investment and Public Asset Management
- VIII. Instruction for Online Bid Submission
- IX. Tender Cum Auction Process
- X. Project Information Memorandum
- XI. Integrity Pact

## **2.9. Clarifications**

- 2.9.1. Bidders requiring any clarification on the RFP may notify the Authority in writing or by fax and e-mail in accordance with Clause 1.2.12. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavor to respond to the queries within the period specified therein, but not later than 10 (ten) days prior to the Bid Due Date. The Authority will provide responses to the queries without identifying the source of such queries.
- 2.9.2. The Authority shall endeavor to respond to the questions raised or clarifications sought online by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.9.3. The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders by publishing it on its website <https://dda.gov.in/tender>. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

## **2.10. Amendment of RFP**

- 2.10.1. At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda. All Addenda issued by the Authority shall be deemed to be part of the Bidding Documents.
- 2.10.2. Any Addendum thus issued hereunder shall be hosted on the website of the Authority <https://dda.gov.in/tender>
- 2.10.3. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

## **C. PREPARATION AND SUBMISSION OF BIDS**

### **2.11. Language**

2.11.1. The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, shall not be considered by the Authority for evaluation of the Bid and the Authority shall have the right to reject such documents. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

### **2.12. Format and Signing of Bid**

2.12.1. The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats as set out in this RFP and complete in all respects. Incomplete and /or conditional and/or qualified Bids shall be liable to rejection by the Authority.

2.12.2. The Bid shall be signed in indelible blue ink by the authorized signatory of the Bidder. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. The Bid shall contain page numbers.

### **2.13. Submission of Bids**

2.13.1. The Bidder shall submit the Bid no later than the date and time specified as the Bid Due Date, on the e-procurement portal [www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com) duly signed in digital form by the authorised signatory of the Bidder, by uploading the complete and legible scanned/digital copies of the Technical and Financial Bids in pdf/digital format (i.e. scanned copy of original signed documents and the supporting documents) as per the format provided in this RFP.

2.13.2. The Bid is to be submitted on the document downloaded from Official Website, the Bidder shall be responsible for its accuracy and correctness as per the version uploaded by the Authority and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the document used for submission by the Bidder and the version uploaded by the Authority, the latter shall prevail. In the event if the Bid submitted on the e-procurement portal cannot be accessed by the Authority due to any technical error or formatting error then the Authority shall have the right to reject such Bid.

2.13.3. The documents comprising the Bid referred to in Clause 2.13.1 shall include:

- (i) Technical Bid in the prescribed format (Appendix-I) along with Annexures and supporting documents;

- (ii) Bid Security in the format at Appendix-II;
- (iii) Power of Attorney for signing of the Bid as per the format at Appendix-III;
- (iv) If applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;
- (v) a duly executed and stamped copies of the Integrity Pact as per the format at Appendix-XI, executed by the Bidder and by each of the Members (in case of Consortium).
- (vi) Joint Bidding Agreement in case of a Consortium, substantially in the format at Appendix-V;
- (vii) Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed or in case any other Bidder such other constitutional documents of the Bidder as per the applicable law;
- (viii) Bidder's duly audited balance sheet and profit and loss account for the preceding three years;
- (ix) Licence Deed with each page initialled by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (iii) hereinabove;
- (x) Payment proof related to payment of the non-refundable Bid Processing Fee (scanned copy of the RTGS/NEFT/Other Electronic transaction confirmation receipt);
- (xi) If applicable, Copy of Registration from the Competent Authority as defined in Public Procurement Order No. F. No. 6/18/2019-PPD dated 23<sup>rd</sup> July 2020, if applicable (to be submitted by the "Bidder from a country which shares a land border with India")
- (xii) Financial Bid in the prescribed format (Appendix-VI);

2.13.4. The following documents shall be separately submitted in original to the person specified in the Clause 2.13.6 in a sealed envelope on or before 5:00 PM of the third working day from the Bid Due Date, failing which the Bid shall be rejected:

- (a) Power of attorney as required under Clause 2.13.3 (iii) and Clause 2.13.3 (iv);
- (b) Joint Bidding Agreement as required under Clause 2.13.3 (vi);
- (c) Duly executed and stamped copy of the Integrity Pact as per the format at Appendix-XI, executed by the Bidder and by each of the Members (in case of Consortium); and

- (d) Bank guarantee / demand draft towards the Bid Security as required under Clause 2.21.

The envelope shall clearly bear the following identification: **“Bid Documents for auction of licence rights of land parcel for development of a Warehouse Complex, Sector 36, Rohini, New Delhi”**.

- 2.13.5. If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

- 2.13.6. The envelope under Clause 2.13.4 shall be addressed to

|   |   |
|---|---|
| <b>Name</b>   | Dr. Mannan Akhtar, IAS  |
| <b>Designation</b>  | Commissioner (Land Disposal)  |
| <b>Address</b>  | Room No. 107<br>Delhi Development Authority<br>A Block, 1 <sup>st</sup> Floor, Vikas Sadan<br>INA, New Delhi – 110023 |
| <b>Telephone No &amp; Email ID</b>  | + 91 11 2469 8350<br><a href="mailto:slpc.ld@dda.gov.in">slpc.ld@dda.gov.in</a>                                       |
| Note: The Authority can change the SPOC at any time during the duration of this tender process or the Licence Period. The bidders / the Licensee shall be notified about any such change. |   |

- 2.13.7. Bids submitted by special messenger, fax, telex, telegram, e-mail, or in any way other than on the specified e-platform for bidding, shall not be entertained and shall be rejected.

## 2.14. Bid Due Date

- 2.14.1. The Bid specified in Clause 2.13.1 should be submitted before the Bid Due Date, on the e-procurement portal as per the format and in the manner and form as detailed in this RFP.

- 2.14.2. For the purpose of submission of the Bid on the e-procurement portal [www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com), registration of the Bidder with e-procurement portal [www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com) is mandatory. For any assistance regarding e-procurement, the Bidder may call the helpdesk numbers of the e-procurement portal provided on their website. A Bidder who is already registered need not register again. However, the Bidder is required to have a Class-III Digital Certificate issued by a licensed Certifying Authority (CA).

- 2.14.3. The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Bidders.

2.14.4. The E-procurement portal [www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com), shall not allow submission of any Bid after the Bid Due Date. Physical receipt of document listed at Clause 2.13.4 of the RFP after the time specified therein shall not be considered and the Bid shall be summarily rejected.

## **2.15. Contents of the Bid**

2.15.1. The Technical Bid shall be furnished in the format at Appendix–I along with all the information and documents (complete in all respects) as requested in this RFP.

2.15.2. The Financial Bid shall be furnished in the format at Appendix–VI and shall consist of **Annual Licence Fee (ALF)** (the “**Financial Quote**”) which should be greater than the **Minimum Annual Licence Fee (MALF) for the same to be considered eligible for Auction Process.**

2.15.3. The opening of the Bids and acceptance thereof shall be substantially in accordance with this RFP.

2.15.4. The proposed draft of the Licence Deed shall be deemed to be part of the Bid.

## **2.16. Modifications/ Substitution/ Withdrawal of Bids**

2.16.1. The Bidder may modify, substitute or withdraw its e-Bid after submission, prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the closing time on the Bid Due Date.

2.16.2. Any alteration/modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought by the Authority, may be rejected by the Authority at its discretion.

## **2.17. Rejection of Bids**

2.17.1. Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.17.2. The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

## **2.18. Validity of Bids**

2.18.1. The Bid shall remain valid for a period of 270 (Two Hundred and Seventy) days from the Bid Due Date (“**Bid Validity Period**”). The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

- 2.18.2. In exceptional circumstances without prejudice to Clause 6.2, prior to the expiry of the Bid Validity Period of 270 (Two Hundred and Seventy) days, the Authority may request the Bidders to extend the period of validity for a specified additional period.
- 2.18.3. Subject to Clause 3.8.11, a Bidder may refuse to extend its Bid, in such an event the Bidder shall be considered to have withdrawn from the Bidding Process and the Authority shall not forfeit the Bid Security. A Bidder agreeing to the request will not be allowed to modify its Bid, but would be required to extend the validity of its Bid Security for the period of extension. In case the Authority decides to follow the Swiss Challenge Process as per Clause 3.8.11, the Bidder shall have to extend its Bid for a suitable period, as specified by the Authority.
- 2.18.4. The Selected Bidder shall, where required, extend the Bid Validity Period until the date of execution of the Licence Deed.

## **2.19. Confidentiality**

- 2.19.1. Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless as required under the e-tendering process or if it is directed to do so by any statutory entity that has the power under law to require its disclosure or to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

## **2.20. Correspondence with the Bidder**

- 2.20.1. Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.
- 2.20.2. Queries or requests for additional information concerning this Tender Document may be sent by e-mail to Authority at [slpc.ld@dda.gov.in](mailto:slpc.ld@dda.gov.in)
- 2.20.3. The email should clearly bear the following subject line: **“Queries/Request for Additional Information: Auction of licence rights of land parcel for Development of a Warehouse Complex, Sector 36, Rohini, New Delhi.”**
- 2.20.4. Each query should contain complete details of facts, information and applicable Clause references to the Bidding Documents relevant to the query and also the particulars of the Person posing the query.
- 2.20.5. The queries should be emailed in MS Word format only on or before the last date as specified at the timetable at Clause 1.3 of this Bidding Document for receiving queries.

- 2.20.6. The Authority shall endeavour to respond to queries within a reasonable period of time. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification. The Authority may publish the queries and its responses thereto on its website <https://dda.gov.in/tender> and on [www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com)
- 2.20.7. The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Document. Provided however that, any non-written clarifications and information provided by the Authority, its employees or representatives in any manner whatsoever shall not in any way or manner be binding on the Authority.

#### **D. Bid Security**

##### **2.21. Bid Security**

- 2.21.1. The Bidder shall furnish as part of its Bid, a Bid Security for an amount referred to in Clauses 1.2.7 and 2.1.5, hereinabove in either of the following manners:

(i) a bank guarantee issued by a Nationalized Bank or a Scheduled Bank in India having a net worth of at least Rs. 1,000 Crore (Rs. One thousand crore), in favor of the Authority in the format at Appendix-II and having a validity period of not less than 365 (three hundred sixty five) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the bank guarantee is issued by a foreign bank outside India, confirmation of the same by any Nationalized bank or a Scheduled Bank in India having a net worth of at least Rs. 1,000 Crore (Rs. One thousand crore) is required, or

(ii) in the form of Insurance Surety Bond as per applicable format issued by the IRDA or any other regulatory Authority for such bonds, having a validity period of not less than 365 (three hundred sixty five) days from the Bid Due Date and may be extended as may be mutually agreed between the Authority and the Bidder from time to time, or

(iii) deposited in the account of the Authority through RTGS/NEFT/Other Electronic transaction. Details of the bank account is provided in APPENDIX II (Format of Bank Guarantee) of this document; or

(iv) a demand draft having a validity period of not less than 80 (eighty) days from the Bid Due Date. In case of a demand draft, the Authority shall encash the demand draft and shall refund the Bid Security to unsuccessful Bidders within 30 (thirty) days from the date of execution of Licence deed, and to the Selected Bidder on submission of the Performance Security. The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

- 2.21.2. Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.21.3. Save and except as provided in Clauses 2.21.5 and Clause 2.21.6, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, within 21 (twenty one) days from either the date of issuance of the LOA or annulment of the Bidding Process. Where Bid Security has been paid by online transfer or demand draft (which has been encashed by the Authority), the refund thereof shall be in the form of online transfer or an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.21.4. The Selected Bidder's Bid Security will be returned, without any interest, upon the Selected Bidder depositing first installment of the Upfront Payment, furnishing the Performance Security and signing the Licence Deed in accordance with the provisions thereof. The Selected Bidder shall ensure that Bid Security remains valid till such time the entire Performance Security under the Licence Deed is submitted.
- 2.21.5. The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages *inter alia* in any of the events specified in Clause 2.21.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.21.6. The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or under the Licence Deed, or otherwise in law, under the following conditions:
- (a) If a Bidder submits a non-responsive Bid;
  - (b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of the RFP;
  - (c) If a Bidder withdraws its Bid during the Bid Validity Period as specified in Clause 2.18 of this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
  - (d) if the Selected Bidder fails, within the specified time limit-
    - i. to sign and return the duplicate copy of the LOA;
    - ii. to submit the first instalment of the Upfront Payment; or
    - iii. to furnish the Performance Security; or

- iv. to sign the Licence Deed
- (e) If any change in composition of a Consortium is undertaken in violation of or not in accordance with the requirements of Clause 2.3.3 of this RFP;
- (f) If the Bidder(s) is disqualified as a result of conflict of interest under Clause 2.2 of this RFP; or
- (g) If a Bidder is in breach of the Bidding Documents.

### **3. EVALUATION OF BIDS**

#### **3.1. Opening and Evaluation of Bids**

- 3.1.1. The Authority shall open the Technical Bids on the date mentioned in the Schedule of Bidding Process specified in Clause 1.3, at the place informed in writing by the Authority and in the presence of the Bidders who choose to attend.
- 3.1.2. Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.16.1 shall not be opened.
- 3.1.3. The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.4. Bidders are advised that selection of Bidders will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 3.1.5. Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 3.1.6. The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reason.

#### **3.2. Clarifications**

- 3.2.1. To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 3.2.2. If a Bidder does not provide clarifications sought under Clause 3.2.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

#### **3.3. Tests of responsiveness**

- 3.3.1. Prior to evaluation of Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive if:
  - (a) it is received as per the prescribed format;
  - (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.14.3;
  - (c) it is signed and marked as stipulated in Clauses 2.12 and 2.13;

- (d) it is accompanied by the non-refundable Bid Processing Fee as specified in Clause 1.2.6 submitted in the form as stipulated in this RFP;
- (e) it is accompanied by the Bid Security as specified in Clause 2.1.5;
- (f) it is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.6 and 2.1.7, in the case of a Consortium, in physical and scanned forms as stipulated in this RFP;
- (g) it is accompanied by the Power of Attorney as specified in Clause 2.1.6, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.47;
- (h) it is accompanied by the duly executed and stamped copy of the Integrity Pact as per the format at Appendix-XI and executed by the Bidder and by each of the Members (in case of Consortium), as stipulated in this RFP;
- (i) it contains all the information and documents (complete in all respects) as requested in this RFP;
- (j) it contains information in formats same as those specified in this RFP;
- (k) it contains certificates from its statutory auditors in the formats specified at Appendix-I of the RFP;
- (l) physical submission is signed and sealed and marked as stipulated in Clauses 2.112 and 2.13;
- (m) it is accompanied by the Joint Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.4 (ii)(e);
- (n) the original documents as stipulated under Clause 2.13.4 have been submitted by the Bidder;
- (o) it does not contain any condition or qualification; and
- (p) it is not non-responsive in terms hereof.

3.3.2. The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid. Provided, however, that the Authority may, in its absolute discretion, allow the Bidder to rectify any infirmities or omissions in form of clarification only against the information submitted, if the same do not constitute a modification of the Bid save to the extent of the aforesaid clarification.

### **3.4. Evaluation parameters**

- 3.4.1. Subject to the provisions of Clause 2.7.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.3.1, would be evaluated to assess their Financial Capacity and Technical Capacity. Subject to their Bids being responsive as per Clause 3.3, Bidders qualifying on the criterion of Financial Capacity and Technical Capacity shall be the technically qualified bidders (the “**Technically Qualified Bidders**”). The Technical Bids of Bidders who do not meet these criteria shall be rejected.

### **3.5. Evaluation of Technical Capacity**

- 3.5.1. The Bidder should furnish the details of Technical Capacity for the last 3 (three) financial years immediately preceding the Bid Due Date.
- 3.5.2. The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-I. The Bidder should furnish the required information and documents in support of its claim of Technical Capacity, as per format at Annex-III of Appendix-I.
- 3.5.3. Experience for any project / asset under Clause 2.2 shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

### **3.6. Evaluation of Financial Capacity**

- 3.6.1. The Bid must be accompanied by the Audited Annual Reports of the Bidder (and of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.
- 3.6.2. In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.
- 3.6.3. The Bidder must establish the minimum Net Worth / ACI specified in Clause 2.2.3 and provide details as per the format at Annexure IV of Appendix-I.
- 3.6.4. In case of a Consortium, the combined Net Worth / ACI (sum of Net Worth /ACI) of only those members, who have and shall continue in terms of Clause 2.2.4 (ii)(e)(v) to have at least 26% (twenty six percent) stake each in the SPV, shall be considered.

### **3.7. Opening and evaluation of Financial Bids**

- 3.7.1. The Authority shall inform the venue and time of online opening of the Financial Bids to the Technically Qualified Bidders through e-procurement portal [www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com). The Authority shall open online the Financial Bids on

date and time to be informed as per this Clause in the presence of the authorized representatives of the Bidders who may choose to attend.

### **3.8. Selection of Bidder**

- 3.8.1. The Financial Bid will be opened only for the Technically Qualified Bidders. Post opening of the Financial Bid, an e-Forward Auction shall be conducted among the Technically Qualified Bidders as specified in the Appendix-IX (“**Auction Process**”).
- 3.8.2. If upon completion of the first attempt of the Bidding Process only 01(one) Bidder submits a qualified Technical Bid, or if for any reason only 01 (one) Bidder is determined to be technically qualified as per the Bidding Document (such bidder being referred to the “**Technically Qualified Bidder**”, the Authority reserves the right to:
  - (a) implement the Swiss Challenge process (as described under Clause 3.8.11), whereby:  
  
OR
  - (b) Annul the Bidding Process at its discretion.
- 3.8.3. In case there are 2 (two) or 3 (three) or 4 (four) Technically Qualified Bidders, all of them shall be considered for participation in the Auction Process. In case number of Technically Qualified Bidders are 5 (five) or more, all Bidders except the L1 Bidder shall be allowed to participate the Auction Process. Bidder who quotes the highest Financial Quote, pursuant to the Auction Process, shall be declared as the Selected Bidder (the “**Selected Bidder**”).
- 3.8.4. If the Auction Process does not lead to any Bid, the Authority reserves the right to award based on the highest Financial Quote quoted by the Technically Qualified Bidders.
- 3.8.5. The Bidders selected for participation in the Auction Process shall follow the process as specified in the Appendix-IX. For avoidance of doubt, in case no Auction Process is undertaken pursuant to Clause 3.8.1 or in case Auction Process is undertaken with no increase proposed by any of the Bidders, the Authority in its discretion may declare the Technically Qualified Bidder with highest Financial Quote as the Selected Bidder.
- 3.8.6. In the event that two or more Technically Qualified Bidders quote the same highest Financial Quote (the “**Tie Bidders**”), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 3.8.7. In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the “**first round of bidding**”), the Authority may invite all the remaining Technically Qualified Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Financial Quote of the aforesaid Highest Bidder

(the “**second round of bidding**”). If in the second round of Bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of Bidding, then the Bidder whose Financial Quote was higher as compared to the other Bidder(s) in the first round of Bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of Bidding offer to match the said Highest Bidder in the second round of Bidding, the said third highest Technically Qualified Bidder shall be the Selected Bidder.

- 3.8.8. In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.8.7, the Authority may, in its discretion, invite fresh Bids (the “**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding, to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of Bidding only such Bids shall be eligible for consideration which are higher than the Bid of second highest Bidder in the first round of Bidding.
- 3.8.9. After selection, a letter of award (the “**Letter of Award**” or “**LOA**”) shall be issued (in the format specified in Appendix XII), in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, sign and return the duplicate copy of the LOA in acknowledgement thereof as per the period prescribed in Clause 1.3 of this RFP. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received within the period prescribed in Clause 1.3 of this RFP, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and next eligible Bidder who has submitted the second highest Bid may be considered by the Authority and, if considered as communicated in writing by the Authority (“**Bid Alignment Communication**”), shall be provided with an opportunity to match the H1 Bid of the originally Selected Bidder. Such subsequently Selected Bidder will be required to communicate its acceptance or rejection within 5 (five) days from the Bid Alignment Communication and any failure to communicate its acceptance within the aforementioned time period shall be deemed to be a rejection thereof. Provided further that in the event of any rejection or deemed rejection by the subsequently Selected Bidder to match the H1 Bid, Authority retains the right to provide an opportunity to the Bidder who has submitted the next highest bid to match the H1 Bid. This process maybe repeated, at the option of the Authority at its sole discretion, till selection of a Successful Bidder. .
- 3.8.10. After acknowledgement of the LOA as aforesaid by the Selected Bidder and once the Selected Bidder has paid the first instalment of the Upfront Payment and submitted the Performance Security within the period prescribed in Clause 1.3 of this RFP, the Authority shall cause the Selected Bidder to execute the Licence Deed within a period prescribed in Clause 1.3 of this RFP.

### Swiss Challenge Process

- 3.8.11. In case there is only 1 (one) Technically Qualified Bidder and the Authority decides to initiate a Swiss Challenge Process, the Technically Qualified Bidder will be treated as the anchor Bidder (such Bidder being referred as “**Anchor Bidder**”) for the Swiss Challenge Process and the following process shall be followed:
- (a) The Financial Bid of the Anchor Bidder shall be opened and shall act as the anchor Bid (“**Anchor Bid**”) for the Swiss Challenge process. The Anchor Bidder will be deemed to be technically qualified under the Swiss Challenge Process and not be required to make any incremental payments subject to extension of the Bid Security till the conclusion of the Swiss Challenge Process.
  - (b) The Authority shall publish a timeline within which it shall allow prospective Bidders to conduct site visits, raise queries and submit their challenge Bids under the Swiss Challenge Process.
  - (c) All such Bidder(s) who submit their Technical Bids(s) under the Swiss Challenge Process will have to agree to participate in the forward e-auction with the Anchor Bid as the reserve price for the forward e-auction.
  - (d) The Challenge Bids received under the Swiss Challenge Method shall be evaluated and the Bidders who qualify the Technical Capacity and the Financial Capacity shall be notified as “**Technically Qualified Challenge Bidder(s)**”.
  - (e) All Technically Qualified Challenge Bidder(s) including with Anchor Bidder shall be eligible to participate in the forward e-auction. Terms and conditions contained under this RFP for the forward e-auction shall mutatis mutandis apply for the e-auction under the Swiss Challenge Process. It is clarified, for the avoidance of doubt, that Clause 3.8.3 of this RFP relating to the elimination of the L1 Bidder shall not apply.
  - (f) The highest Financial Quote received in the e-auction portal at the culmination of the forward e-auction process shall be treated as the H1 Bid and the Anchor Bidder or the Technically Qualified Challenge Bidder(s) whoever has submitted the H1 Bid shall be declared as the ‘Highest Bidder’ or the ‘Selected Bidder’.
  - (g) The Authority may specify additional terms in relation to the Swiss Challenge Process.
- 3.8.12. In case no Challenge Bids are received or there are no Technically Qualified Challenge Bidder(s), the Authority reserves the right to award the Project to the Anchor Bidder at the Anchor Bid or annul the Bidding Process at its discretion.

### **3.9. Contacts during Bid Evaluation**

- 3.9.1. Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

## 4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Licence Deed. Notwithstanding anything to the contrary contained herein, or in the LOA or the Licence Deed, the Authority may reject a Bid, withdraw the LOA, or terminate the Licence Deed, as the case may be, without being liable in any manner whatsoever to the Bidder or Licensee, as the case may be, if it determines that the Bidder or Licensee, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the entire Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Licence Deed, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Licence Deed, or otherwise, if a Bidder or Licensee, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Licence Deed, such Bidder or Licensee shall not be eligible to participate in any tender or RFP issued by the Authority during period of 2 (two) years from the date such Bidder or Licensee, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) "**corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Licence Deed or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute an act influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub Clause (e) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the

execution of the Licence Deed, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Licence Deed, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project.

- (b) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) **"coercive practice"** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
- (d) **"undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) **"restrictive practice"** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## 5. PRE-BID CONFERENCE

- 5.1 Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place. A maximum of 2 (two) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid Conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavor to provide clarifications and such further information as it may be, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 5.3 The details of the Pre-Bid Conference, to be conducted in both physical and online mode are as follows:

| <b>Details of Physical Meeting</b>  |  |
|---|--|
| <b>Date and Time:</b>   | 11:00 AM of Wednesday, July 16, 2025   |
| <b>Venue (for Physical)</b>   | Conference Room, Office of Vice Chairman,<br>1 <sup>st</sup> Floor, B Block<br>Vikas Sadan, INA<br>New Delhi |
| <p>Participants who intend to attend the meeting physically are requested to kindly note the information below and plan their travel accordingly:</p> <ol style="list-style-type: none"> <li>1. There is limited parking available near the venue.</li> <li>2. All participants will be required to carry a government issued ID and entry passes will have to be obtained at the entry gate of "D Block".</li> </ol> |  |
| <b>Details of Online Meeting – Will be notified via a notice on DDA's Website prior to the date of the meeting.</b>   |  |

## 6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts at Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and / or in connection with the Bidding Process.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and / or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Bidder in order to receive clarification or further information;
  - (c) qualify or not to qualify any Bidder; and/ or to consult with any Bidder in order to receive clarification or further information;
  - (d) retain any information and / or evidence submitted to the Authority by, on behalf of, and / or in relation to any Bidder; and / or
  - (e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and / or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 6.4 The Bidding Documents are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them the priority shall be in the following order:
- (a) Licence Deed, including its amendments;
  - (b) the RFP as modified, altered, amended and clarified from time to time by the Authority;
  - (c) any other documents to be provided by the Authority pursuant to this RFP
- i.e. the Licence Deed at (a) above shall prevail over the RFP at (b) above.

## **Appendices**

## APPENDIX I – BID LETTER

### Letter Comprising the Bid for Qualification

(Refer Clause 2.13.3)

To,

Delhi Development Authority

Vikas Sadan

INA

New Delhi-110023

**Sub: Selection of Bidder for auction of licence rights of land parcel for development of a Warehouse Complex, Sector 36, Rohini, New Delhi.**

Dear Sir,

1. With reference to your RFP document no \_\_\_\_\_ dated \_\_\_\_\_, I/we, having examined the Bidding Documents and understood its contents, hereby submit my/our Bid for the Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the documents accompanying such Bid for qualification of the Bidders for the aforesaid project, and we certify that all information provided therein is true and correct; nothing has been omitted or suppressed which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for development, finance, operation & maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or required to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we / any of the members of the Consortium or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.

7. I/ We certify that in the last three years, we / any of the members of the Consortium or our/ their directors, promoters or Associates have not been blacklisted, debarred or suspended by any governmental authority in India, in relation to any public procurement works/contracts.
8. I/ We declare that:
  - a. I/ We have examined and have no reservations to the Bidding Documents, including any Addendum/corrigendum issued/ to be issued by the Authority;
  - b. I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFP document;
  - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by any public sector enterprise or any government or concerning any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
  - d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
9. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.17.2 of the RFP document.
10. I/We understand and acknowledge that pursuant to Clause 3.8.2 read with Clause 3.8.11, the Authority reserves the right to trigger a Swiss Challenge Process for the determination of the Selected Bidder. We unconditionally accept the same including, for the avoidance of doubt, opening of Financial Bid and extension of the Bid Security till the conclusion of the Swiss Challenge Process.
11. I/ We believe that we/ our Consortium satisfy(s) the Net Worth/ACI criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid.
12. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting the Bid for the Project.
13. I/ We certify that in regard to matters other than security and integrity of the country, I/ We certify that we/ any Member of the Consortium or any of our/ their Associates

have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

14. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
15. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ key employees<sup>5</sup>.
16. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Investment and Public Asset Management OM No. 3/9/2016-DD-II-B dated 28<sup>th</sup>September, 2017 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines forms part of the RFP at Appendix-VII thereof. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Investment and Public Asset Management in their OM No. 3/9/2016-DD-II-Bdated 28<sup>th</sup> September, 2017, a copy of which forms part of the RFP at Appendix-VII thereof.
17. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government/ State Government or any entity Controlled by it, from participating in any project, and no bar subsists as on the date of Bid.
18. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred above or any other provisions of this RFP, we shall intimate the Authority of the same immediately.
19. I/ We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity of those of its Members and we undertake that:

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<sup>5</sup> In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule ..... hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to this letter submitted by the Bidder. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

(a) The Lead Member i.e. the member whose Technical Capacity has been relied on for submission of Bid shall until the 5<sup>th</sup> (fifth) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity capital of the Licensee, respectively; and

(b) Each of the Members, whose Financial Capacity or Technical Capacity has been relied on for submission of Bid shall until the 5<sup>th</sup> (fifth) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity capital of the Licensee, respectively; and

(c) existing Members on the date of the Bid shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity capital of the SPV at all times until the 5<sup>th</sup> (fifth) anniversary of the commercial operation date of the Project.

We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Licence Deed in respect of Change in Ownership.

20. I/ We acknowledge and agree that in the event of a change in Control of a Member whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with the RFP, I/we shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/we further acknowledge and agree that in the event such change in Control occurs after signing of the Licence Deed but prior to commencement of the Appointed Date under the Licence Deed, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Licence Deed shall, at the sole discretion of the Authority, be liable to be terminated under and in accordance with Clause 2.3.2 of the RFP without the Authority being liable to us in any manner whatsoever.
21. I/ We hereby irrevocably waive any right or remedy which we may have at any stage in law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Bidders, or in connection with the selection/ Bidding Process itself, in respect of the above-mentioned Project and the terms and implementation thereof.
22. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Licence Deed in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

23. I/ We have studied all the Bidding Documents carefully and also surveyed the Plot Location. We understand that except to the extent as expressly set forth in the Licence Deed, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Project.
24. The Statement of Legal Capacity as per format provided at Annex V in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of application [and the power of attorney for Lead Member of consortium], as per format provided at Appendix-III [and Appendix-IV respectively] of the RFP, are also enclosed.
25. The Integrity Pact as per format provided at Appendix-XI of the RFP and executed by the Bidder and by each of the Members (in case of Consortium), is also enclosed.
26. I/ We understand that the Selected Bidder shall incorporate a special purpose vehicle under the Companies Act, 2013, prior to execution of the Licence Deed, for execution of the Licence Deed and implementation of the Project as per the Licence Deed.
27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
28. I/ We certify that in terms of the RFP, we meet the Technical Capacity in Clause 2.2.2 (B) of the RFP.
29. I/ We certify that in terms of the RFP, I/ we do qualify on the basis of [Developed and owned] / [Operated, maintained, and managed] / [Developed, operated, maintained and managed] the Functional Eligible Project as per Clause 2.2.2 (B) of the RFP document.
30. I / We herewith submit a Bid Security of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ only) to the Authority in accordance with the RFP document through Bank Guarantee No. \_\_\_\_\_ Date \_\_\_\_\_ issued by \_\_\_\_\_
31. The Bid Security in the form of a Demand Draft/ Bank Guarantee/ RTGS/ NEFT / IMPS/ Insurance surety bond (strike out whichever is not applicable) is attached.
32. The documents accompanying the Bid, required to be submitted in original as specified in Clause 2.13.4 of the RFP, have been submitted in a separate envelope and marked as “Enclosures of the Bid for ..... Project” and the documents specified in Clause 2.13.3 have been uploaded/ are being uploaded on the Official Website.
33. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened or rejected.

34. The Financial Quote has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Licence Deed, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
35. I/We agree, acknowledge and undertake that I/we shall prepare and submit the all project documents and permits, consents and approvals as required (at our own cost and expense, with no liability to the Authority, whether financial or otherwise) to the Authority within timelines specified in the Bidding Documents.
36. {We, the Members agree and undertake to be jointly and severally liable for all the obligations of the Licensee under the Licence Deed till the Appointed Date in accordance with the Licence Deed.}<sup>6</sup>
37. I/we confirm that the bid shall remain valid for a period of 120 (one hundred and twenty) days from the Bid Due Date extendable by another 60 (sixty) days at the sole discretion of the Authority.
38. I/ We hereby undertake to submit this Technical Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Licence Deed.

In witness thereof, I/ we submit this Bid under and in accordance with the terms of the RFP document. The list of documents being submitted along with the Bid is listed below.

Yours faithfully,

Date:

(Signature, name and designation of the Authorised Signatory)

Place:

(Name and seal of the Bidder/ Lead Member)

---

<sup>6</sup> This Paragraph shall be omitted if the Bidder is not a Consortium.

**Annex- I**

**Particulars of the Bidder**

1. Details of the Bidder/ member of Consortium
  - a. Name:
  - b. Country of incorporation:
  - c. Type of entity:
  - d. Registered address:
  - e. Address of the corporate headquarters and its branch office(s), if any, in India:
  - f. Date of incorporation and commencement of business:
  - g. Incorporation / Registration Number<sup>7</sup>/ Permanent Account Number (PAN):
  - h. Copy of GST registration certificate
  - i. Copy of Permanent Account Number (PAN)
  - j. Copy of Tax Deduction and Collection Account Number (TAN)
2. Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact for any communication by the Authority:
  - a. Name:
  - b. Designation:
  - c. Company:
  - d. Address:
  - e. Telephone Number/Mobile No:
  - f. E-Mail Address:
  - g. Fax Number:
4. Particulars of the Authorised Signatory of the Bidder:
  - a. Name:
  - b. Designation:
  - c. Company :
  - d. Address:
  - e. Telephone Number/Mobile No:
  - f. Fax Number:

---

<sup>7</sup> Where not applicable, PAN Number to be provided

## 5. In case of a Consortium:

- (a) The information above (1-4) should be provided for all the Members of the Consortium.
- (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.2.4 (ii)(e) should be attached to the Bid.
- (c) Information regarding the role of each Member should be provided as per table below:

| Sl No: | Name of Member | Role* | Percentage of Equity in the Consortium §§ |
|--------|----------------|-------|---|
| 1      |                |       |   |
| 2      |                |       |   |
| 3      |                |       |   |
| 4      |                |       |   |

*\*The role of each Member, as may be determined by the Bidder, should be indicated in accordance with Clause 2.2.4 (ii)(c) and Annex-II.*

*§§ The percentage of equity should be in accordance with Clause 2.2.4 (ii)(e)(iv), (v) and (vi).*

## 6. The following information shall also be provided for each Member of the Consortium:

**Name of Bidder/ member of Consortium:** \_\_\_\_\_

| S. No. | Criteria   | YES | NO |
|--------|--|-----|----|
| 1      | Has the Bidder/ constituent of the Consortium been blacklisted / barred by the Central/ State Government, or any Public Sector Undertaking / Corporation, from participating in any project (PPP or otherwise)?  |     |    |
| 2      | If the answer to 1 is yes, does the bar subsist as on the date of Bid?   |     |    |
| 3      | Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% (five percent) of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last three years? |     |    |

7. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (attach extra sheets, if necessary):

Signature of Authorised  
Signatory  
Stamp of Bidder/ Lead Member

**Annex- II****Technical Capacity of the Bidder@***(Instruction: Refer to Clauses 2.2.2(B), and 3.5 of the RFP)*

| Bidder Type <sup>#</sup> | Member Code <sup>¥</sup> | Project Code <sup>¥¥</sup> | Functional Eligible Project @         | Type of Experience (As per Clause 2.2.2(B))   | Details of Functional Eligible Project    |  |   |   |
|--------------------------|--------------------------|----------------------------|---------------------------------------|---|---|--|---|---|
|                          |                          |                            |                                       |   | Project Cost (as per Clause 2.2.2 (B)(i)) | Is the project functional during last 3 years (Yes/ No) (as per Clause 2.2.2 (B)(iv)(a)) | Was the project being used as warehouse facility on a commercial basis. | Was the project being used for storing agricultural/ horticultural/ dairy produce |
| (1)                      | (2)                      |                            | Name of the Project and brief details | Operated, maintained, and managed /Developed, operated, maintained and managed/ Developed and Owned |   |  |   |   |
| Single Entity            |                          | a                          |                                       |   |   |  |   |   |
|                          |                          | b                          |                                       |   |   |  |   |   |
|                          |                          | c                          |                                       |   |   |  |   |   |
|                          |                          | d                          |                                       |   |   |  |   |   |
| Member 1                 |                          | 1a                         |                                       |   |   |  |   |   |
|                          |                          | 1b                         |                                       |   |   |  |   |   |

| Bidder Type <sup>#</sup> | Member Code <sup>¥</sup> | Project Code <sup>¥*</sup> | Functional Eligible Project @         | Type of Experience (As per Clause 2.2.2(B))   | Details of Functional Eligible Project    |  |   |   |
|--------------------------|--------------------------|----------------------------|---------------------------------------|---|---|--|---|---|
|                          |                          |                            |                                       |   | Project Cost (as per Clause 2.2.2 (B)(i)) | Is the project functional during last 3 years (Yes/ No) (as per Clause 2.2.2 (B)(iv)(a)) | Was the project being used as warehouse facility on a commercial basis. | Was the project being used for storing agricultural/ horticultural/ dairy produce |
| (1)                      | (2)                      |                            | Name of the Project and brief details | Operated, maintained, and managed /Developed, operated, maintained and managed/ Developed and Owned |   |  |   |   |
|                          |                          | 1c                         |                                       |   |   |  |   |   |
| Member 2                 |                          | 2a                         |                                       |   |   |  |   |   |
|                          |                          | 2b                         |                                       |   |   |  |   |   |
|                          |                          | 2c                         |                                       |   |   |  |   |   |
| Member 3                 |                          | 3a                         |                                       |   |   |  |   |   |
|                          |                          | 3b                         |                                       |   |   |  |   |   |
|                          |                          | 3c                         |                                       |   |   |  |   |   |
| Member 4                 |                          | 4a                         |                                       |   |   |  |   |   |
|                          |                          | 4b                         |                                       |   |   |  |   |   |

| Bidder Type <sup>#</sup> | Member Code <sup>¥</sup> | Project Code <sup>¥¥</sup> | Functional Eligible Project @         | Type of Experience (As per Clause 2.2.2(B))   | Details of Functional Eligible Project    |  |   |   |
|--------------------------|--------------------------|----------------------------|---------------------------------------|---|---|--|---|---|
|                          |                          |                            |                                       |   | Project Cost (as per Clause 2.2.2 (B)(i)) | Is the project functional during last 3 years (Yes/ No) (as per Clause 2.2.2 (B)(iv)(a)) | Was the project being used as warehouse facility on a commercial basis. | Was the project being used for storing agricultural/ horticultural/ dairy produce |
| (1)                      | (2)                      |                            | Name of the Project and brief details | Operated, maintained, and managed /Developed, operated, maintained and managed/ Developed and Owned |   |  |   |   |
|                          |                          | 4c                         |                                       |   |   |  |   |   |

**INSTRUCTIONS:**

@ Provide details of only those projects which qualify for the Technical Capacity and have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.2.4.

# A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.4, shall be provided.

¥ Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.

£\$\$ For conversion of US Dollars to Rupees, the rate of conversion shall be Rupees 85.4976 (Rupees Eighty Five Point Four Nine Seven Six only) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date on which the RFP has been published, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the date on which the RFP has been published.

¥¥ Refer Annex-III, Appendix I. Add more rows if necessary

**Annex- III****Details of Functional Eligible Projects**

(Instruction: Refer to Clauses 2.2.2 (B), 2.2.3 and 3.5 of the RFP)

**Project code:****Member Code:**

| Item<br>(1)  | Refer<br>Instruction<br>(2) | Particulars of the Project<br>(3) |  |
|--|-----------------------------|-----------------------------------|--|
| Title & nature of the project  | 4                           |                                   |  |
| Location (within India or Outside India)   | 4                           |                                   |  |
| Project Cost (certified by the Statutory Auditor of the Bidder) (Rs. In Crore)   | 4 & 6                       |                                   |  |
| Date of commencement of project / contract.  | 7                           |                                   |  |
| Date of completion/ commissioning  | 7                           |                                   |  |
| Total Built Up Area of the   | 5                           | <b>Year</b>                       | <b>Built Up Area<br/>(square feet)</b> |
|  |                             | FY2025                            |  |
|  |                             | FY2024                            |  |
|  |                             | FY2023                            |  |
| Major Clients over the last 3 years  | NA                          |                                   |  |
| Developed & Owned / Operated, maintained, and managed /<br>Developed, operated, maintained and managed   | 4                           |                                   |  |
| Developed under a separate legal entity (Yes/ No) (only applicable in case of “Developed” projects) if yes provide details of name of the separate legal entity or Name of Bidder if no ((As per Clause 2.2.2(B)(ii)(a)) | 8                           |                                   |  |
| Equity shareholding (with period during which equity was held) (only applicable in case of “Developed” projects)   | 9                           | <b>Year</b>                       | <b>Equity<br/>Shareholding</b>         |
|  |                             | FY2025                            |  |
|  |                             | FY2024                            |  |
|  |                             | FY2023                            |  |

| Item<br>(1)  | Refer<br>Instruction<br>(2) | Particulars of the Project<br>(3) |
|--|-----------------------------|-----------------------------------|
| If not Developed under a separate legal entity (only applicable in case of “Developed” projects), amount paid for development of Project (Rs in Crore) | 10                          |                                   |
| Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)  | 13                          |                                   |

**Instructions:**

1. Bidders are expected to provide information in respect of each Functional Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 2.2.2(B) of the RFP, as the case may be. Information provided in this Clause is intended to serve as a backup for information provided Annex-II of this Appendix-I. Bidders should also refer to the Instructions below.
2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Functional Eligible Project relates to an Associate of the Bidder or its Member, write “Associate” along with Member Code.
4. Details of each of the Functional Eligible Projects in terms of name of the project, location of the project (within or outside India), project cost, experience being claimed under which category (Developed and Owned / Operated, maintained, and managed / Developed, operated, maintained and managed) etc. The claim for project cost shall be accompanied by a certificate from the statutory auditor of the Bidder.
5. Details of total built up area of the project which was available for being let out during the entire year of operations for each of last three years.
6. Provide the estimated capital cost of the Functional Eligible Project.
7. The date of commissioning of the project, date of completion of construction should be clearly indicated.
8. In case the Functional Eligible Project is developed under a separate legal entity, the name and other details should be provided as per Clause 2.2.2(B)(ii)(a) In case the Functional Eligible Project is developed under the Bidder, write the name of the Bidder.
9. In case the Functional Eligible Project is developed under a separate legal entity, the equity shareholding held by the bidder in that separate legal entity for the entire period for which

“Developed” experience is being claimed may be provided. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on. Bidders are required to provide details of the years for which the experience is being claimed. For other years, the Bidder is requested to write NA.

10. If the Functional Eligible Project is not Developed under a separate legal entity (only applicable in case of “Developed” projects), the Bidder is required to mention amount paid for development of Project (Rs in Crore).
11. Experience for any activity relating to a Functional Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
12. For each Functional Eligible Project, a certificate from the Bidder's statutory auditor or its respective clients must be furnished as per format provided in Annexure III of Appendix I hereinabove. In case the Bidder does not have a Statutory Auditor, then certified by a CAG-empaneled Chartered Accountant.

The certificate from the Statutory Auditor or CAG-empaneled Chartered Accountant as the case may be, shall also provide for the below information.

- 1. Signature, name and designation of the authorised signatory of the firm*
- 2. Name of the audit firm:*
- 3. Seal of the audit firm:*
- 4. Date of issuance of Certificate:*
- 5. Document evidencing empanelment with CAG]*

In case the Certificate is issued by the client, then it should provide for the below information.

- 1. Signature, name and designation of the authorised signatory of Client organization*
- 2. Name of the Client organization:*
- 3. Seal of the Client organization:*
- 4. Date of issuance of Certificate:]*

13. In the event that credit is being taken for the Eligible Experience of an Associate, as defined in Clause 2.2.8, the Bidder should also provide a certificate in the format below:

**Certificate from Statutory Auditor regarding Associate<sup>S</sup>** (on letter head of Statutory Auditor)

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of \_\_\_\_\_ (*name of the Bidder / Member/ Associate*) is held, directly or indirectly<sup>#</sup>, by \_\_\_\_\_ (*name of Associate/ Bidder/ Member*).

By virtue of the aforesaid shareholding, the latter exercises Control over the former, who is an Associate in terms of Clause 2.2.8 of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

*{Describe the share-holding of the Bidder / Member and the Associate. In the event the Associate is under common Control with the Bidder / Member, the relationship may be suitably described and similarly certified herein }*

\_\_\_\_\_  
(Signature, name and designation  
of the authorised signatory)

Name of the audit firm:

Seal of the audit firm:

Date:

§ *In the event that the Bidder/ Member exercise Control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to*

# *In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% (fifty percent) in order to establish that the chain of "Control" is not broken.*

Note: *It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Eligibility.*

**Annex- IV****Financial Capacity of the Bidder***(Instruction: Refer to Clauses 2.2.2 (A), 2.2.3 and 3.6 of the RFP)**(In Rs. crore<sup>§</sup>)*

| Bidder Type <sup>§§</sup> | Member Code <sup>£</sup> | Net Worth/ ACI <sup>££</sup> |
|---------------------------|--------------------------|------------------------------|
| (1)                       | (2)                      | Year 1<br>(3)                |
| Single Entity             |                          |                              |
| Member 1                  |                          |                              |
| Member 2                  |                          |                              |
| Member 3                  |                          |                              |
| Member 4                  |                          |                              |
| TOTAL                     |                          |                              |

**Name & address of the bankers of the Bidder:**

<sup>§</sup> For conversion of US Dollars to Rupees, the rate of conversion shall be Rs. 85.8683 (Rupees Eighty Five Point Eight Six Eight Three only) to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

<sup>§§</sup> A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

<sup>£</sup> Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.

<sup>££</sup> The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.8 separately.

**Instructions:**

- The Bidder/ its constituent Members shall attach copies of the balance sheets, financial statements and Annual Reports for three (03) years preceding the Bid Due Date. The financial statements shall:
  - reflect the financial situation of the Bidder or Members and its/ their Associates where the Bidder is relying on its Associate's financials;
  - be audited by a statutory auditor;
  - be complete, including all notes to the financial statements; and
  - correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
- For Companies Net Worth shall mean (Subscribed and Paid-up Equity Capital + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders). For entities other than companies, AIFs

and Foreign Investment Fund, the Net Worth shall mean assets net of liabilities and calculated as per applicable accounting standards.

3. Year 1 will be the latest completed financial year, preceding the Bid Due Date. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.11.
4. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 2.2.4 (ii)(e) of the RFP document.
5. The Bidder shall provide an Auditor's Certificate specifying the Net Worth /ACI of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.2.3(b) of the RFP document.
6. In case of ACI, the Bidder shall provide certificate (specifying methodology adopted) issued by statutory auditor (or such other certificate as filed with the regulator in the relevant jurisdiction) not older than 3 (three) months prior to the Bid Due Date.
7. In the event that credit is being taken for the Financial Capacity of an Associate, as defined in Clause 2.2.8, the Bidder should also provide a certificate in the format below:

**Certificate from the Statutory Auditor regarding Associate<sup>§</sup>**

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ..... (name of the Bidder/ Member/ Associate) is held, directly or indirectly<sup>£</sup>, by ..... (name of Associate/ Bidder/ Member). By virtue of the aforesaid share-holding, the latter exercises Control over the former, who is an Associate in terms of Clause 2.2.8 of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

*{Describe the share-holding of the Bidder/ Member and the Associate. In the event the Associate is under common Control with the Bidder/ Member, the relationship may be suitably described and similarly certified herein.}*

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of Date:  
the authorised signatory).

<sup>^^</sup> In the event that the Bidder/ Member exercises Control over an Associate by operation of law or by contract or otherwise, this certificate may be suitably modified and copies of the relevant law/documents may be enclosed and referred to.

<sup>£</sup> In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% (fifty percent) in order to establish that the chain of "Control" is not broken.

*Note: It may be noted that in the absence of any detail in the above certificate, the information would be considered inadequate and could lead to exclusion of the relevant capacity in computation of Net Worth.*

**Annex- V**

**Statement of Legal Capacity**

*(Instruction : To be forwarded on the letterhead of the Bidder / Each Member of Consortium)*

Date: \_\_\_\_\_

To,

Delhi Development Authority  
Vikas Sadan  
INA  
New Delhi-110023

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the Bid) satisfy the eligibility criteria and agree to abide by the terms and conditions laid out in the RFP document.

We have agreed that \_\_\_\_\_ (insert member's name) will act as the Lead Member of our consortium.\*

We have agreed that \_\_\_\_\_ (insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf\* and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of \_\_\_\_\_

*\*Please strike out whichever is not applicable*

## APPENDIX II - Format of Bank Guarantee

(To be provided for the Project)

### Format of the Bank Guarantee for Bid Security

(Refer to Clause 2.21)

B.G. No. \*\*\*\*\*Dated:

1. In consideration of you, Delhi Development Authority, having its head office at Vikas Sadan, INA, New Delhi-110023, India (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of ..... (a company / partnership registered under \_\_\_\_\_ / [reference to the applicable law under which the Bidder has been registered and/or constituted]) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the **“Auction of license rights of a land parcel in Plot No Development of a Warehouse Complex, Sector 36, Rohini”** (hereinafter referred to as “the Project”) pursuant to the RFP Document dated ..... issued in respect of the Project and other related documents including without limitation the draft Licence Deed (hereinafter collectively referred to as “Bidding Documents”), we [●] (insert the Name of the Bank) having our registered office at [●] (insert address of registered office) and one of its branches at [●] (insert address of BG issuing branch) (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.21 of the RFP Document, irrevocably, unconditionally and without reservation, guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority, an amount of Rs. [●] (Rupees [●]) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in breach or default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the

Bid Validity Period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. [●] (Rupees [●]).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as directed by the Authority from time to time, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in breach or default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in breach or default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid Validity Period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [Insert name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein and that the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. [●] (Rupees [●]). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [[●] (indicate date falling 360 days after the Bid Due Date)].

Signed and Delivered by ..... Bank

By the hand of Mr./Ms. ...., its ..... and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

Note: The bank account details of DDA for preparation of BG are provided below:

| S. No. | Particulars         | Details                     |
|--------|---------------------|-----------------------------|
| 1.     | Name of Beneficiary | Delhi Development Authority |
| 2.     | Name of Bank        | Indusind Bank Ltd.          |
| 3.     | Branch Address      | Jorbagh Branch, Delhi       |
| 4.     | Account No.         | 251035072025                |
| 5.     | IFSC Code           | INDB0001035                 |
| 6.     | Branch Code         | 1035                        |

## APPENDIX III - Format of Power of Attorney

### Power of Attorney for signing of Bid<sup>8</sup>

(Refer Clause 2.1.6)

Know all men by these presents, We, ..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms (Name), son/daughter/wife of ..... and presently residing at....., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the RFP published by Delhi Development Authority (the “Authority”) for the auction of licence rights of land parcel in Sector 36, Rohini, New Delhi on license fee basis for development and operations of a Warehouse Complex, including but not limited to signing and submission of all applications, bids and other documents and writings, participating in bidders’ and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Licence Deed and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Licence Deed with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 20.....

For.....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

---

<sup>8</sup> To be submitted in original.

(Signature, name, designation and address of the Attorney)

*Notes:*

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *The Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961, are not required to be legalised by the Indian Embassy if it carries a conforming apostille certificate.*

## **APPENDIX IV - Format of Power of Attorney for Lead Member of Consortium**

### **Power of Attorney for Lead Member of Consortium<sup>9</sup>**

*(Refer Clause 2.1.7)*

Whereas the Delhi Development Authority (the “Authority”) has invited bids from qualified parties for the auction of license rights of land parcel in Sector 36, Rohini, New Delhi on license fee basis for development and operations of a Warehouse Complex (the “Project”).

Whereas, ....., ....., and ..... (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, 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 the Consortium’s bid for the Project and its execution.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS

We, ..... having our registered office at ....., M/s. ...., having our registered office at ....., and M/s. ...., having our registered office at ....., (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s ....., having its registered office at ....., being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the License/ Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its Bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accepting the Letter of Award, participating in bidders’ and other conferences, responding to queries, submitting information/ documents, signing and executing contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s

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<sup>9</sup> To be submitted in original.

Request for Proposal - Development of a Warehouse Complex, Sector 36, Rohini, New Delhi  
bid for the Project and/ or upon award thereof till the Licence Deed is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 20....

For .....

(Signature, Name & Title)

For .....

(Signature, Name & Title)

For .....

(Signature, Name & Title)

(Executants)

(To be executed by all the Members of the Consortium)

Witnesses:

**Notarised**

1.

2.

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *The Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

## APPENDIX V - Format of Joint Bidding Statement

### Joint Bidding Agreement

(Refer Clause 2.2.4(ii)(e))

(To be executed on stamp paper of the appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the \_\_\_\_ day of \_\_\_\_ 20\_\_

#### AMONGST

1. \_\_\_\_\_ Limited, a company incorporated under the Companies Act, 1956/ 2013<sup>10</sup> and having its registered office at \_\_\_\_\_ (hereinafter referred to as the "Party of the **First Part** " which expression shall, unless repugnant to the context include its successors and permitted assigns)

#### AND

2. \_\_\_\_\_ ,a company incorporated under the Companies Act, 1956/ 2013 and having its registered office at \_\_\_\_\_ (hereinafter referred to as the " Party of the **Second Part** " which expression shall, unless repugnant to the context include its successors and permitted assigns)

#### AND

3. { \_\_\_\_\_ ,a company incorporated under the Companies Act, 1956/ 2013 and having its registered office at \_\_\_\_\_ (hereinafter referred to as the " Party of the **Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

#### AND

4. { \_\_\_\_\_ ,a company incorporated under the Companies Act, 1956/ 2013 and having its registered office at \_\_\_\_\_ (hereinafter referred to as the " Party of the **Fourth Part** " which expression shall, unless repugnant to the context include its successors and permitted assigns) } <sup>11</sup>

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<sup>10</sup> A Bidder who is registered abroad may substitute the words, viz "a company registered under the Companies Act, 1956/2013" by the words, viz "a company duly organised and validly existing under the laws of the jurisdiction of its incorporation". A similar modification may be made in Name Clause 2, as necessary

<sup>11</sup> The number of Parties will be shown here, as applicable, subject however to a maximum of 4 (four)

OR

\_\_\_\_\_, a partnership firm constituted under Partnership Deed dated \_\_\_\_\_ and registered under the Indian Partnership Act, 1932, and having its principal office at \_\_\_\_\_ and comprising of following partners –

Mr. / Ms. \_\_\_\_\_ (S/W/D of Mr. \_\_\_\_\_), Mr. / Ms. \_\_\_\_\_ (S/W/D of Mr. \_\_\_\_\_), Mr. / Ms. \_\_\_\_\_ (S/W/D of Mr. \_\_\_\_\_), Mr. / Ms. \_\_\_\_\_ (S/W/D of Mr. \_\_\_\_\_);

OR

\_\_\_\_\_, a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008 having its registered office at \_\_\_\_\_;

OR

Mr. / Ms. \_\_\_\_\_, carrying on business as a sole proprietor under the name and style of M/s. \_\_\_\_\_ & Co with Principal Place of Business at \_\_\_\_\_;

OR

Mr. / Ms. \_\_\_\_\_, as a Resident Indian Citizen / Non-Resident Indian having PAN No [insert PAN No] and residing at [insert address of residence]

The above mentioned parties of the FIRST, SECOND, {THIRD, FOURTH} PART are collectively referred to as the "**Parties**" and severally referred to as a "**Party**"

**WHEREAS,**

- A) The Delhi Development Authority (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids (the Bids") by its Request for Proposal No. \_\_\_\_\_ dated \_\_\_\_\_ (the "RFP") for qualification and short-listing of bidders for "**Auction of licence rights of land parcel in Development of a Warehouse Complex, Sector 36, Rohini, New Delhi** " ("**Project**").
- B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other Bidding Documents in respect of the Project, and
- C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

**NOW IT IS HEREBY AGREED as follows:**

## **1. Definitions and Interpretations**

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

## **2. Consortium**

- a) The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.
- b) The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

## **3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "**SPV**") under the Indian Companies Act, 2013, for entering into a Licence Deed with the Authority and for performing all its obligations as the Licensee in terms of the said Licence Deed for the Project.

## **4. Role of the Parties**

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be .....
- { (c) Party of the Third Part shall be ..... of the Consortium; }
- { (d) Party of the Fourth Part shall be ..... of the Consortium; }

## **5. Joint and Several Liability**

5.1 The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Licence Deed, till the Appointed Date in accordance with the Licence Deed.

5.2 The Parties do hereby undertake and declare that the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Consortium; and that each member of the Consortium shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member.

## **6. Shareholding in the SPV**

6.1 The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

**First Party:**

**Second Party:**

**{Third Party:}**

**{Fourth Party:}**

6.2 The Parties undertake:

(a) Each of the Member of the Consortium shall nominate one member as the lead member (the "Lead Member"), who shall have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity capital of the SPV until the expiry of the 5th (fifth) anniversary of the Project COD. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III and Appendix-IV, signed by all the other members of the Consortium;

(b) Each of the Member of the Consortium, whose Technical Capacity or Financial Capacity is being used to qualify under this RFP, shall have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity capital of the SPV until the expiry of the 5th (fifth) anniversary of the Project COD.

(c) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity capital of the SPV at all times until the 5th (fifth) anniversary of the commercial operation date of the Project;

6.3 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Agreement.

## **7. Representation of the Parties**

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;

- (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates or Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

## 8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Appointed Date of the Project is achieved under and in accordance with the Licence Deed, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project, this Agreement will stand terminated upon return of the Bid Security by the Authority to the Bidder.

## 9. Miscellaneous

- (a) This Joint Bidding Agreement shall be governed by laws of India.
- (b) The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

|   |  |
|---|--|
| Signed, Sealed and Delivered<br><br>For and Behalf of Lead Member<br><br>(Signature)<br><br>(Name)<br><br>(Designation) | Signed, Sealed and Delivered<br><br>For and Behalf of Second Part<br><br>(Signature)<br><br>(Name) |
|---|--|

|                              |                               |                              |
|------------------------------|-------------------------------|------------------------------|
| (Address)                    |                               | (Designation)                |
|                              |                               | (Address)                    |
| Signed, Sealed and Delivered | Signed, Sealed and Delivered  | Signed, Sealed and Delivered |
| For and Behalf of Third Part | For and Behalf of Fourth Part | For and Behalf of Fifth Part |
| (Signature)                  | (Signature)                   | (Signature)                  |
| (Name)                       | (Name)                        | (Name)                       |
| (Designation)                | (Designation)                 | (Designation)                |
| (Address)                    | (Address)                     | (Address)                    |

**Notes:**

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

## **APPENDIX VI - Financial Quote**

### **Financial Quote**

**NOT TO BE SUBMITTED WITH THE TECHNICAL BID**

**ONLY TO BE SUBMITTED ONLINE**

The Financial Quote is to be submitted through e-procurement portal:

[www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com)

## **APPENDIX VII - DIPAM Guidelines**

### **Guidelines of the Department of Investment and Public Asset Management**

No. 3/9/2016-DD-II-B

Government of India

Department of Investment and Public Asset Management

Block 14, CGO Complex

New Delhi.

Dated 28<sup>th</sup>September, 2017.

#### OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like Net Worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment / adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. 'Grave Offence' is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case-to-case basis after considering the facts of the case and relevant legal principles, by the Government. 'Grave Offence' would include the below noted cases:
  - a. Only those orders of SEBI are to be treated as coming under the category of 'Grave Offences', which directly relate to 'Fraud' as defined in the SEBI Act and / or regulations.
  - b. Only those orders of SEBI that cast a doubt on the ability of the bidder to manage the public-sector unit, when it is disinvested, are to be treated as adverse.
  - c. Any conviction by Court of Law.
  - d. In cases in which SEBI also passes a prosecution order, disqualification of the bidder should arise only on conviction by the Court of Law
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government / conviction by a Court of Law for an offence committed by the bidding party or its Associate Company (as defined in Companies Act, 2013) would result in disqualification. The decision in regard to the relationship interse between the concerns, would be taken based on the relevant facts and after

- examining whether the two concerns are substantially Controlled by the same person/persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
  - (d) Any bidder, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order, based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
  - (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
  - (f) Before disqualifying a bidder, a Show Cause Notice as to why it should not be disqualified, would be issued to it and it would be given an opportunity to explain its position.
  - (g) These criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority, which if decided against the bidder, may disqualify the bidder in terms of (a) & (b) above or the eligibility criteria prescribed in the EoI, is pending against them. In case any investigation is pending in case which if decided against the bidder, may disqualify the bidder in terms of (a) & (b) above on the eligibility criteria prescribed in EoI against the bidder or the concern in which the bidder has substantial interest or against its CEO or any of its Directors/Managers, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be filed along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

## **APPENDIX VIII - Instruction for Online Bid Submission**

### **Instructions for Online Bid Submission**

The bidder can access/ download the bidders guide/ bidders manual from the link:

[www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com)

## **APPENDIX IX - Instructions to Bidders for Electronic Auction Process**

### **Tender Process for Auction Process (e-Reverse Auction / e-Forward Auction) Instructions to Bidders**

The bidding manual can be downloaded online at [www.DDA.a2zprocure.com](http://www.DDA.a2zprocure.com) under the download tab “DDA Land eAuction Bidding Manual”.

Note:

- i. *The e-Forward Auction will have a scheduled start time and close time which will be displayed on screen.*
- ii. *The e-Forward Auction will have a fixed time window of 1 hour which will be displayed on screen.*
- iii. *In the event a bid is received during the last 5 (Five) minutes before the scheduled close time of electronic auction, the close time of electronic auction will be automatically extended by 5 (Five) minutes from the closing date and time to give equal opportunity to all other Technically Qualified Bidders.*
- iv. *This process of auto extension will continue till no Bid (Financial Quote) is received during a period of 5 (Five) minutes within the closing date and time.*

*For example, assuming that the initial scheduled close time for a particular auction is 11:00 AM and a Bid (Financial Quote) is received at 10:58 AM, the scheduled close time shall be revised to 11:05 AM. again, if a Bid (Financial Quote) is received at 11:01 AM, the scheduled close time shall be revised to 11:10 AM and so on. In the event that no further Bid (Financial Quote) is received till 11:10 AM, the auction will close at 11:10 AM.*

*The above example is only illustrative and meant for explaining the e-auction process only.*

- v. *The current server time (Indian Standard Time) will also be displayed on the screen.*
- vi. *The bid increment amount is Rs. 10,00,000/- (Rupees Ten Lakhs).*
- vii. *The maximum bid increment amount in a single bid would be Rs. 2,00,00,000/- (Rupees Two Crores).*
- viii. *The first bid on the e-Forward Auction would have to be the reserve price + 1 bid increment*

## **APPENDIX X - Project Information Memorandum**

### **Description of the Land Parcel at Sector 36, Rohini, New Delhi**

*[Note: Uploaded separately]*

## **APPENDIX XI - Format of Integrity Pact**

### **Integrity Pact** (To be signed by the bidder)

To

Delhi Development Authority  
Vikas Sadan  
INA, New Delhi-110023

**Sub: Submission of bid for auction of license for a DDA land parcel located in Development of a Warehouse Complex, Sector 36, Rohini, New Delhi.**

Dear Sir,

I/We acknowledge that D.D.A. is committed to follow the principles thereof as enumerated in the Integrity Agreement enclosed with the RFP.

I/We agree that the Request For Proposal (RFP No [●]) (hereinafter referred to as “RFP”) is to provide interested parties with information that may be useful to them in formulation of their application for qualification and making their financial offers (“Bid”) and is made on a condition that I/We will sign the enclosed Integrity Agreement, which is an integral part of Bid, failing which I/We will stand disqualified from the Bidding Process.

I/We acknowledge that THE MAKING OF THE BID SHALL BE REGARDED AS AN UNCONDITIONAL AND ABSOLUTE ACCEPTANCE of this condition of the RFP.

I/We confirm acceptance and compliance with the Integrity Agreement in letter and spirit and further agree that execution of the said Integrity Agreement shall be separate and distinct from the main contract, which will come into existence when Bid is finally accepted by D.D.A.

I/We acknowledge and accept the duration of the Integrity Agreement, which shall be in the line with Article 6 of the enclosed Integrity Agreement.

I/We acknowledge that in the event of my/our failure to sign and accept the Integrity Agreement, while submitting the Bid, DDA shall have unqualified, absolute and unfettered right to disqualify the Bidder and reject the Bid in accordance with terms and conditions of the Bid.

Yours faithfully

(Duly authorized signatory of the Bidder)

**INTEGRITY AGREEMENT**

**(To be signed by the Bidder and same signatory competent/authorized to sign the relevant contract on behalf of D.D.A.)**

This Integrity Agreement is made on..... this .....day of ..... 2025

BETWEEN

Delhi Development Authority represented through [●] (Name of Division)  
\_\_\_\_\_ DDA;

\_\_\_\_\_ (*Address of Division*) (hereinafter referred as the ‘Authority’, which expression shall unless repugnant to the meaning or context hereof include its successors and permitted assigns);

AND

(Name and Address of the Bidder entity) through \_\_\_\_\_ (hereinafter referred to as the “Bidder” and which expression shall unless repugnant to the meaning or context hereof include its successors and permitted assigns),

**PREAMBLE**

WHEREAS the Authority has floated the RFP (RFP No [●]) (hereinafter referred to as “RFP”) and intends to award through auction license for a DDA land parcel located in Sector 36, Rohini, New Delhi for Development of a Warehouse Complex, hereinafter referred to as the “License Agreement”

AND WHEREAS the Authority values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/transparency in its relation with its Bidder(s) and Contractor(s).

AND WHEREAS to meet the purpose aforesaid both the parties have agreed to enter into this Integrity Agreement (hereinafter referred to as “Integrity Pact” or “Pact”), the terms and conditions of which shall also be read as integral part and parcel of the Bid and License Agreement between the parties.

NOW, THEREFORE, in consideration of mutual covenants contained in this Pact, the parties hereby agree as follows and this Pact witnesses as under:

**Article 1: Commitment of the Principal/Owner**

The Authority commits itself to take all measures necessary to prevent corruption and to observe the following principles:

- (a) No employee of the Authority, personally or through any of his/her family members, will in connection with the RFP, or the execution of the License Agreement, take a promise

for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.

- (b) The Authority will, during the Bidding Process, treat all Bidder(s) with equity and reason. The Authority will, in particular, before and during the Bidding Process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential/additional information through which the Bidder(s) could obtain an advantage in relation to the Bidding Process.
- (c) The Authority shall endeavor to exclude from the Bidding Process any person, whose conduct in the past has been of biased nature.
- (d) If the Authority obtain information on the conduct of any of its employees which is a criminal offence under the Bharatiya Nyaya Sanhita 2023 (“BNS”) / Prevention of Corruption Act, 1988 (“PC Act”) or is in violation of the principles herein mentioned or if there be a substantive suspicion in this regard, the Authority will inform the Chief Vigilance Officer and in addition can also initiate disciplinary actions as per its internal laid down policies and procedures.

#### **Article 2: Commitment of the Bidder(s)**

- (a) It is required that each Bidder (including their respective officers, employees and agents) adhere to the highest ethical standards, and report to the Government/Department all suspected acts of fraud or corruption or coercion or collusion of which it has knowledge or becomes aware, during the Bidding Process and throughout the negotiation or award of a contract.
- (b) The Bidder(s) commits himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the Bidding Process and execution of License Agreement.
- (c) The Bidder(s) will not, directly or through any other person or firm, offer, promise or give to any of the Authority’s employees involved in the Bidding Process or execution of the License Agreement or to any third person any material or other benefit which he/she is not legally entitled to, in order obtain in exchange any advantage of any kind whatsoever during the Bidding Process or during the execution of the License Agreement.
- (d) The Bidder(s) will not enter with other Bidder(s) into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to cartelize in the bidding process.
- (e) The Bidder(s) will not commit any offence under the relevant BNS/PC Act. Further the Bidder(s) will not use improperly (for the purpose of competition or personal gain), or pass on to others, any information or documents provided by the Authority as part of the

business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

- (f) The Bidder(s) of foreign origin shall disclose the names and addresses of agents/representatives in India, if any. Similarly, Bidders(s) of Indian Nationality shall disclose names and addresses of foreign agents/representatives, if any. Either the Indian agent on behalf of the foreign principal or the foreign principal directly could bid in a bid/tender but not both. Further, in cases where an agent participates in a bid/ tender on behalf of one developer, he shall not be allowed to quote on behalf of another developer along with the first developer in a subsequent/parallel bid/tender for the same item.
- (g) The Bidder(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the Bid.
- (h) The Bidder(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.
- (i) The Bidder(s) will not, directly or through any other person or firm indulge in fraudulent practice means a wilful misrepresentation or omission of facts or submission of fake/forged documents in order to induce public official to act in reliance thereof, with the purpose of obtaining unjust advantage by or causing damage to justified interest of others and/or to influence the procurement process to the detriment of the Government interests.
- (j) The Bidder(s) will not, directly or through any other person or firm use coercive practices (means the act of obtaining something, compelling an action or influencing a decision through intimidation, threat or the use of force directly or indirectly, where potential or actual injury may be fall upon a person, his/her reputation or property to influence their participation in the Bidding Process).

### **Article 3: Consequences of Breach**

- (a) Without prejudice to any rights that may be available to the Authority under law or the License Agreement or its established policies and laid down procedures, the Authority shall have the following rights in case of breach of this Integrity Pact by the Bidder(s) and the Bidder accepts and undertakes to respect and uphold the Authority's absolute right: If the Bidder(s), either before award or during execution of License Agreement has committed a transgression through a violation of Article 2 above or in any other form, such as to put his reliability or credibility in question, the Authority after giving 14 days' notice to the said Bidder shall have powers to disqualify the Bidder(s) from the Bidding Process or terminate/ determine the License Agreement, if already executed or exclude the Bidder from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of transgression and determined by the Authority. Such exclusion may be forever or for a limited period as decided by the

Authority.

- (b) Forfeiture of Bid Security / Performance Security: If the Authority has disqualified the Bidder(s) from the Bidding Process prior to the award of the Bid or terminated/ determined the License Agreement or has accrued the right to terminate /determine the License Agreement according to Article 3(a), the Authority apart from exercising any legal rights that may have accrued to the Authority, may in its considered opinion forfeit the entire amount of Performance Security / Bid Security of the Bidder, as applicable.
- (c) Criminal Liability: If the Authority obtains knowledge of conduct of a Bidder, or of an employee or a representative or an associate of a Bidder which constitutes corruption within the meaning of BNS or PC, or if the Authority has substantive suspicion in this regard, the Authority will inform the same to law enforcing agencies for further investigation.

**Article 4: Previous Transgression:**

- (a) The Bidder declares that no previous transgressions have occurred in the last 5 years with any other company in any country conforming to the anticorruption approach or with Central Government or State Government or any other Central/ State Public Sector Enterprises in India that could justify his exclusion from the Bidding Process.
- (b) If the Bidder makes incorrect statement on this subject, he can be disqualified from the Bidding Process or action can be taken for banning of business dealings/holiday listing of the Bidder as deemed fit by the Authority.
- (c) If the Bidder can prove that he has resorted/recouped the damage caused by him and has installed a suitable corruption prevention system, the Authority may, in its own discretion, revoke the exclusion prematurely.

**Article 5: Equal Treatment of all Bidders:**

- (a) The Bidder(s) undertake(s) to demand from all contractors and subcontractors a commitment in conformity with this integrity Pact. The Bidder shall be responsible for any violation(s) of the principle laid down in this agreement/Pact by any of its sub-contractor/sub-vendors.
- (b) The Authority will enter into Pacts on identical terms as this one with all Bidders.
- (c) The Authority will disqualify Bidders, who do not submit, the duly signed Pact between the Authority and the bidder along with the Bid or violate its provisions at any stage of the Bidding Process.

**Article-6 - Duration of the Pact:**

- (a) This Pact begins when both the parties have legally signed it. It expires for the Bidder, till the Bid has been awarded. If any claim is made/lodged during the time, the same shall be binding and continue to be valid despite the lapse of this Pact as specified above, unless it is discharged/ determined by the Competent Authority or DDA.

**Article 7- Other Provisions:**

- (a) This Pact is subject to Indian Law, place of performance and jurisdiction is the Head Quarters of the Division of the Authority, who has floated the RFP.
- (b) Changes and supplements need to be made in writing. Side agreements have not been made.
- (c) If the Bidder is a partnership or a consortium, this Pact must be signed by all the partners or by one or more partner holding power of attorney signed by all partners and consortium members. In case of a sole Bidder, the Pact must be signed by a representative duly authorized by board resolution or such other document issued by the sole Bidder (in case the sole Bidder is not a company).
- (d) Should one or several provisions of this Pact turn out to be invalid; the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
- (e) It is agreed term and condition that any dispute or difference arises between the parties with regard to the terms of this Integrity Agreement/Pact, any action taken by the Authority in accordance with this Integrity Agreement/ Pact or Interpretation thereof shall not be subject to arbitration.

**Article 8 – Legal and Prior Rights:**

- (a) All rights and remedies of the parties hereto shall be in addition to all the other legal rights and remedies belonging to such parties under the RFP and/or law and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid. For the sake of brevity, both the Parties agree that this Integrity Pact will have precedence over the Bid documents with regard any of the provision covered under this Integrity Pact.

IN WITNESS WHEREOF the parties have signed and executed this Integrity Pact at the place and date first above mentioned in the presence of following witnesses:

|   |  |
|---|--|
| For and on behalf of Authority: Signature | For and on behalf of Bidder: Signature |
| Name:                                     | Name:                                  |
| Designation:                              | Designation:                           |
| Address:                                  | Address:                               |
| Place:                                    | Place:                                 |
| Date:                                     | Date:                                  |

WITNESSES:

|                      |                      |
|----------------------|----------------------|
| Witness 1: Signature | Witness 2: Signature |
| Name:                | Name:                |
| Designation:         | Designation:         |
| Address:             | Address:             |
| Place:               | Place:               |
| Date:                | Date:                |

## APPENDIX XII - Format of Letter of Award

### FORMAT OF LETTER OF AWARD

(to be issued on DDA's Letterhead)

Ref. No.: [insert reference no]

Date: [insert date]

To,

[Insert Name and Address of Selected Bidder]

Kind Attention: [Insert Name and Designation of the concerned official of Successful Bidder]

Sir,

#### **Subject: Letter of Award ("LOA") for the selection of the Selected Bidder.**

1. This is with reference to your Bid for the RFP published on [insert date of publication of RFP] by the Delhi Development Authority for the auction of licence rights of land parcel (measuring approximately 23.2 acres (across two plots, as set out in Clause 1.1.2 iv) in Sector 36, Rohini, Delhi on license fee basis for Warehouse Complex development ("Tender Documents").
2. We are pleased to inform you that pursuant to the Bidding Process, that you had submitted the Highest Financial Quote of [insert value of highest financial quote] as the Annual License Fee (ALF) in accordance with the Tender Document, you have been chosen as the Selected Bidder.
3. You are requested to sign and return the duplicate copy of this LOA to the office of the undersigned, as acknowledgement of this LOA, latest within [10 (ten) days] of the receipt of this LOA, failing which the Bid Security submitted by you shall be unconditionally appropriated and this LOA shall stand cancelled and annulled forthwith.
4. This LOA shall originally remain valid for a period of [12 (twelve)] months from the date of its issuance.
5. You have submitted a Bid Security for a sum of INR [insert the amount] on [insert date]. The Bid Security shall remain valid at all times till the submission of the Performance Security in accordance with the License Deed and at least for a period of 12 (twelve) months from the date of the issuance of the LOA.

*Capitalized terms if not defined herein shall have the meaning ascribed thereto under the Tender Documents.*

Sincerely,

[Insert name and designation of the issuing authority]

**Delhi Development Authority**

## **APPENDIX XIII - Format of Licence Deed**

### **FORMAT OF LICENSE DEED**

*[Uploaded separately]*

## **APPENDIX XIV - Development Obligations**

### **DEVELOPMENT OBLIGATIONS**

1. The Licensee will have to develop an energy efficient Warehouse Complex on the Plot Location which may include:
  - (a) Grade A Warehouse Space(s)
  - (b) Wholesale Market(s) (as defined in extant provisions of MPD)
  - (c) Commercial Office Space(s) (to the extent permissible under extant provisions of MPD)
  - (d) Custom Bonded Warehouses (as permitted under Applicable Laws)
2. Notwithstanding anything contrary to facilities mentioned above, the Licensee shall also develop the following supporting facilities:
  - (a) Internal Roads and Paved areas for circulation
  - (b) Parking facilities for trucks and other vehicles of users who come to avail the services of the Warehouse Complex
  - (c) Services and Utilities such as rest rooms, water supply and rainwater harvesting, storm water drains, sewage treatment plant, solid waste management, electrical substation and distribution network, street lighting, yard lighting, fire water supply with hydrants as per Applicable Laws
  - (d) Open landscape and horticulture area
  - (e) Adequate power backup

## APPENDIX XV - Specifications and Standards

### STANDARDS AND SPECIFICATIONS

#### 1. Specification and standards

The building shall be designed in accordance with the latest Indian Standard Codes and shall be designed to resist wind and seismic forces and should comply with the following:

- (a) Applicable National Building Code (NBC)
- (b) Applicable Bureau of Indian Standards specifications
- (c) Applicable Building Bye-Laws
- (d) Applicable Master Plan regulations
- (e) Relevant Bureau of Indian Standards (BIS), Standards, National Building Code, relevant Central Public Works Department (CPWD) norms (wherever applicable), Ministry of Road Transport and Highways (MoRTH), Indian Road Congress (IRC)
- (f) Guidelines as prescribed in the Warehouse Standards (Annexure 01 and Annexure 02) of the “*E-handbook On Warehousing Standards*” published by Ministry of Commerce and Industry, Government of India in 2022 as currently available on:

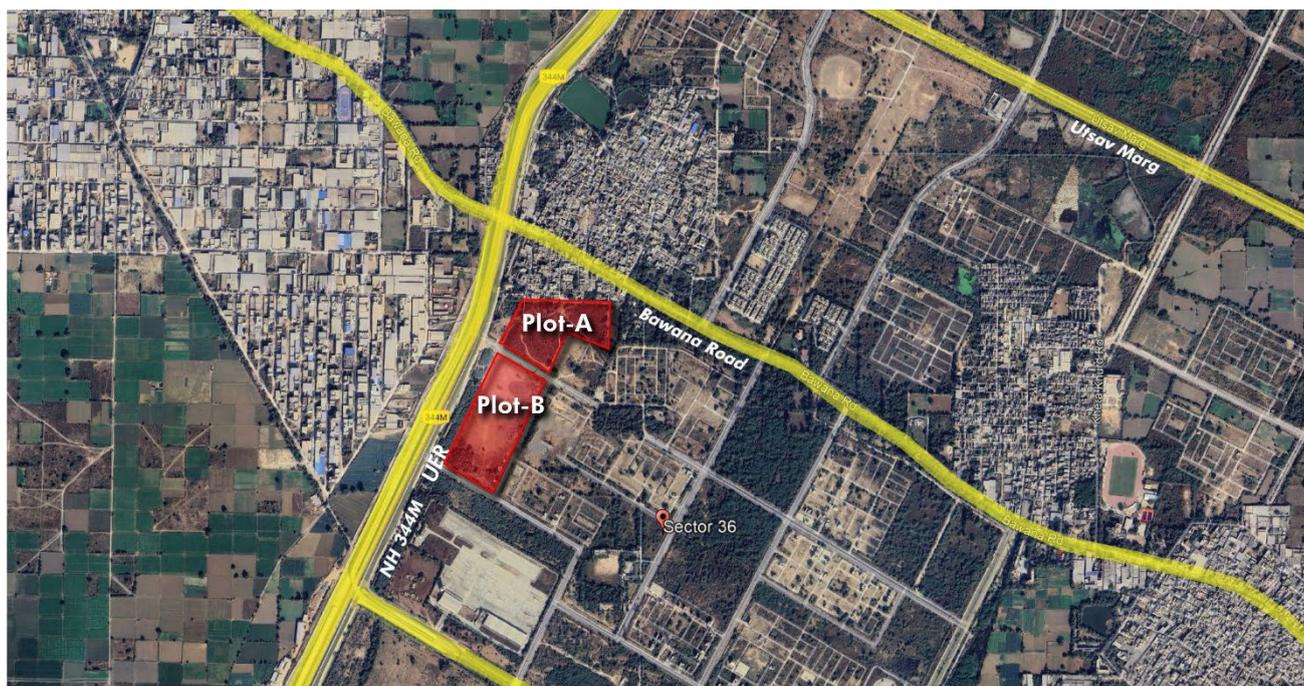
<https://warehousingindia.org/wp-content/uploads/2022/09/Handbook-on-Warehousing-Standards.pdf>

or any other such applicable guidelines / standards that may be published by relevant Government Instrumentality.

# APPENDIX X - Project Information Memorandum

## Description of the Land Parcel at Sector 36, Rohini, New Delhi

The land parcel of approximately 23.2 acres is located in the western end of Sector 36, Rohini. Currently the site is accessible via three 60 feet wide roads in the norther, southern & eastern of the site. There is a green belt (compensatory afforestation for Dwarka Expressway) along the western periphery of site, it is also acting as a noise barrier for UER II (Urban Extension Road II). The map below shows the major and arterial roads and the site location:

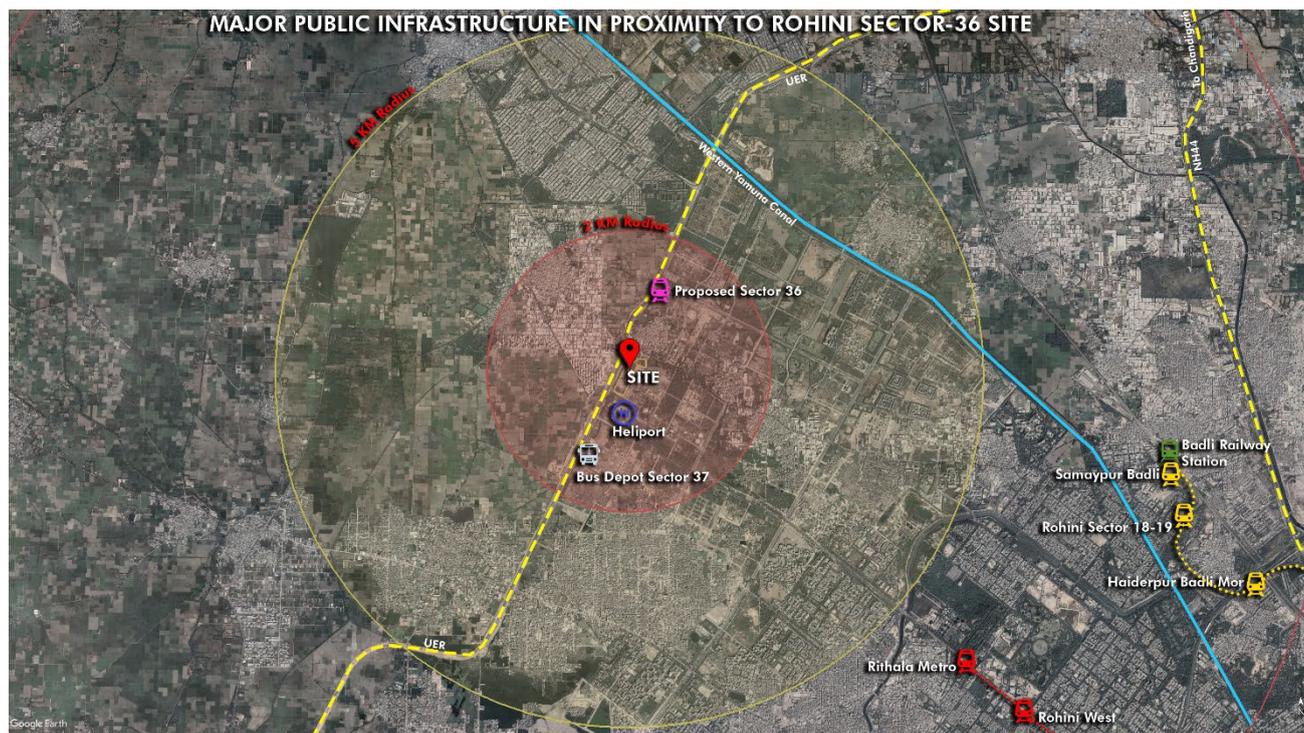


Key features of the site include:

| Sl. No. | Description                       | Details   |
|---------|-----------------------------------|---|
| 1       | <b>Total Plot Area</b>            | 23.16 Acres approximately<br>Plot A – 10.43 acres approximately<br>Plot B – 12.73 acres approximately<br>(Setbacks shall be governed as per MPD norms as two separate plots.) |
| 2       | <b>Land use (as per MPD 2021)</b> | Commercial  |
| 3       | <b>Current Land Status</b>        | Vacant  |
| 4       | <b>Permissible FAR</b>            | 80  |
| 5       | <b>Maximum Ground Coverage</b>    | 40%   |
| 6       | <b>Height</b>                     | Below 15 meters<br>(As per UBBL 2016 – Table 3.2 – Risk Matrix for Storage Building/ Warehouse/ Godowns as per MPD 2021 Table 6.4.2.1 Other Conditions)                       |
| 7       | <b>Parking</b>                    | 3 ECS per 100 square meters   |

The site is located close to the Rohini Heliport (within 2-minute walkable distance), proposed sector 36 Rohini Metro Stations and at a 5 minute walking distance to Sector 37 Bus Depot in Rohini. The site lies adjacent to the UER II which connect to NH 44 (i.e. Srinagar-Kanyakumari Highway) directly near the northern Delhi-Haryana border.

The existing metro stations like Rithala (Red Line) and Samaypur Badli (Yellow Line) are within 10 km distance from the site. The existing Badli Railway Station is also within 10 km distance from the site and the station is part of Delhi-Kalka and Delhi-Srinagar route. These key access infrastructures are depicted in the map below:

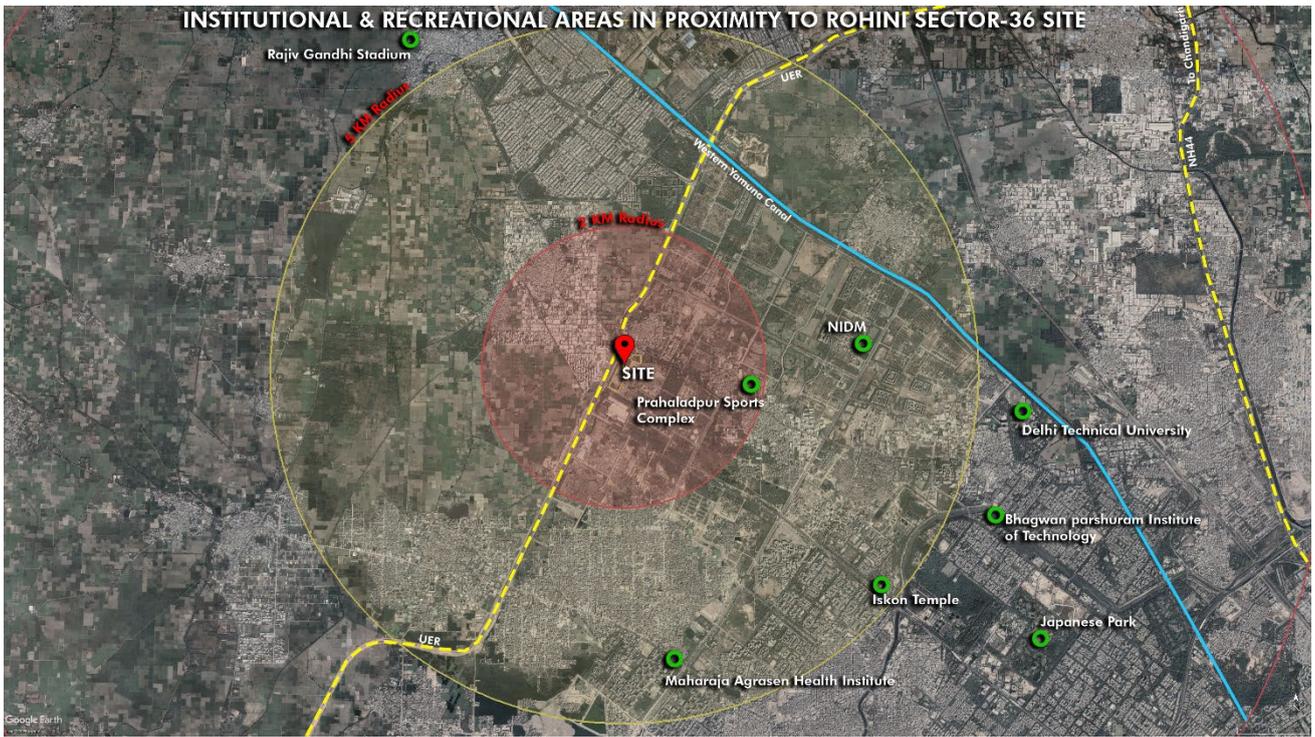


The Warehouse Complex when developed will be uniquely positioned to cater to the customers from institutional, residential and industrial areas. The site is adjacent to the UER-II which provides it traffic free road connectivity.

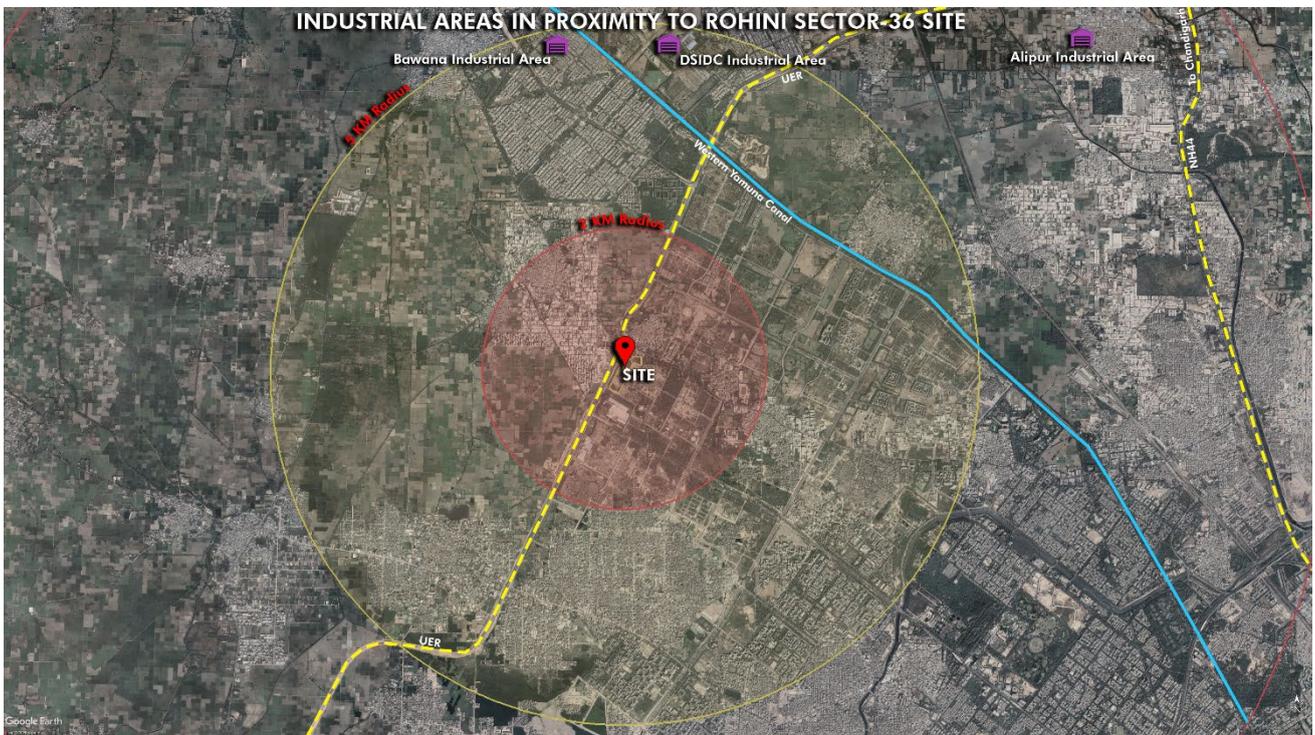
There are many institutional complexes that lie within the 7-10 km proximity to the site such as:

- National Institute of Disaster Management
- Delhi Technical University
- Bhagwan Parshuram Institute of Technology
- Maharaja Agrasen Health Institute
- NIFTEM
- NIT, Delhi

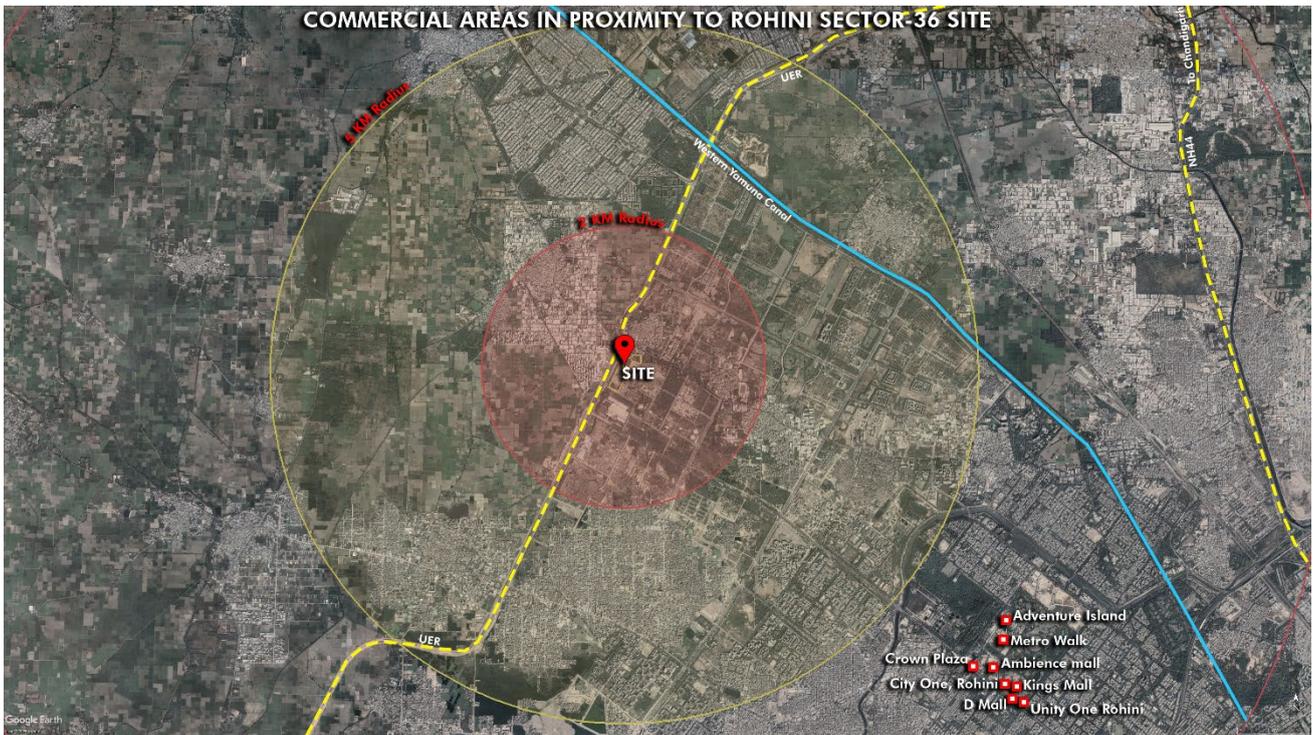
The same are depicted in the illustration below.



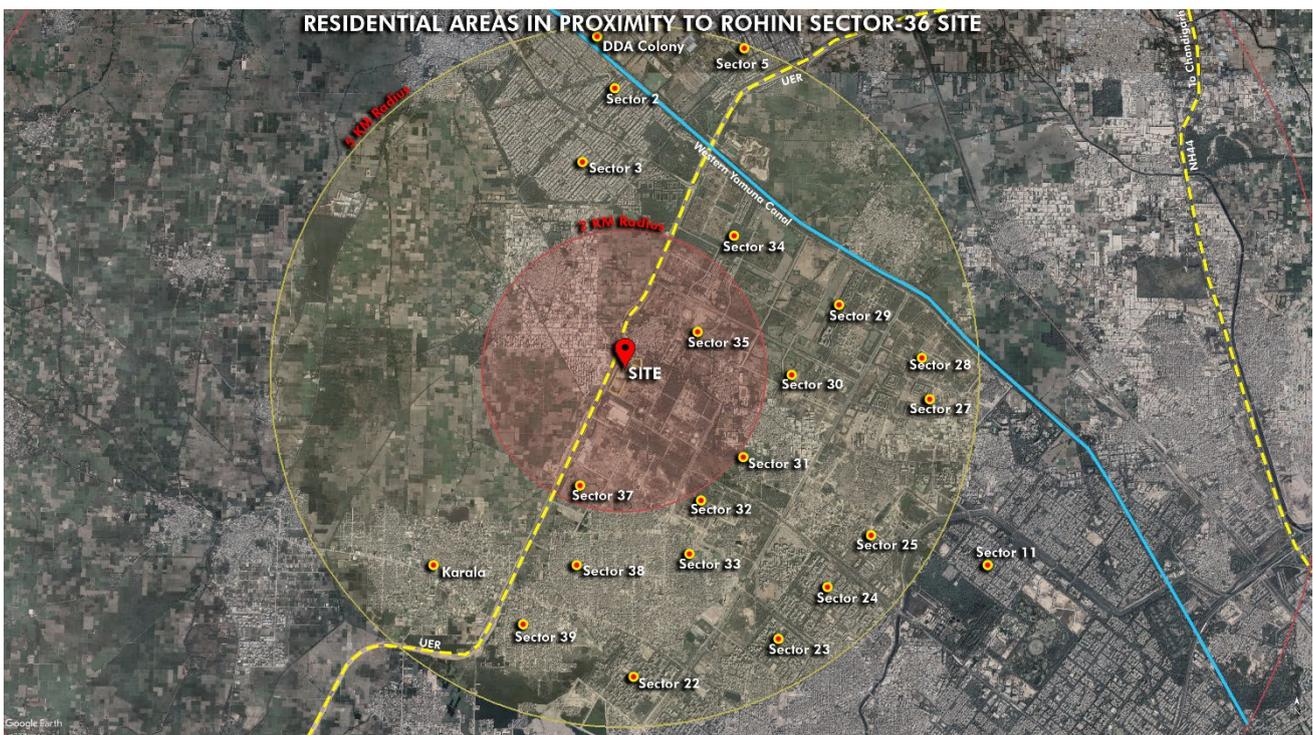
The property is just 5 km away from the already existing industrial complexes and the site can act as useful location for a non-industrial warehouse within Delhi. The industrial area of Rohini Sector-36 are depicted below.



The site is about 8-10 km away from major commercial centres including the Ambience Mall, Kings Mall, Crown Plaza, Metro Walk, D-Mall, Unity One and City One which lie in Sector 10 of Rohini and close to the Rithala metro station. The key commercial areas are plotted in the map below:



The site is also surrounded by residential areas with a mix of plotted development, group housing projects, DDA housing complexes etc. are illustrated below:

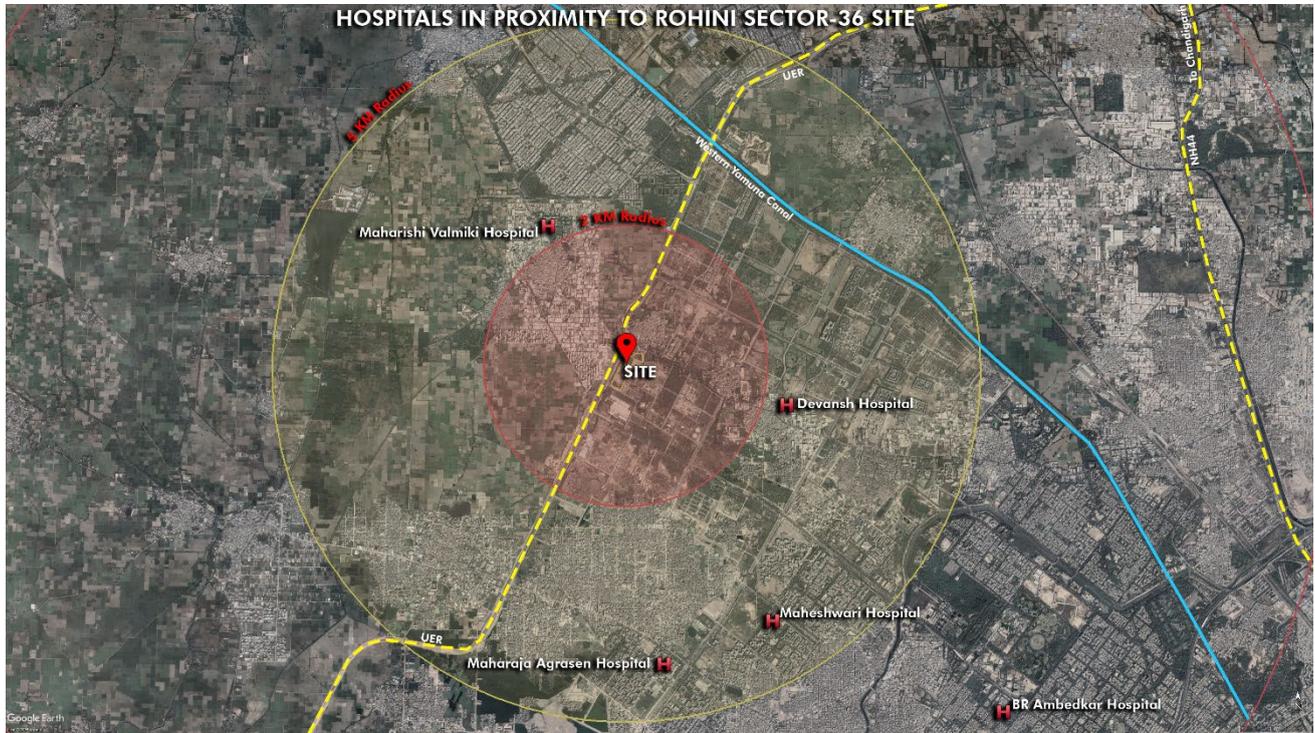


In addition to the commercial, recreation, institutional and residential catchments areas highlighted above, the site is in proximity to some medical facilities / hospitals like:

- Maharishi Valmiki Hospital (150 Beds + 100 Beds proposed)
- Devansh Hospital (30+ Beds)
- Shree Agrasen Hospital (500 Beds)

- Maheshwari Hospital (30+ Beds)
- Dr BR Ambedkar Hospital (500 Beds)

The hospital locations vis a vis the site is illustrated in the map below:





# APPENDIX XIII - Format of Licence Deed

## FORMAT OF LICENSE DEED

### TEMPORARY ALLOTMENT OF NAZUL LAND

#### FORM D

#### LICENSE DEED

THIS LICENSE DEED (including Schedule I of this License Deed, which forms an integral part of this License Deed) made on this.....day of.....two thousand ..... (“**Execution Date**”) at Delhi (hereinafter called the “**Deed**”) between the President of India which expression shall unless the context requires a different or another meaning, include his successors and assigns through Delhi Development Authority, a body constituted under Section 3 of the Delhi Development Act, 1957 (“**DDA**” or “**Authority**” or “**Licensor**”) which expression shall unless the context requires a different or another meaning, include his successors and assigns).

and

[●], a company registered under the Companies Act, 2013, having its registered office at [●] (hereinafter called the “**Licensee**”).

WHEREAS DDA is responsible for planning, development and construction of housing projects, commercial lands, land management, land disposal, land pooling, land costing etc. in Delhi. As a part of its objective, the DDA has decided to tender of a land parcel for development, building, financing, operation & maintenance and transfer of a Warehouse Project (“**Project**”);

WHEREAS the Licensor is willing to grant the Licensee a licence for use of land with the details set out below for development of the Project (“**Project Site**”) subject to the terms and conditions specified hereinafter:

| Project Site  | Area   |
|---|--|
| Sector 36, Rohini, New Delhi<br>Google Map Link:<br><a href="https://maps.app.goo.gl/tGz45oCK5QH6VKhk8">https://maps.app.goo.gl/tGz45oCK5QH6VKhk8</a> | Approximately 23.2 acres across two plots (Plot A : 10.43 Acres approximately & Plot B: 12.73 acres approximately) |

WHEREAS the Authority had invited proposals under its Request for Proposal No. [●] dated [RFP issuance date to be inserted] (the “**Request for Proposal**” or “**RFP**”) for selection of bidders to develop, build, finance, operate and transfer the Project.

WHEREAS following the evaluation of the bids submitted by the bidders, including that of [\_\_\_\_\_] /consortium comprising ..... And ..... (collectively, the “**Consortium**”) with ..... as its lead member (the “**Lead Member**”) (the “**Bid**”), the Authority has selected \_\_\_\_\_/the Consortium, as the “**Selected Bidder**”).

Subsequently, the Authority has issued the letter of award no. [●] dated [●] (the “**Letter of Award**” or “**LOA**”) to the Selected Bidder, *inter alia*, requiring it to incorporate a private limited company under the Companies Act, 2013 to undertake the obligations set out under this Deed.

WHEREAS the Selected Bidder has since incorporated the Licensee and has requested the Authority, by its letter dated [●] for execution of a licence deed.

WHEREAS the Authority, through its letter dated [●], has agreed to the request of the Selected Bidder, and accordingly intends to enter into this Deed with the Licensee for providing a licence for development and operation of the Project at the Project Site, including all buildings, facilities and appurtenances to be constructed, as more particularly described in Annexure B hereto and subject to and on the terms and conditions set forth hereinafter (the “**Licensed Premises**”). The Licensed Premises is a public premise as defined under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, as amended from time to time.

WHEREAS for grant of a licence for the Licensed Premises, the first instalment of the Upfront Fee has been paid by the Licensee to the Licensor with the balance Upfront Fee payable in accordance with the terms of this Deed, and the Annual License Fee shall be paid by the Licensee to the Licensor subject to the terms and conditions specified hereinafter;

AND WHEREAS the Licensee has represented to the Licensor that the former has the technical expertise, financial standing and capacity to undertake the Project in accordance with the terms of this Deed.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the adequacy of which is hereby acknowledged and confirmed, it is mutually agreed:

1. That in consideration of the payment of Rs. [●] (Rupees [●] only) as performance security received in the form of [performance bank guarantee] issued by .....Bank dated ..... (“**Performance Security**”), being equivalent to the highest bid of Rs. [●] (Rupees [●] only) quoted, by the Licensee for due and proper performance of its obligations hereunder during the License Period and on the terms these presents and also willingness of the Licensee to pay the Annual License Fee to the Licensor for grants unto the Licensee and authorises him to use the Licensed Premises subject to the conditions hereinafter appearing for the Term commencing from the Execution Date.
2. That the Licensee shall keep and maintain the Licensed Premises and the Plot Location around the Licensed Premises in a clean, proper and decent condition, well equipped with all the facilities as per this Deed and shall not suffer the Licensed Premises to be in a bad state of affairs during the Term and shall not in any manner damage the Licensed Premises

nor cause any kind of obstruction to the site around the Project Site in any manner whatsoever.

3. That the Licensee shall charge such rates as may be commercially decided by the Licensee in accordance with the Applicable Law, Applicable Permit and shall exhibit the schedule of rates at a conspicuous place in the premises, if required as per the Applicable Law.
4. That Licensee shall maintain the Licensed Premises in clean and hygienic conditions and shall conform to the rules, regulations, or bye-laws made in this regard by the municipal authority concerned and as required under the Applicable Law and the Applicable Permits.
5. [*Not Used*].
6. That the Licensee shall place and continue to keep in the aforesaid Licensed Premises all necessary equipment for the implementation and operation and maintenance of the Project as per the terms of this Deed, Applicable Laws and Applicable Permits.
7. That the Licensee shall not display or exhibit pictures, posters, statuettes or other articles at the Licensed Premises which are repugnant to the morale or art of indecent, immoral or other improper character. It is expressly agreed that the decision of the Licensor in this behalf shall be conclusive and binding on the Licensee and shall not be a subject matter of dispute.
8. That the Licensee shall not display or exhibit any advertisements or placard or put upon any hoarding in any part of the interior or exterior of the Licensed Premises other than those permitted as per the Applicable Law and Applicable Permits.
9. That the Licensee shall have no right, title or interest in the Project Site licensed to him nor shall he be deemed to have exclusive possession thereof, except in accordance with this Deed.
10. That the Licensee shall not be entitled to allow any other person to use the Licensed Premises in his stead or to use any part thereof other than as per the terms set out this Deed, and upon expiry of the License Period (unless extended as per the terms of this Deed), the licence shall stand terminated automatically.
11. That the Licensee shall maintain and pay the cost of all utilities including light, power and water consumed by it at the Project Site as per the demand of the authorities concerned and subject to the terms of the Applicable Law and this Deed.
12. That the Licensee shall also pay all fees, taxes and statutory levies payable to the government or municipal or local bodies concerned in connection with the Licensed Premises, the Project and this Deed.
13. [*Not Used*].
14. [*Not Used*].

15. That notwithstanding the other rights, the Licensor may in its sole discretion and on such terms as may be considered reasonable by it grant relief to the Licensee against forfeiture of Performance Security, imposition of interest or determination or revocation of the licence under this Deed.
16. That the Licensee shall abide by Applicable Laws including all rules, regulations, orders and instructions that the Licensor may from time to time reasonably make or adopt or issue for the care, protection and administration of the Licensed Premises.
17. That the Licensor shall not be responsible for the safety of Licensed Premises or any other material or articles belonging to the Licensee and also shall not be liable for any damage or injury to the property of the Licensee lying at any time in, on, upon or around the said Licensed Premises from any cause whatsoever.
18. That the overall control and supervision of the Licensed Premises shall remain vested with the Licensee subject to the terms of this Deed.
19. That the Licensor shall have the right to revoke the licence in the event of breach of any of the terms and conditions of this licence specified herein in this Deed by the Licensee.
20. That the Licensee shall not have the right to create lien on the Project Site. Subject to Article 26.2 of Schedule I, the Licensee shall have the right to create Encumbrance in favour of the Senior Lenders.
21. That on expiry of the License Period (unless extended as per the terms of this Deed) or on determination or revocation of the licence under the terms and conditions hereof, any belongings of the Licensee found the Licensed Premises shall be dealt with in accordance with the terms and conditions contained herein.
22. That the Licensor shall have the right to terminate the licence under this Deed as per the terms of this Deed.
23. [*Not Used*].
24. [*Not Used*].
25. That nothing herein contained shall be construed as conferring upon the Licensee any right, title or interest in respect of, over, in or upon the Licensed Premises and the property of the Licensor, save and except the licence provided for the Project.
26. That the dealing of the Licensee/ his employees with the public shall be polite and courteous and he shall not indulge in or suffer any anti-social activities. The Licensee shall also not indulge in any activity which may cause harm to the interest of the Delhi Development Authority or its employees.
27. [*Not Used*].

28. That upon receiving a prior written notice of 07 (seven) days, the Licensee shall allow the representatives and the authorised staff of the Licensor to enter upon the premises/ site during business hours in order to monitor the Licensed Premises, check water and sanitary conditions which may be found necessary from time to time by the Licensor and for the purposes connected therewith. In case of an Emergency, the Authority shall have the right to enter the Licensed Premises as per Article 10.7 of Schedule I of this Deed.
29. That the Licensee shall be responsible for all Damages or loss of property due to the reasons for which he or his agents, employees, customers, sub licensees, and representatives are responsible and shall be liable to make good any loss or Damage that may be sustained by the Licensor. The decision of the Licensor in regard to the extent and quantum of compensation as per the terms of this Deed, if any, to be paid to it shall be binding upon the Licensee.
30. That the Licensed Premises allotted shall not be used for residential purpose or for a purpose other than that for which it is allowed. The Licensee shall not be permitted to utilise the Licensed Premises for any other purposes other than in relation to the Project in accordance with the terms and conditions contained herein.
31. [*Not Used*].
32. That the Licensee shall also comply with the special instructions, terms and conditions given in the Schedule I attached hereto. Defined terms used but not defined herein shall have the meaning ascribed thereto in Annexure A of Schedule I.
33. That in case any amount becomes due against the Licensee in respect of any matter covered under this Deed, the same shall, on, the failure of the Licensee to pay within the time prescribed, be recovered as arrears of land revenue.
34. That all or any of the powers vested in the Licensor under these presents in respect of the grant, determination, revocation, cancellation or restoration of this licence or recovery of any dues in respect thereof or connected therewith shall also be exercised by Vice Chairman, Delhi Development Authority, Delhi and the Licensee shall have no objection whatsoever in this respect.

## SCHEDULE I OF THE LICENSE DEED

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Deed (including those in Annexure A) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Annexures and used therein shall have the meaning ascribed thereto in the Annexures.

### 1.2 Interpretation

1.2.1 In this Deed, except where 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;
- (b) 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;
- (c) the table of contents, headings or sub-headings in this Deed are only for convenience of reference and shall not be used in, and shall not affect, the construction or interpretation of this Deed;
- (d) 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;
- (e) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (f) any reference to day shall mean a reference to a calendar day;
- (g) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday or a statutory holiday as declared by the Government of Delhi and on which Banks in Delhi are generally open for business);
- (h) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (i) references to any date, period or project milestone shall mean and include such date, period or project milestone as may be extended pursuant to this Deed;
- (j) any reference to any period commencing 'from' a specific date or date and 'till' or 'until' a specific day or date shall include both such days or dates; provided that if the last day of any period computed under this Deed is not a business day, then the period shall run until the end of the next business day;
- (k) the words importing singular shall include plural and vice versa;

- (l) references to any gender shall include the other and the neutral gender;
- (m) **“lakh”** means a hundred thousand (100,000) and **“crore”** means ten million (10,000,000);
- (n) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Deed 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;
- (o) the Schedule, Annexures and Recitals to this Deed form an integral part of this Deed and shall be in full force and effect as though they were expressly set out in the body of this Deed;
- (p) references to Recitals, Articles, Clauses, Sub-Clauses, provisos, Schedule or Annexures in this Deed shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-Clauses, provisos, Schedule and Annexures of or to this Deed; reference to an Annexure shall, subject to anything to the contrary specified therein, be construed as a reference to an Annexure to the Schedule in which such reference occurs; and reference to a paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a paragraph of the Schedule or Annexure, as the case may be, in which such reference appears;
- (q) the damages payable by either Party to the other of them, as set forth in this Deed, whether on per-diem basis or otherwise, are mutually agreed genuine pre-estimate of loss and damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (**the “Damages”**); and
- (r) 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 Deed, any documentation required to be provided or furnished by the Licensee to the Authority shall be provided free of cost and in 3 (three) copies, and if the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Deed shall, unless otherwise defined or construed in this Deed, 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 the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down<sup>1</sup>.

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<sup>1</sup> *Note: All the measurements of the areas set out in this Deed are an approximate measurement of the areas and the final areas will be confirmed by the Authority prior to execution of the Deed.*

#### 1.4 **Priority of contract documents and errors/discrepancies**

1.4.1 This Deed, and all other agreements and documents forming part of or referred to in this Deed are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Deed, the priority of this Deed and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Deed;
- (b) all other agreement and documents forming part hereof or referred to herein;
- (c) the LOA issued to the Selected Bidder;
- (d) Written addenda/ corrigendum to the RFP;
- (e) RFP; and
- (f) the Bid.

1.4.2 Subject to the provisions of Article 1.4.1, in case of ambiguities or discrepancies within this Deed, the following shall apply:

- (a) between two or more Articles of this Deed, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) between the Articles of this Deed and the Schedule, the Articles shall prevail;
- (c) between the Schedule of this Deed and the Annexures, the Schedule shall prevail;
- (d) between any two Annexures, the Annexure more relevant to the issue under consideration shall prevail; and
- (e) between any value written in numerals and that in words, the latter shall prevail.

## 2. **SCOPE OF PROJECT**

### 2.1 **Scope of the Project**

The scope of the project during the License Period shall mean and include the following (the “**Scope of the Project**”):

- (a) to develop, finance and construct the Project on the Licensed Premises set forth in Annexure B, in accordance with the provisions of this Deed;
- (b) to operate and maintain the Licensed Premises in accordance with the provisions of this Deed;
- (c) to transfer the Licensed Premises to the Authority upon Termination or expiry of the License Period in accordance with the provisions of this Deed; and
- (d) to perform and fulfil all other obligations of the Licensee in accordance with the provisions of this Deed and matters incidental thereto or necessary for the performance of any or all of the obligations of the Licensee under this Deed.

### **3. TERMS OF LICENSE AND LICENSE PERIOD**

#### **3.1 The License**

3.1.1 Subject to and in accordance with the provisions of this Deed, Applicable Laws and Applicable Permits, the Authority hereby grants to Licensee the exclusive license and permission to develop, build, finance, operate and transfer the Licensed Premises (as mentioned at the Annexure B) in accordance with the terms and conditions as set forth in this Deed, and the Licensee hereby accepts the terms of this license and agrees to implement the Project and maintain the Licensed Premises subject to and in accordance with the terms and conditions set forth in this Deed.

3.1.2 Subject to and in accordance with the provisions of this Deed, Applicable Laws and Applicable Permits, the license hereby granted shall oblige or entitle (as the case may be) the Licensee to undertake the following, at the Licensed Premises:

- (a) the Right of Way, access and leave and license to use the Licensed Premises for the purpose of developing the Project, to the extent conferred by the provisions of this Deed;
- (b) develop, repair, equip, finance the Project and other activities incidental thereto and as permitted under and in accordance with the Applicable Law and Applicable Permits, during the License Period;
- (c) achieve Project COD in accordance with the provisions of Article 13.3 and subsequently, manage, operate and maintain the Licensed Premises throughout the License Period in accordance with the standards and terms set out in this Deed, Applicable Laws, Applicable Permits and Good Industry Practice;
- (d) pay Annual Licence Fee to the Authority in accordance with the provisions of Article 18;
- (e) perform and fulfil all the obligations of the Licensee in accordance with this Deed;
- (f) bear and pay all Taxes, costs, expenses and charges in connection with or incidental to the performance of the obligations of the Licensee under this Deed;
- (g) appoint Contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Deed in accordance with its terms;
- (h) upon Termination of the License Deed, transfer the Licensed Premises to the Authority in accordance with the terms of this Deed;
- (i) neither assign, transfer or sub-licence or create any lien or Encumbrance on this Deed in contravention of the terms of this Deed, or the Licensed Premises hereby granted or on the whole or any part of the Licensed Premises, nor sell, transfer, exchange, lease, sub-licence or part possession thereof in contravention of the terms of this Deed;
- (j) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to implement, manage, operate and maintain the Licensed Premises; and

- (k) do all things incidental or related thereto or which the Licensee considers desirable and appropriate to be carried out in connection therewith during the License Period.

**3.2 License Period**

- 3.2.1 Subject to compliance by the Licensee of each of the terms and conditions set out under this Deed and timely performance of all its obligations set out hereunder including timely payment of Annual Licence Fee to the Licensor, the licence hereby granted to the Licensee shall commence from the Appointed Date and shall remain in force for a period of 33 (thirty three) years thereafter (the “**Licence Period**”), unless otherwise terminated at an earlier date in accordance with the provisions of this Deed. The Licence Period shall be inclusive of the Appointed Date as well as the last day of the Licence Period. It is clarified, for the avoidance of doubt, that the Licence Period shall remain fixed and is not subject to any extension on account of any reasons whatsoever.
- 3.2.2 The Authority shall have the right to terminate this Deed, in accordance with Article 23. Upon expiration of the Licence Period or termination of this Deed in accordance with Article 23, the licence hereby granted shall stand cancelled and revoked forthwith but without prejudice to the rights of the Authority against the Licensee in respect of any matter or thing occurring or arising prior to such termination or expiration.

**4. CONDITIONS PRECEDENT**

**4.1 Conditions Precedent (CP)**

- 4.1.1 Save and except as expressly provided in this Deed and any related Annexures or unless the context otherwise requires, the respective rights and obligations of the Parties under this Deed shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Article 4.1.2 or Article 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Article 4.1.1.
- 4.1.2 The Licensee may, upon providing the Performance Security to the Authority in accordance with Article 9, and at any time after 30 (thirty) days from the Execution Date or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy the Conditions Precedent set forth below:

| <b>S No.</b> | <b>Condition Precedent</b>  | <b>Timeline for fulfilment of such condition</b>   |
|--------------|---|--|
| (i)          | Licensor has provided Right of Way to the Licensee as per Article 10                      | Within a period of 120 (one hundred and twenty) days from the date of receipt of the notice from the Licensee, or such longer period as per the terms of this Deed |
| (ii)         | Licensor has handed over the Licensed Premises to the Licensee free from any Encumbrances |  |

- 4.1.3 The Conditions Precedent required to be satisfied by the Licensee within a period of 180 (one hundred and eighty) days from the Execution Date. The Conditions Precedents shall be deemed to have been fulfilled when the Licensee shall have completed all the actions set out below:

- (a) delivered to the Authority a legal opinion from the legal counsel of the Licensee with respect to the authority of the Licensee to enter into this Deed and the enforceability of the provisions thereof;
- (b) delivered to the Authority the copies (certified as true copies by an authorised officer of the Licensee) of the latest constitutional documents of the Licensee;
- (c) delivered to the Authority, duly attested by a director of the Licensee documentary evidence demonstrating the achievement of Financial Closure;
- (d) deliver to the Authority the detailed project report and the detailed layout plan (at its own cost and expense) in form and manner satisfactory to the Authority;
- (e) delivered to the Authority copies (certified as true copies by a director of the Licensee) of all resolutions adopted by the board of directors of the Licensee authorising the execution, delivery and performance by the Licensee of this Deed;
- (f) provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Licensee;
- (g) execute and procure execution of the Substitution Deed for the benefit of the Senior Lenders; and
- (h) procured all Construction Permits unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Construction Permits, have been fulfilled as on date the Licensee claims satisfaction of all the Conditions Precedent under this Deed.

Provided that upon request in writing by the Licensee, the Authority may, in its discretion, amend or waive any of the Conditions Precedent set forth in this Article 4.1.3.

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated herein and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.
- 4.1.6 The Licensee shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, notify the Authority of the occurrence of the Appointed Date.

#### **4.2 Extension of Appointed Date for delay by the Authority**

In the event that the Authority fails to procure fulfilment or waiver of the Condition Precedent set forth in Article 4.1.2 within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Deed by the Licensee or due to Force Majeure Event, the Authority may extend the timeline set out in Article 4.1.2 by a period of 180 (one hundred and eighty) days by issuing a written intimation to the Licensee.

#### **4.3 Damages for delay by the Licensee**

- 4.3.1 In the event that: (i) the Licensee does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.3 within the period specified in that Article;

and (ii) the delay has not occurred as a result of breach of this Deed by the Authority or due to Force Majeure Event, the Licensee shall pay Damages to the Authority of an amount calculated at the rate of Rs. 2,50,000 Lakhs (Rupees Two Lakhs and Fifty Thousand only) per day, for each day's delay until the fulfilment or waiver of such Conditions Precedent.

- 4.3.2 Subject to the receipt of Damages and a written request for extension of the timeline set out in Article 4.1.3 above from the Licensee, the Authority may extend the timeline set out in Article 4.1.3 for completion of the Conditions Precedent for a maximum period of 150 (one hundred and fifty) days by issuing a written intimation to the Licensee.

#### 4.4 **Commencement of the License Period and Appointed Date**

The date on which all the Conditions Precedent specified in Article 4.1, are satisfied or waived, as the case may be, shall be the “**Appointed Date**” which shall be the date of the commencement of the License Period. For avoidance of doubt, the Parties agree that the Licensee may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence development of the Licensed Premises in accordance with the terms of this Deed.

#### 4.5 **Termination upon delay in completion of Conditions Precedent**

Without prejudice to the provisions of Article 4.2 and 4.3, and subject to the provisions of Article 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of 180 (one hundred and eighty) days from the Execution Date or the extended period provided in accordance with this Deed, then all rights, privileges, claims and entitlements of the Licensee under or arising out of this Deed shall be deemed to have been waived by, and to have ceased with the concurrence of the Licensee and the Deed may be terminated by the non-defaulting Party. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Licensee, the Performance Security or the Bid Security, as the case may be, of the Licensee shall be encashed and appropriated by the Authority as Damages thereof.

### 5. **OBLIGATIONS OF THE LICENSEE**

#### 5.1 **General Obligations of the Licensee**

- 5.1.1 Subject to and on the terms and conditions of this Deed, the Licensee shall, at its own cost and expense, implement the Project, procure finance for and undertake the construction, development, designing, equipping, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Deed or arising hereunder.
- 5.1.2 The Licensee shall arrange for, procure and maintain, at its own cost and risk, all infrastructure facilities and utilities for the construction, development, designing, equipping, operation and maintenance of the Project, including procuring connection for and supply of electricity, water, gas and other utilities as may be necessary or required for the operation of the Project. The Licensee shall obtain all Applicable Permits and comply with the conditions thereunder for the procurement and use of such infrastructure facilities and utilities.
- 5.1.3 During the License Period, the Licensee shall obtain from the relevant Government Instrumentalities, the Applicable Permits and keep in force and comply with the conditions of all Applicable Permits for the construction, development, designing, equipping, operation and maintenance of the Project and upon Termination, transfer all of the Project to the Authority as per the terms of this Deed.

- 5.1.4 The Licensee shall comply with all Applicable Laws and conditions of all Applicable Permits (including keeping them valid and in force as required) while performing its obligations under this Deed. Further, the Licensee shall ensure and procure that its Contractors, if any, comply with all Applicable Permits and Applicable Laws and discharge their obligations in accordance with the Good Industry Practices and as a reasonable and prudent person, during their performance of any of the Licensee's obligations under this Deed.
- 5.1.5 The Licensee shall pay the Annual Licence Fee to the Authority in accordance with Article 18.
- 5.1.6 The Licensee shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Deed:
- (a) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
  - (b) within 7 (seven) days of availing any debt for the construction and/or operation and maintenance of the Licensed Premises, provide to the Authority the details of the Senior Lenders alongwith the details of the debt availed and any other information as may be required by the Authority;
  - (c) not do or omit to do any act, deed or thing which may in any manner violates any provision of this Deed;
  - (d) always act in a manner consistent with the provisions of this Deed and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Deed or Applicable Laws and Applicable Permits;
  - (e) the Project shall be developed, operated and maintained in accordance with the Specifications and Standards, Applicable Permits, Applicable Laws and Good Industry Practice; and
  - (f) transfer the Licensed Premises to the Authority upon Termination or expiration of the Licence Period in accordance with the provisions of this Deed.

## 5.2 **Obligations relating to Project Agreements**

- 5.2.1 It is expressly agreed that the Licensee shall, at all times, be responsible and liable for all its obligations under this Deed. Notwithstanding anything contained in the Project Agreements or any other agreement, no default under any Project Agreement or any other agreement shall excuse the Licensee from its obligations or liability hereunder.
- 5.2.2 Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Licensee shall submit to the Authority a true copy thereof, duly attested by a Director of the Licensee, for its record.
- 5.2.3 Notwithstanding anything to the contrary contained in this Deed, the Licensee shall not create any Encumbrance in any manner on the Licensed Premises as the case may be, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-license or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Deed or Applicable Laws.

- 5.2.4 The Licensee shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Licensee in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Licensee expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.2.5 Permission to any third party to operate/ undertake any permissible activities as allowed under the Master Plan and Annexure C of this Deed, within the Licensed Premises, shall be given by the Licensee only after prior written intimation to the Authority as per Article 5.2.3 above. Such contract shall be in compliance with the Applicable Laws and shall be expressly subject to the terms and conditions of this Deed. Any permission to third parties to operate or maintain the aforesaid facilities shall be co-terminus with or, less than the License Period and upon expiry of the License Period or, early termination of this Deed by the Authority, all permissions granted to third parties to operate or maintain any facility or amenities within the Licensed Premises as aforesaid shall automatically cease and terminate forthwith and the Licensee shall be obliged to handover vacant and peaceful occupation of the Licensed Premises to the Authority in terms of this Deed. Such third-party permissions shall not be in contravention of this Deed, Applicable Laws and Applicable Permits. Further, the Licensee shall deliver to the Authority an undertaking as provided in Annexure M, executed jointly by the Licensee and each sub-licensee.
- 5.2.6 The Licensee shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Licensee shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Licensee.

### 5.3 **Obligations relating to Change in Ownership**

- 5.3.1 The Licensee shall not undertake or permit any: (a) Change in Ownership; or (b) change in shareholding in breach of Article 5.3.2, except with the prior written approval of the Authority.
- 5.3.2 Notwithstanding anything to the contrary contained in this Deed, the Licensee agrees and acknowledges that during the License Period:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate 25% (twenty-five per cent) or more of the total Equity of the Licensee; or

- (b) acquisition of any control directly or indirectly of the Board of Directors of the Licensee by any person either by himself or together with any person or persons acting in concert with him,

shall require prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this regard being final, conclusive and binding on the Licensee, and undertakes that it shall not give effect to any such acquisition of equity or control of the Board of Directors of the Licensee without such prior approval of the Authority. For avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Licensee from any liability or obligation under this Deed.

#### 5.3.3 For the purposes of the Article 5.3.2:

- (a) the expression acquirer, control and person acting in concert shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (as amended from time to time) or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Licensee;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of the shares of the Licensee; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies, whether situated in India or abroad, the Equity of the Licensee, not less than half of the directors on the Board of Directors of the Licensee or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five one per cent) of the Equity of the Licensee, shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Licensee.

#### 5.4 **Obligation relating to employment of foreign nationals**

The Licensee acknowledges, agrees and undertakes that employment of foreign personnel by the Licensee and/or its Contractors and their sub-contractors shall be in accordance with Applicable Laws and subject to grant of Applicable Permits, including employment or residential visas and work permits. The Licensee shall obtain such Applicable Permits at its own cost and expense.

#### 5.5 **Sole purpose of the Licensee**

The Licensee shall not, except with the prior written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than the business incidental or consequential to the provisions of this Deed.

**5.6 Branding the Licensed Premises**

The Licensee may, in its discretion, name or brand the Licensed Premises or any part thereof in accordance with the Applicable Laws and Applicable Permits.

**5.7 Facilities for physically challenged and elderly persons**

The Licensee shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, GOI or a substitute thereof and any policy issued by the Government of Delhi, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Licensed Premises.

**5.8 Obligations relating to Taxes**

5.8.1 The Licensee shall pay within the prescribed time, at all times during the subsistence of this Deed, all Taxes including GST, fees, levies, duties, cesses and all other statutory charges payable in respect of the Licensed Premises.

5.8.2 It is specifically agreed by the Licensee that the Upfront Fee and the Annual Licence Fee shall be paid exclusive of all Taxes levied or charged as per Applicable Law and the same shall be borne and paid by the Licensee alone. It is agreed and understood that each Party shall bear their respective income tax arising out of the Licence granted under this Deed.

**5.9 Obligations relating to the Licensed Premises**

5.9.1 The Licensee shall at all times operate the Licensed Premises in accordance with the Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Deed.

5.9.2 The Licensee shall use the Licensed Premises only for the purpose set out in this Deed and any use thereof in violation of Applicable Laws or this Deed shall constitute a Licensee's Event of Default.

**5.10 Obligations relating to information**

5.10.1 Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Deed, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Licensee shall provide such information to the Authority forthwith and in the manner and form required by the Authority.

5.10.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Licensee's activities under or pursuant to this Deed which the Authority proposes to publish, the Licensee shall provide such comments to the Authority in the manner, form and within the timeline as may be required by the Authority.

**5.11 Obligations relating to other charges**

During the License Period, the Licensee shall be responsible for and shall make, on a regular and timely basis, payments for all utility charges in respect of the Licensed Premises, including water, electricity, telecommunications, internet, cable charges, municipal solid waste, etc. All such payments shall be made by the Licensee directly to the service provider(s) providing such services and shall keep and hold the Authority harmless and indemnified in this regard.

## **6. OBLIGATIONS OF THE AUTHORITY**

### **6.1 General Obligations of the Authority**

- 6.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Deed and as set out under the Applicable Law.
- 6.1.2 Subject to and in accordance with the provisions of this Deed and Applicable Laws, the Authority agrees to provide support, cooperate with and facilitate the Licensee in the implementation and operation of the Licensed Premises.
- 6.1.3 Notwithstanding anything in this Article, the Authority shall not be required to provide any financial support or financial assistance to the Licensee.

## **7. REPRESENTATIONS AND WARRANTIES**

### **7.1 Representations and warranties of the Licensee**

7.1.1 The Licensee represents, warrants and undertakes to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Deed or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (b) it has full power and authority to execute and perform its obligations under this Deed and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Deed and to validly exercise its rights and perform its obligations under this Deed;
- (d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Deed;
- (e) this Deed constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Deed shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (f) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Deed or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (g) the information furnished in the Bid and as updated on or before the Execution Date is true and accurate in all respects as on the Execution Date;
- (h) the execution, delivery and performance of this Deed shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- (i) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial, Government Instrumentality or other authority, the outcome of which may result in the breach of this Deed or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Deed;
- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Deed and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Deed;
- (k) it has complied with Applicable Laws and Applicable Permits in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Deed;
- (l) it shall at no time undertake or permit any Change in Ownership or change in shareholding in contravention of Article 5.3 ;
- (m) no representation or warranty given by it contained herein or in any other document furnished by it to the Authority, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- (n) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing this license or entering into this Deed or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (o) agree that the execution, delivery and performance by it of this Deed and all other agreements, contracts, documents and writings relating to this Deed constitute private and commercial acts and not public or government acts;
- (p) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings; and
- (q) further representations as may be added depending on the specific circumstances of the Licensee.

## 7.2 **Representations, warranties and Covenants of the Authority**

### 7.2.1 The Authority represents, warrants and covenants to the Licensee that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Deed and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Deed, exercise its rights and perform its obligations, under this Deed;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Deed;

- (c) this Deed constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) 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 Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Deed; and
- (e) it has good, legal and valid right to Licensed Premises and has the power and authority to grant access of Licensed Premises to the Licensee for the development of the Project in accordance with the provisions of this Deed.

### **7.3 Disclosure**

7.3.1 In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of it. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of a Party under this Deed.

7.3.2 Neither the Authority nor any of its agents or employees shall be liable to the Licensee in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:

- (a) any inaccuracy, omission, unfitness for any purpose of inadequacy of any kind whatsoever in the data disclosed by the Authority to the Licensee in relation to the Project; and/or
- (b) any failure to make available to the Licensee any materials, documents, drawings, plans or other information relating to the Project.

## **8. DISCLAIMER**

### **8.1 Disclaimer**

8.1.1 The Licensee acknowledges that prior to the execution of this Deed, the Licensee has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Specifications and Standards, Project Site, Licensed Premises, existing local conditions, physical qualities of ground, subsoil and geology, availability of users, market potential and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability or completeness of any assessment, assumption, statement or information provided by it and the Licensee confirms that it shall have no claim whatsoever against the Authority in this regard.

8.1.2 The Licensee acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Licensee, Associates or any person claiming through or under any of them.

- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 8.1.1 above shall not vitiate this Deed or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 8.1.4 shall not prejudice the disclaimer of the Authority contained in Article 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Licensee pursuant to this Deed.
- 8.1.5 Except as otherwise provided in this Deed, all risks relating to the Project shall be borne by the Licensee and the Authority shall not be liable in any manner for such risks or the consequences thereof.

## **9. PERFORMANCE SECURITY**

### **9.1 Performance Security**

- 9.1.1 The Licensee has provided to the Authority the initial Performance Security. The Licensee shall thereafter ensure that the Performance Security shall at all times be equal to then prevailing ALF and after factoring in Escalation. The Licensee shall maintain and keep in force the Performance Security for the entire duration of the License Period in accordance with this Article 9. The Licensee shall, at all times, maintain a valid Performance Security for the required amounts as per the terms of this Deed, for 06 (six) months from the Transfer Date.

### **9.2 Appropriation of Performance Security**

- 9.2.1 Upon occurrence of a Licensee Default or failure to meet any Condition Precedent or failure to make any payment which becomes due and payable to the Authority under and in accordance with this Deed, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable from the Performance Security as Damages for such Licensee Default or failure to meet any Condition Precedent or failure to pay such amounts which are due and payable by the Licensee to the Authority under and in accordance with the provisions of this Deed.
- 9.2.2 Upon such encashment and appropriation of the Performance Security, the Licensee shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Deed in accordance with Article 23. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Licensee shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Licensee Default or for satisfying any Condition Precedent, and in the event of the Licensee not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Deed in in accordance with Article 23.

### **9.3 Release of Performance Security**

- 9.3.1 The Performance Security shall remain in force and effect for the License Period as per the terms of this Deed.
- 9.3.2 The Performance Security shall be released by the Authority within 09 (nine months) from the Transfer Date, subject to the Licensee:

- a. having handed over actual vacant occupation of the Licensed Premises and the Licensor having issued the Occupation Takeover Letter to the Licensee; and
- b. having paid and discharged all its payment obligations to the Licensor in full (including without limitation all unpaid Annual Licence Fee and accrued interest thereon and all other amounts due and payable, including the Liquidated Damages specified in Article 23.4.1) under this Deed.

**9.4 References to Performance Security**

References to the Performance Security occurring in this Deed for and in respect of any period prior to the delivery of the Performance Security by the Licensee to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Licensee and/or any amounts due and payable by the Licensee to the Authority under and in accordance with the provisions of this Deed, and the amount so determined shall be appropriated from the Performance Security.

**10. RIGHT OF WAY**

**10.1 The Licensed Premises**

The Project is to be developed at Project Site described in Annexure B, and in respect of the Licensed Premises, the Right of Way shall be provided and granted by the Authority to the Licensee on a leave and licensee basis under and in accordance with this Deed.

**10.2 License and Access to the Licensed Premises**

10.2.1 The Authority hereby grants access to ~~all~~ the Licensed Premises to the Licensee for carrying out surveys, investigations and soil tests of the Licensed Premises that the Licensee may deem necessary prior to the Appointed Date, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of the survey, investigations and tests carried out or work undertaken by the Licensee on or about the Licensed Premises pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Upfront Fee and Annual Licence Fee, this Deed and the covenants and warranties on the part of the Licensee herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Licensee, commencing from the Appointed Date, leave and license rights in respect of all the land comprising the Licensed Premises which is described in Annexure B. The Licensed Premises shall be handed-over to the Licensee and provided on an 'as is where is' basis, free of any Encumbrances, for construction, development, designing, equipping, operation and maintenance the Project, for the duration of the License Period and, for the purposes permitted under this Deed, and for no other purpose whatsoever.

10.2.3 The license, access, Right of Way and all other rights to the Licensed Premises granted under this Deed by the Authority to the Licensee shall always be subject to existing rights of way.

10.2.4 It is expressly agreed that the Licensee's rights to the Licensed Premises shall terminate automatically and forthwith, without the need for any action to be taken by the Authority, upon the Termination of this Deed for any reason whatsoever. For avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected

on the Licensed Premises by the Licensee or its Contractors, the rights of the Licensee in respect of the Licensed Premises shall automatically terminate, without any further act of the Parties, upon Termination of this Deed.

- 10.2.5 The Licensee hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Licensee a transfer or surrender of the rights granted hereunder at any time after the License Period has expired or has been terminated in terms hereof, whichever is earlier, a sufficient proof of which shall be the declaration of any duly authorised officer of the Authority, and the Licensee consents to it being registered for this purpose.

### **10.3 Procurement of the Licensed Premises**

- 10.3.1 Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted to the Licensee the access and Right of Way of the Project Site.

- 10.3.2 On and after the Appointed Date, the Licensee shall maintain a round-the-clock vigil over the Licensed Premises and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Licensee shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expense.

### **10.4 Licensed Premises to be free from Encumbrances**

The Licensed Premises shall be made available to the Licensee pursuant hereto free from all Encumbrances and occupations and without the Licensee being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Licensed Premises for the duration of the License Period, except insofar as otherwise expressly provided in this Deed. For avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Licensee accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Licensed Premises.

### **10.5 Protection of Licensed Premises from encroachments**

During the License Period, the Licensee shall protect the Licensed Premises from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Licensee to place or create any Encumbrance over all or any part of the Licensed Premises, or on any rights of the Licensee therein or under this Deed, save and except as otherwise expressly set forth in this Deed.

### **10.6 Special or temporary Right of Way**

The Licensee shall bear all costs and charges for any special or temporary Right of Way required by it in connection with access to Licensed Premises.

### **10.7 Access to the Authority**

The Right of Way and right to the Licensed Premises granted to the Licensee hereunder shall always be subject to the right of access of the Authority, its representatives or authorised personnel and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations as per the terms of this Deed.

## **10.8 Geological and archaeological finds**

It is expressly agreed that geological or archaeological rights do not form part of the rights granted to the Licensee under this Deed and the Licensee hereby acknowledges that it shall not have any right or interest in the underlying fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such right, interest and property on or under each of the Licensed Premises shall vest in and belong to the Authority or the concerned Government Instrumentality. The Licensee shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property.

## **10.9 Permitted Use**

The Licensee shall use or cause to be used any or all part of the Licensed Premises for operating, managing and maintaining the Licensed Premises as approved by the Authority and in accordance with Applicable Laws and Applicable Permits. Any use of the Licensed Premises in violation thereof shall constitute a Licensee Default under this Deed.

## **11. UTILITIES AND ASSOCIATED ROADS**

### **11.1 Existing utilities and roads**

Notwithstanding anything to the contrary contained herein, the Licensee shall ensure that the Government Instrumentalities owning the existing roads, Right of Way or utilities, on, under or above the Licensed Premises are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the relevant Government Instrumentality.

### **11.2 Shifting of obstructing utilities**

The Licensee shall, subject to Applicable Laws, provisions of Applicable Permits and with the assistance of the Authority, undertake shifting of any utility, including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Licensed Premises, if and only if such utility causes or shall cause a Material Adverse Effect on the construction, development, designing, re-designing, refurbishment, equipping, operation and maintenance of the Licensed Premises. The cost of such shifting shall be borne by the Licensee, and in the event of any delay in shifting thereof, the Licensee shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

## **12. DEVELOPMENT OF LICENSED PREMISES**

### **12.1 Construction, Designing and Development of Licensed Premises**

12.1.1 On or after the Appointed Date, the Licensee shall undertake development of the Licensed Premises as specified in Annexure C (the "Minimum Development Obligations") and in conformity with the Specifications and Standards set forth in Annexure D. The Licensee shall undertake the Minimum Development Obligations, where the Development Works shall commence from the Appointed Date and shall be completed within the Construction Period.

12.1.2 In the event that the Development Works is not completed, and Project COD is not achieved on or prior to the Project SCOD, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Deed. Without prejudice to the Authority's rights under this Deed and/or any other right that it may have under Applicable Laws or equity including the right to terminate, the Authority may in its sole discretion choose to allow:

- (a) an extension to Project SCOD by a period of 06 (six) months, subject to receipt of written request from Licensee and the status of construction of the Project (subject to reasonableness of completion of Project by Project SCOD as determined by the Authority);
- (b) an extension to Project SCOD by a period equal to the "impact period" of GRAP Order affecting the construction of the Project, as determined by Authority basis the annual submissions identifying the delay in construction pursuant to the Grap Order ("**GRAP Extension**"); and
- (c) any extension thereafter to Project SCOD, subject to levy of liquidated damages at the rate of INR 5,00,000 (Rupees Five Lakhs only) for each day of delay till the achievement of the Project COD.

The Damages for the period of such extension shall be paid in advance by the Licensee. To the extent that the Authority has agreed to allow for an extension and the Licensee has paid the Damages in advance as stated above, the Authority shall not terminate this Deed in accordance with the provisions of this Article 12.1.2 for the period of such extension. Notwithstanding the foregoing, the Parties agree that this Article shall not prejudice, in any manner whatsoever, the Authority's right of Termination under any other provision of this Deed.

12.1.3 For the purposes of Article 12.1.2 (b) above, the impact period of GRAP Order for any particular year shall be calculated as the total number of days for which construction activity was prohibited in the National Capital Region on account of GRAP Order for that year multiplied by 1.50 (one point five zero), with any fractional number of days being rounded up to the nearest integer.

12.1.4 Notwithstanding anything set out herein, it is clarified that the Project SCOD shall not exceed 36 (thirty six) months from the Appointed Date on any account whatsoever including for the avoidance of doubt GRAP Extensions.

## **13. PROJECT COD**

### **13.1 Quarterly progress reports**

During the Construction Period, the Licensee shall, within 7 (seven) days after the close of each quarter, furnish to the Authority a quarterly report on progress of the Development Works of the Licensed Premises (including any delay on account of implementation of GRAP Order) as per the details sets out in Annexure J and shall promptly give such other relevant information as may be required by the Authority.

### **13.2 Annual submission of GRAP Event**

During the Construction Period, the Licensee shall, within 7 (seven) days after the close of each financial year, furnish to the Authority a report identifying the delays caused to the construction of the Project on account of prevailing Grap Order and Grap Event for the immediately preceding financial year.

### 13.3 **Completion Certificate**

If the Development Works for the Licensed Premises is complete as per the Minimum Development Obligations and all the Operational Permits required for the commercial operations for the Licensed Premises have been received and the Licensee certifies in writing that the Licensed Premises can be safely and reliably placed in commercial operation, the Authority may, at the request of the Licensee, issue a completion certificate, specifying the details of the Licensed Premises which can be put to commercial use (the “**Completion Certificate**”).

### 13.4 **Project COD**

The Minimum Development Obligations for the Licensed Premises shall be deemed to be complete when and the Completion Certificate is issued under the provisions of Article 13.2, and accordingly the commercial operation date, shall be the date on which such Completion Certificate is issued (the “**Project COD**”). The Licensed Premises shall enter into commercial service on Project COD whereupon the Licensee shall be entitled to operate and maintain the Licensed Premises subject to compliance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Deed.

## 14. **OPERATION AND MAINTENANCE**

### 14.1 **O&M Obligations of the Licensee**

14.1.1 During the Operation Period, the Licensee shall operate and maintain the Licensed Premises in accordance with this Deed and if required, modify, repair or otherwise make improvements to the Licensed Premises to comply with the provisions of this Deed, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Licensee hereunder shall include:

- (a) ensuring that the Project meets the requirement of Annexure C at all times on and after the Project SCOD;
- (b) undertaking complete KYC compliance on the Users and sub-licensee to, *inter alia*, ensure that the Licensed Premises are not being used in violation of the Applicable Law, Applicable Permits and the terms of this Deed;
- (c) undertaking routine maintenance including prompt repairs of Licensed Premises so as to ensure compliance with the Applicable Law, Applicable Permits and the terms of this Deed;
- (d) providing round the clock security at the Licensed Premises and preventing with the assistance of the concerned law enforcement agencies, any encroachments on or authorised entry on the Licensed Premises;
- (e) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Licensed Premises in conformity with the Good Industry Practice and this Deed;
- (f) complying with the extant Safety Requirements;
- (g) operation and maintenance of the Licensed Premises diligently and efficiently and in accordance with Applicable Laws, Operational Permits, Good Industry Practice and provisions of this Deed; and

- (h) responsible for the acts or defaults of any of its Contractors, its agents or employees, as if they were the acts or defaults of the Licensee.
- 14.1.2 The Licensee shall remove promptly from the Licensed Premises all surplus construction machinery and materials, waste materials (including hazardous materials and wastewater), rubbish and other debris (including, without limitation, accident debris) and keep the Licensed Premises in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Deed.
- 14.1.3 If the Licensee fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Licensee and shall not be claimed from the Authority. For avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to and independent of the Damages payable under this Deed. In the event the Authority is required to pay any penalty to the Government Instrumentality under any Applicable Laws then the Authority shall be entitled to be indemnified by the Licensee under Article 28.

#### **14.2 Safety, breakdowns and accidents**

- 14.2.1 The Licensee shall ensure safe conditions at the Licensed Premises for the Users and the Authority, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures in conformity with the provisions of this Deed, Applicable Laws, Applicable Permits and Good Industry Practice. In the event of occurrence of any damage, breakdowns and/or accidents, the Licensee shall undertake removal of obstruction and debris without delay.
- 14.2.2 Licensee's responsibility for rescue operations in the Licensed Premises shall include safe evacuation of all Users, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction, which may endanger or interrupt the operation of the Licensed Premises.

#### **14.3 Overriding powers of the Authority**

- 14.3.1 If in the opinion of the Authority, the Licensee is in material breach of its obligations under this Deed, and such breach is causing or is likely to cause material hardship or danger to any person or property, the Authority may, without prejudice to any of its rights under this Deed including Termination thereof, by notice require the Licensee to take reasonable measures immediately for removing such hardship or danger as the case may be.
- 14.3.2 In the event the Licensee, upon notice under this Article 14.3, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may take over the performance of any or all the obligations of the Licensee to the extent deemed necessary by it for removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be expenses, and the Authority shall be entitled to recover them from the Licensee in accordance with the provisions of this Deed along with the Damages specified therein.

#### **14.4 Restoration of loss or damage to the Licensed Premises**

Save and except as otherwise expressly provided in this Deed, in the event that the Licensed Premises or any part thereof suffers any loss or damage during the License Period from any cause whatsoever, the Licensee shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Licensed Premises conforms to the provisions of this Deed.

#### **14.5 Excuse from performance of obligations**

14.5.1 The Licensee shall not be considered in breach of its obligations under this Deed if any part of the Licensed Premises is not available to Users, or the Licensed Premises is not available for the use on account of any of the following for the duration thereof:

- (a) a Force Majeure Event (as per the terms of this Deed);
- (b) measures taken to ensure the safe use of the Licensed Premises, except when unsafe conditions occurred because of failure of the Licensee to perform its obligations under this Deed; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Licensed Premises.

14.5.2 Provided, that any such event and particulars thereof shall be notified by the Licensee to the Authority without any delay.

14.5.3 Notwithstanding the above, the Licensee shall keep all unaffected parts of the Licensed Premises open to Users provided that services can be provided safely.

### **15. SAFETY REQUIREMENTS**

#### **15.1 Safety Requirements**

The Licensee shall comply with the provisions of this Deed, Applicable Laws, Applicable Permits and Good Industry Practice for securing the safety of the Licensed Premises, safety of the Users and other persons present in the premises. In particular, the Licensee shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Licensed Premises and shall comply with the safety requirement set forth in Annexure G (the “**Safety Requirements**”).

#### **15.2 Expenditure on Safety Requirements**

Unless otherwise expressly provided in this Deed, all costs and expenses arising out of or relating to Safety Requirements shall be borne by the Licensee.

### **16. MONITORING OF OPERATION AND MAINTENANCE AND JOINT INVENTORY**

#### **16.1 Annual Status Reports**

During Operation Period, the Licensee shall, no later than 30 (thirty) days after the close of every Financial Year, furnish to the Authority an annual report, in a mutually agreed format, stating in reasonable detail the condition of the Licensed Premises and information as listed out in Annexure K, including its compliance or otherwise with the Safety Requirements, the terms of this Deed, Applicable Law and Applicable Permits, and shall promptly give

such other relevant information as may be required by the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

## **16.2 Joint Inventory**

Within 30 (thirty) days from: (a) the date of operationalization of any part of the Licensed Premises; (b) Project COD; and (c) every 5th (fifth) anniversary from the Project COD, the Parties shall jointly depute representative to inspect and prepare a joint report of the inventory of the Licensed Premise, in a mutually agreed format, stating in reasonable detail the inventory of structures and the fixtures attached to such structures (“Joint Inventory Report”). The Joint Inventory Report shall be jointly signed by such deputed representatives and the same shall be binding on the Parties.

## **17. SECURITY**

### **17.1 Security obligations of the Licensee**

17.1.1 The Licensee shall provide and maintain perimeter fencing or other suitable protection, to the extent allowed under Applicable Laws and Applicable Permits, around the Licensed Premises and shall be responsible for the security arrangements for the Licensed Premises in order to maintain safe and orderly conduct of its business and the security thereof.

17.1.2 The Licensee shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority’s actions or the actions of any organization authorised by the Authority other than those resulting from willful or grossly negligent acts and omissions of the Authority. The Authority agrees that it shall cause the relevant organization to take such actions as reasonably deemed necessary by them for the security of the Licensed Premises, without unduly disrupting the operations of the Licensed Premises or interfering with the exercise of rights or fulfilment of obligations by the Licensee under this Deed. The Licensee agrees that it shall extend its full support and cooperation to the Authority and to the other organization authorised by the Government in discharge of their obligations for and in respect to the security of the Licensed Premises.

17.1.3 The Licensee shall engage and depute trained personnel for maintaining the security and safety of Users inside the Licensed Premises in accordance with Good Industry Practice.

17.1.4 The Licensee shall abide by and implement any instructions of the Authority for enhancing the security within and around the Licensed Premises. The Licensee shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the implementation of any instruction of the Authority.

## **18. CONSIDERATION PAYABLE BY THE LICENSEE**

18.1 The grant of license under this Deed is subject to Licensee paying the Annual Licence Fee as prescribed in Article 18.3.

## 18.2 Upfront Fee

18.2.1 The Licensee is required to pay to the Authority, non-refundable, Upfront Fee of Rs. 7,55,00,000/- (Rupees Seven Crores Fifty Five Lakhs only) the “**Upfront Fee**” plus applicable Taxes in the manner specified hereinunder:

| S. No. | Amount of Upfront Fee  | Due date for payment of Upfront Fee                   |
|--------|--|---|
| 1.     | Rs.3,55,00,000/- (Rupees Three Crores Fifty-Five Lakhs only) plus applicable Taxes | Prior to the Execution Date                           |
| 2.     | Rs. 2,00,00,000/- (Rupees Two Crores only) plus applicable Taxes                   | Prior to the first anniversary of the Execution Date  |
| 3.     | Rs. 2,00,00,000/- (Rupees Two Crores only) plus applicable Taxes                   | Prior to the second anniversary of the Execution Date |

## 18.3 Annual Licence Fee

18.3.1 The Licensee agrees to pay to the Authority, commencing from the Project SCOD, a non-refundable annual licence fee computed in accordance with Article 18.3.2 (the “**Annual Licence Fee**” or “**ALF**”) plus applicable Taxes as prescribed hereinunder.

### 18.3.2 Annual License Fee for the License Period

- (a) The initial license fee of INR [●] (being the amount discovered pursuant to the Bidding Process under the RFP), plus applicable taxes as prescribed hereinunder, shall be paid as per Article 18.3.4 below.
- (b) The initial licence fee shall stand increased by the Escalations as per **Annexure I**. It is clarified that the first such escalation shall occur on the first anniversary of the Project SCOD. The initial license fee of INR [●] escalated in accordance with this Article 18.3.2 (as provided in Annexure I) shall be referred to as the “**Annual License Fee**”. All such escalations shall be calculated on an annual compounded basis (Please refer to the example provided in Annexure I). The Annual License Fee shall be paid by the Licensee during the License Period.
- (c) At any point during the License Period, if the Licensee is able to increase the FAR area of the Project over and above the Presently Maximum Permissible FAR area, the applicable Annual Licence Fee shall be increased in accordance with Article 27 below.

18.3.3 The Licensee acknowledges and agrees that the amounts payable to the Authority (including the Annual License Fee) shall at all times be paid in priority to payments due to any other Person, including the Senior Lenders. The Licensee further agrees that it shall cause and ensure that this priority is recognised by the Senior Lenders in any escrow or trust and retention account arrangement entered into by the Licensee or otherwise.

18.3.4 The Annual License Fee shall be paid by the Licensee as per the terms prescribed hereunder:

- (a) The first quarterly payment of the Annual License Fee shall be paid on the Project SCOD. It is clarified that: (i) the first quarterly payment of the ALF shall be pro-rata to the first Fiscal Quarter of the License Period in which the Project SCOD is declared; and (ii) the last quarterly payment of the ALF shall be pro-rata to the last Fiscal Quarter of the License Period;

- (b) For each year of the License Period, ALF shall be payable quarterly in advance every 3 month from the date as set out in Article 18.3.4 (a) above.; and
- (c) For the License Period, the invoice shall be raised by the first day of the first month of each Fiscal Quarter and shall be payable on or before the tenth day of the first month of each Fiscal Quarter (“**ALF Due Date**”). First invoice shall be raised on or before the date of Project SCOD.

#### **18.4 Interest on Delayed Payments**

All amounts due and payable by the Licensee under the provisions of this Deed shall be paid on or before the relevant due date (which, for the ALF payments shall be the ALF Due Date and for other payments, the date falling after expiry of 30 (thirty) days from the date of demand/notice unless otherwise communicated in writing by the Authority). In the event of delay beyond the due date the Licensee shall pay interest for the period of delay, calculated at a rate equal to 3% above the SBI 6 Months MCLR and recovery thereof shall be without prejudice to the rights of the Parties under this Deed including Termination thereof.

#### **18.5 Set-off**

The Licensee shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Licensee under this Deed which has fallen due and payable against any amount due to the Licensee under this Deed. Any exercise by the Authority of its rights under this Article shall be without prejudice to any other rights or remedies available to it under this Deed or otherwise.

#### **18.6 Taxes and duties**

Other than as set out in this Deed, all Taxes and duties shall be paid by the Licensee.

#### **18.7 Project Security**

18.7.1 The Licensee shall, prior to the Appointed Date, open and create a fixed deposit for an amount equal to the one quarter of the ALF with a Bank (the “**Project Security**”) in accordance with this Agreement.

18.7.2 The Project Security shall at all times be lien marked in favour of the Authority until the expiry of 12 (twelve) months from the expiry of the License Period. The Licensee shall: (i) share documentary evidence that the Project Security has been created and lien is marked in favour of the Authority; and (ii) submit a letter (in a form and manner acceptable to the Authority) to the Bank (under copy to the Authority) confirming the lien marked and irrevocably instructing the Bank to act only on the instructions of Authority.

#### **18.8 Maintenance of Project Security**

The Licensee shall maintain the Project Security for an amount equal to the one quarter of the ALF. The Licensee shall increase the amount of Project Security with such additional sum to ensure that the Performance Security is equal to one quarter of the ALF upon Escalation of the ALF at all times.

#### **18.9 Encashment of the Project Security**

Notwithstanding anything to the contrary contained in this Deed, the complete Project Security shall, in the event the ALF is not paid to the Authority by the ALF Due Date, be

appropriated towards the outstanding ALF. Provided that upon Termination, the Project Security shall be appropriated towards any outstanding amounts payable by the Licensee to the Authority (including unpaid ALF).

## **19. INSURANCE**

### **19.1 Insurance during License Period**

The Licensee shall affect and maintain at its own cost, during the License Period, such insurances for such maximum sums as may be required under the Applicable Permits and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice and as are customarily and ordinarily available in India, consistent with similar facilities of the size and type of the Project, including in particular comprehensive and adequate insurance to cover against:

- (a) any loss, damage or destruction of the Licensed Premises;
- (b) Licensee's general liability arising out of this Deed to the extent it is commercially insurable;
- (c) workmen's compensation;
- (d) third party liability; and
- (e) such other insurance as may be customary in accordance with Good Industry Practice.

The Licensee shall also affect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Licensee during the License Period.

Licensee shall submit copies of such insurance policies to Authority as requested by the Authority. In case the Licensee fails to obtain or maintain the above required insurances, the Authority shall have the right to obtain such insurances and recover all costs in relation to obtaining or maintaining the insurances from the Licensee.

### **19.2 Compliance with conditions of insurance policies**

The Licensee expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Licensee's failure to comply with conditions imposed by the insurance policies effected in accordance with this Deed.

## **20. FORCE MAJEURE**

20.1 As used in this Deed, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, save and except as expressly provided otherwise, mean occurrence of any or all the below set events, if (a) it affects the ability of the Party claiming the benefit of Force Majeure (the "**Affected Party**") to perform its obligations under this Deed (additionally, in the case of the Licensee, if the Licensee is unable to own or operate, all or a substantial part of the Licensed Premises), (b) is beyond the reasonable control of the Affected Party, and (c) the Affected Party could not have prevented or overcome by exercise of due diligence and following good industry practice:

- (a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Licensed Premises);

- (b) compulsory acquisition in public interest or expropriation of the Licensed Premises or rights of the Licensee;
- (c) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, riot, insurrection, terrorist or military action; or
- (d) any event or circumstances of a nature analogous to any of the foregoing.

## **20.2 Duty to Report Force Majeure Event**

20.2.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 20 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Deed;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

20.2.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Deed. For avoidance of any doubt, the giving of a notice of Force Majeure by any Party to the other Party shall not automatically constitute Force Majeure.

20.2.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (at least weekly) reports containing information as required by Article 20, and such other information as the other Party may reasonably request the Affected Party to provide.

## **20.3 Effect of Force Majeure on the Licence Period**

Notwithstanding anything contained in this License Deed, it is clarified that License Period shall remain fixed and shall not be extended on account of occurrence of one or more Force Majeure Events.

## **20.4 Allocation of Costs Arising Out of Force Majeure**

20.4.1 Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

20.4.2 Save and except as expressly provided in this Article 20, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

## **20.5 Termination Notice for Force Majeure Event**

20.5.1 If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Deed by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article and upon issue of such Termination Notice, this Deed shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to the other Party to make a representation and may after the expiry of such 15 (fifteen) day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

## **20.6 Dispute Resolution**

20.6.1 In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure in accordance with Article 30; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

## **20.7 Excuse from performance of obligations**

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event. It is clarified for the avoidance of doubt that the Licensee shall not be liable to make payment of the ALF pro-rated for the period of Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Deed, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

## **21. COMPENSATION FOR BREACH OF THE AGREEMENT**

### **21.1 Compensation for default by the Licensee**

Subject to the provisions of Article 20.3 and Article 20.4, in the event of the Licensee being in material breach or default of this Deed, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Article 21.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Deed or for any consequential losses incurred by the Authority.

## 21.2 **Compensation to be in addition**

Compensation payable under this Article 21 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Deed including Termination thereof.

## 21.3 **Mitigation of costs and damage**

The non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of the Deed by the other Party.

## 22. **SUSPENSION OF LICENSEES RIGHTS**

### 22.1 **Suspension upon Licensee Default**

Upon occurrence of Licensee Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Deed including its right of Termination hereunder, to (a) suspend all rights of the Licensee under this Deed including the Licensee's right to receive any revenues on account of the operation of the Licensed Premises pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Licensee and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Licensee and the Lender's Representative, the Authority shall extend the aforesaid 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days. It is hereby clarified that total period of extension on account of Suspension shall not exceed a period of 270 (two hundred and seventy) days.

### 22.2 **Authority to act on behalf of Licensee**

During the period of Suspension hereunder, all rights and liabilities vested in the Licensee in accordance with the provisions of this Deed shall continue to vest in the Licensee and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Licensee under and in accordance with this Deed and the Project Agreements, shall be deemed to have been done or take for and on behalf of the Licensee and the Licensee undertakes to indemnify the Authority for all costs incurred during such period. The Licensee hereby licenses and sub-licenses respectively, the Authority or any other person authorise by it to use during Suspension, all Intellectual Property belonging to or licensed to the Licensee with respect to the Licensed Premises and their design, engineering, construction, operation and maintenance and which is used or created by the Licensee in performing its obligations under this Deed.

### 22.3 **Revocation of Suspension**

22.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the suspension forthwith and restore all rights of the Licensee under this Deed. For avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

22.3.2 Upon the Licensee having cured the Licensee Default as set out in Article 23.1.1 within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Licensee under this Deed.

#### 22.4 **Substitution of Licensee**

At any time during the period of Suspension, the Lenders' Representative, on behalf of the Senior Lenders, shall be entitled to substitute the Licensee under and in accordance with the Substitution Deed, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 22.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of the Senior Lenders.

#### 22.5 **Termination**

22.5.1 At any time during the period of Suspension under this Article 22, the Licensee may by notice request the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake the substitution in accordance with the provisions of this Deed and within the period specified in Article 22.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Deed under and in accordance with Article 23 as if it is a Licensee Default under Article 23.1.

22.5.2 Notwithstanding anything to the contrary contained in this Deed, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 22, this Deed shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Deed shall apply, *mutatis mutandis*, to such Termination as if a termination Notice had been issued by the Authority upon occurrence of Licensee Default.

### 23. **TERMINATION**

#### 23.1 **Termination for Licensee Default**

23.1.1 Subject to Applicable Laws and save as otherwise provided in this Deed, in the event that any of the defaults specified below shall have occurred, and the Licensee fails to cure the default within a Cure Period of 60 (sixty) days, the Licensee shall be deemed to be in default of the Deed (the "**Licensee Default**"), unless the default has occurred as a result of any breach of this Deed by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Licensee has failed to maintain the Project Security as per Article 18.7;
- (b) The Licensee has failed to maintain the Performance Security as per Article 9.1 or the Performance Security has been encashed and appropriated in accordance with Article 9.2 and the Licensee fails to replenish, renew or replace the Performance Security within the Cure Period;
- (c) the Licensee abandons or manifests intension to abandon the development or operation of the Licensed Premises without the prior written consent of the Authority;
- (d) Project COD does not occur on or before the 3<sup>rd</sup> (third) anniversary of the Appointed Date;

- (e) the Licensee is in breach of the extant Safety Requirements at any point of time, as the case may be;
- (f) the Licensee has failed to make any payment to the Authority (other than the Annual Licence Fee) within the period specified in this Deed;
- (g) the Licensee has failed to make payment to the Authority of the Annual Licence Fee for a period of more than 300 (three hundred) days from the ALF Due Date;
- (h) a breach of any of the Project Agreements by the Licensee has caused a Material Adverse Effect on either Party;
- (i) the Licensee creates any Encumbrance in breach of this Deed;
- (j) the Licensee repudiates this Deed or otherwise takes an action or evidences or conveys an intention not to be bound by this Deed;
- (k) a Change in Ownership or change in shareholding has occurred in breach of the provisions of Article 5.3.2 or any change in composition or control in breach of Clause 2.3.2 of the RFP;
- (l) there is a transfer of (i) the rights and/or obligations of the Licensee under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Licensee;
- (m) an execution levied on any of the assets of the Licensee has caused a Material Adverse Effect on either Party;
- (n) the Licensee is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Licensee or for the whole or material part of its assets that has a material bearing on the Project;
- (o) the Licensee has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect: provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Licensee are transferred to the amalgamated or reconstructed entity and unless such amalgamated or reconstructed entity has:
  - (i) unconditionally assumed the obligations of the Licensee under this Deed and the Project Agreements;
  - (ii) the capability and operating experience necessary for the performance of its obligations under this Deed and the Project Agreements;
  - (iii) the financial standing to perform its obligations under this Deed and the Project Agreements and has a credit worthiness at least as good as that of the Licensee as at the Appointed Date; and
  - (iv) ensured that each of the Project Agreements remain in full force and effect.
- (p) occurrence of any Insolvency Event;

- (q) any representation or warranty of the Licensee herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Licensee is at any time hereafter found to be in breach thereof;
- (r) the Licensee submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (s) the Licensee has failed to fulfil any obligation and for such failure, Termination has been specified in this Deed;
- (t) the Licensee issues Termination Notice in violation of the provisions of this Deed; or
- (u) the Licensee commits a default in complying with any other provisions of this Deed and if such default causes or may cause a Material Adverse Effect on the Project and the rights and interest of the Authority.

23.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Deed, upon occurrence of a Licensee Default, the Authority shall be entitled to terminate this Deed by issuing a Termination Notice to the Licensee; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Licensee of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Licensee to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

23.1.3 The Authority shall, if there are Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 23.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Licensee in accordance with the Substitution Deed. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Deed.

23.1.4 Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Licensee: Provided further that upon written request from the Lenders' Representative and the Licensee, the Authority shall extend the aforesaid period by a further period of 270 (two hundred and seventy) days, subject to the Authority's unilateral discretion.

## 23.2 Termination for Authority Default

23.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 180 (one hundred and eighty) days or such longer period as has been expressly provided in this Deed, the Authority shall be deemed to be in default of this Deed (the "**Authority Default**") unless the default has occurred as a result of any breach of this Deed by the Licensee or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Authority commits a material default in complying with any of the provisions of this Deed and such default has a Material Adverse Effect on the Licensee; or
- (b) the Authority fails to handover the Project Site to the Licensee for construction of the Project as per the timeline set out in this License Deed.

23.2.2 Without prejudice to any other right or remedy which the Licensee may have under this Deed, upon occurrence of a Authority Default, the Licensee shall, subject to the provisions of the Substitution Deed, be entitled to terminate this Deed by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Licensee shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

### 23.3 Consequence and Termination Payment

23.3.1 In the event of termination of this Deed pursuant to a Licensee Default:

- (a) prior to Project COD, the Authority shall require the Licensee to: (A) handover the peaceful and vacant possession of Licensed Premises, including part or whole of the structures and fixtures attached to it (as per the Joint Inventory Report and any subsequent additions thereto) as instructed by the Authority, to the Authority within 03 (three) months from the Termination Date and the Authority shall not be required to make any payment to the Licensee; or (B) demolish the part or whole of the structure at the Licensed Premises at the instruction of the Authority, at its own cost and risk and handover the vacant possession of Licensed Premises to the Authority. It is clarified that in the event the Authority requires the Licensee to demolish any structure constructed over the Project Site and handover a clear Project Site, then the time period for such handover shall be notified by the Authority in the Termination Notice. Additionally, Authority shall be entitled to: (i) encash the Project Security; and (ii) forfeit 100% (hundred percent) of the Performance Security.; or
- (b) post Project COD, the Authority shall require the Licensee to: (A) handover the peaceful and vacant possession of Licensed Premises, including part or whole of the structures and fixtures attached to it (as per the Joint Inventory Report and any subsequent additions thereto) as instructed by the Authority, to Authority within 03 (three) months from the Termination Date; or (B) demolish the part or whole of the structure at the Licensed Premises at the instruction of the Authority, at its own cost and risk and handover the vacant possession of Licensed Premises to the Authority. It is clarified that in the event the Authority requires the Licensee to demolish any structure constructed over the Project Site and handover a clear Project Site, then the time period for such handover shall be notified by the Authority in the Termination Notice. The Authority or any entity designated by it shall acquire all of Licensee's rights, title and interests in and to the Licensed Premises in the manner set out in Article 24. Authority shall be entitled to: (i) encash the Project Security; and (ii) forfeit 100% (hundred percent) of the Performance Security.

23.3.2 In the event of termination of this Deed pursuant to an Authority Default occurring:

- (a) prior to Project COD, then Authority or any entity designated by it shall acquire all of Licensee's rights, title and interests in and to the Licensed Premises in the manner set out in Article 24, on payment, to the Licensee, on the Transfer Date,

the Construction Costs incurred by the Licensee up to the date of Termination Notice simultaneously with the Licensee transferring the possession of the Licensed Premises thereon to the Authority. In addition, the Authority shall be simultaneous with the transfer of possession of the Licensed Premises in accordance with Article 24 hereof, refund the entire Performance Security furnished by the Licensee, after deduction of any unpaid amount therefrom. The Construction Costs payable hereunder shall be audited by an independent CAG empanelled chartered accountant or IBBI approved valuer appointed jointly by the Parties at cost and expense of the Authority;

- (b) post COD, then the Authority or any entity designated by it shall acquire all of Licensee's rights, title and interests in and to the Licensed Premises in the manner set out in Article 24, on payment on the Transfer Date of Building Value of the assets (as per the Joint Inventory Report and any subsequent additions thereto), simultaneously with the transfer of the assets to the Authority, as determined in accordance with Article 24. In addition to the Building Value of the assets, the Authority shall simultaneously with the transfer of possession of the Licensed Premises in accordance with Article 24 hereof, refund the entire Performance Security furnished by the Licensee, after deduction of any unpaid amounts therefrom.

23.3.3 Amounts to be paid in accordance with Article 23.3.1 (b) in the circumstance in which they are payable shall be sole and exclusive remedy of the Licensee and no further amounts shall be payable by the Authority to the Licensee.

#### 23.4 **Other rights and obligations of the Authority**

23.4.1 Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Licensed Premises forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Licensed Premises;
- (c) be entitled to restrain the Licensee and any person claiming through or under the Licensee from entering the Licensed Premises; and
- (d) succeed upon election by the Authority, without the necessity of any further action by the Licensee, to the interests of the Licensee under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Licensee. For avoidance of doubt, the Licensee acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Licensee and such Contractors, and the Authority shall not in any manner be liable for such sums.

#### 23.5 **No Surrender**

23.5.1 Other than as set out in Article 23.2 above, the Licensee shall not be entitled to surrender or otherwise terminate the Licence granted hereunder prior to expiry of the Licence Period.

## 23.6 **Survival of rights**

Notwithstanding anything to the contrary contained in this Deed, any Termination pursuant to the provisions of this Deed shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract.

## 24. **HANDING OVER OCCUPATION; CONSEQUENCES OF EXPIRY OR TERMINATION**

24.1 Simultaneously with the expiry of the Licence Period or on early termination of the Licence under the provisions of this Deed:

24.1.1 The Licensee shall pay all arrears, if any, of all unpaid Annual Licence Fees and other payments and charges payable by the Licensee hereunder;

24.1.2 The Licensee shall, and shall ensure that each of the sub-licensee, vacates the Licensed Premises within a period of 03 (three) months from the date of expiry of the Licence Period or such period as set out in Article 23.3.1 above upon termination of Licence, whichever is earlier and the Licensee shall, unless instructed by the Authority to demolish the part or whole of the structure in accordance with Article 23.3.1, hand over to the Licensor, (i) actual, vacant, and peaceful occupation of the Licensed Premises (including part or whole of the structures and fixtures attached to it (as per the Joint Inventory Report and any subsequent additions thereto) as instructed by the Authority) in working condition (reasonable wear and tear excepted) and modifications made in accordance with the terms of this Deed. The Licensee shall not remove any of the fixtures or permanent fittings and fixtures, removal of which may cause damage to the Licensed Premises, unless otherwise specifically required by the Licensor. In case of any damage to the Licensed Premises or to any permanent fixture or fitting therein, the Licensee shall be obliged, at its cost, to repair any such damage and restore the Licensed Premises to a good and tenable state, failing which the Licensor shall be entitled to deduct amounts incurred by it towards such repairs/ restoring such damage from the Performance Security provided by the Licensee to the Licensor. The Licensor shall issue an Occupation Takeover Letter to the Licensee on the date the Licensor resumes or takes over exclusive possession and occupation of the Licensed Premises. It is clarified, for the avoidance of doubt, in the event the Authority instructs the Licensee to demolish the part or whole of the structure of the Licensed Premises at its own cost, the Licensee shall hand over to the Licensor actual, vacant (to the extent required by the Authority in writing), and peaceful occupation of the Licensed Premise within the timeline as specified by the Authority in writing;

24.1.3 In the event, for any reason whatsoever, the Licensee fails to or refuses to or delays in vacating the Licensed Premises within the time period set out in Article 24.1.2 above, then without prejudice to such rights, the Licensor has under this Deed or under Applicable Law or otherwise including the right to encash the Project Security and the right to forfeit the entire Performance Security, the Licensee shall be obligated to pay to the Licensor in advance, on a weekly basis, (i) five times of the last paid Annual Licence Fee for such period for which it overstays at the Licensed Premises, which will increase at the rate of 12% (twelve per cent) per annum on compounding basis; (ii) pay all other charges due and payable to the Licensor for the Licensed Premises; and (iii) pay such damages to the Licensor at such rates as may be determined by the Licensor at that point in time; and

24.1.4 Subject to the Licensee having handed over actual vacant occupation of the Licensed Premises and the Licensor having issued the Occupation Takeover Letter to the Licensee upon expiry or early termination of the Licence Period and the Licensee having paid and discharged all its payment obligations to the Licensor in full (including without limitation

all unpaid Annual Licence Fee and accrued interest thereon and all other amounts due and payable, including the Liquidated Damages specified in Article 23.4.1) under this Deed, the Licensor:

- (a) may acquire all of Licensee's rights, title and interests in and to all or any of the assets constructed on the Project Site as part of the Licensed Premises in accordance with Article 23.3 and 24.1; and
- (b) shall return any excess amounts that have been already paid by the Licensee to the Licensor,

in each case, to the Licensee within a period of 3 (three) month from the date of discharge by the Licensee of the aforesaid payment obligations to the Licensor.

## **25. BARE LICENCE**

- 25.1 This Deed constitutes a bare Licence granted by the Licensor to the Licensee to use and occupy the Licensed Premises and nothing contained herein constitutes or creates or shall be construed to create or be deemed to constitute or create any easement, tenancy, sub-tenancy or any other similar right, title, interest or entitlement in, to and upon the Licensed Premises in favour of the Licensee or as transferring any interest therein in favour of the Licensee other than the permissive right of use hereby granted. Nothing contained in this Deed shall constitute a transfer or conveyance or letting of the Licensed Premises to the Licensee. During the Licence Period, the Licensee shall not create or attempt to create any Encumbrance, sub-licence or third party rights, except to the limited extent permitted in this Deed, or induce any third party to part with occupation or use of the Licensed Premises in any manner whatsoever. The Licence hereby granted to the Licensee is a non-assignable, non-transferable Licence granted for the limited purpose set out in this Deed.
- 25.2 The Parties expressly agree and acknowledge that this Deed constitutes only a Licence of the Licensed Premises and does not constitute or gives rise to or be construed as a lease, development agreement, and does not give rise to any relationship (including joint venture, collaboration and/or agency) other than that of Licensor and Licensee. Should any clause of, or part of any clause within, this Deed be interpreted or construed otherwise for any reason by any Court of law of competent jurisdiction, such clause/ provision shall be modified to restore the relationship of a licensor and Licensee and aligning it with the intent of the Parties as set out in this Article.
- 25.3 The Licensee hereby agrees and acknowledge that this Deed does not confer in any manner whatsoever, any right or interest in the land, property and/or building in or at the Licensed Premises.

## **26. ASSIGNMENT AND CHARGES**

### **26.1 Restrictions on assignment and charges**

- 26.1.1 Subject to Articles 26.2 and 26.3, this Deed shall not be assigned by the Licensee to any person.
- 26.1.2 Subject to the provisions of Article 26.2, the Licensee shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Deed or any Project Agreement to which the Licensee is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

## 26.2 Permitted assignment and charges

26.2.1 The restraints set forth in Article 26.1 shall not apply to:

- (a) mortgage created on the building and assets constructed on the Project Site by the Licensee as per the terms of this Deed (without creating any right or charge or interest in the Project Site), and as security only for indebtedness to the Senior Lenders who have financed the construction and/or working capital arrangements for the Licensed Premises;
- (b) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project or liens or encumbrances required by any Applicable Law;
- (c) pledges or hypothecation of goods or assets other than Licensed Premises and their related documents of title, arising or created in the ordinary course of business of the Licensed Premises (without being able to be assigned by the Licensee), and as security only for indebtedness to the Senior Lenders who have financed the construction and/or working capital arrangements for the Licensed Premises; and
- (d) assignment of rights, interest and obligations of the Licensee to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Deed as security for financing provided by Senior Lenders.

26.2.2 The Licensee shall not, directly or indirectly, transfer, encumber, let or sub-license or part with the occupation of the Licensed Premises or any part thereof and/or the benefits arising out of this Deed or any part thereof in any manner whatsoever to any person for raising any debt for any other purpose other than as permitted under this Deed.

26.2.3 The Licensee may permit or sub- license any third party to operate permissible activities in the Licensed Premises or any other facilities within the Licensed Premises as per Annexure C, for a period that shall be coterminous with or, less than the License Period and upon expiry of the License Period or Termination of the Deed, all such permissions granted to third parties to operate or maintain any facilities or amenities as aforesaid shall automatically cease and terminate forthwith.

## 26.3 Substitution Agreement

26.3.1 Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Licensee pursuant to the agreement for substitution of the Licensee (the “**Substitution Agreement**”) to be entered into amongst the Licensee, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Annexure L.

26.3.2 Upon substitution of the Licensee under and in accordance with the Substitution Agreement, the Nominated Company substituting the Licensee shall be deemed to be the Licensee under this Deed and shall enjoy all rights and be responsible for all obligations of the Licensee under this Deed as if it were the Licensee; provided that where the Licensee is in breach of this Deed on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Licensee for curing such breach.

## 26.4 Assignment by the Authority

26.4.1 Notwithstanding anything to the contrary contained in this Deed, the Authority may, after giving 60 (sixty) days' notice to the Licensee, assign and/or transfer any of its rights and benefits and/or obligations under this Deed to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Deed.

26.4.2 Any assignment under this Article 26 shall be subject to the approvals and consents required therefore under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

## **27. EXPANSION AND INCREASE IN ANNUAL LICENCE FEE**

27.1 In the event, an increase in the floor area ratio ("FAR") is permissible, at any stage during the License Period and the Licensee intends to avail the benefits of such increased FAR in relation to the Licensed Premises as per the Applicable Laws, Applicable Permits and Master Plan, the Licensee shall obtain the prior written consent of the Authority. The Licensee shall submit an application specifying the details of the structural additions/modifications or expansions proposed to be carried out in the Licensed Premises to the Licensor.

27.2 Thereafter, the Licensor, at its sole discretion, may provide such consent to the Licensee in accordance with the terms and conditions as it may deem fit. Upon the receipt of such written consent from the Licensor, the Licensee may avail the benefits of the increased FAR and carry out such structural additions/ modifications or expansions at the Licensed Premises, as approved by the Licensor, at its own risk, cost, expense and liability and in compliance with the Applicable Laws, Applicable Permit and the Master Plan.

27.3 In the event, the Licensee avails such benefits and thereby increases the built-up area of the Project, the following conditions shall be applicable:

- (a) the License Period shall remain unaltered and as defined under Article 3.1;
- (b) no rights shall accrue to the Licensee on the structural additions/ modifications carried out in the Project pursuant to the increased FAR and such structural additions/ modifications shall become a part and parcel of the Licensed Premises which shall be governed by the terms and conditions of this Deed; and
- (c) in case of an increase in the actual FAR area of the Project from the Presently Maximum Permissible FAR area, the applicable Annual Licence Fee for the subsequent quarters shall increase on a pro-rata basis and Annexure I shall be amended accordingly.

27.4 The structural additions/ modifications/ expansion work initiated by the Licensee at the Licensed Premises shall be performed by the Licensee in good workmanlike manner and in compliance with all Applicable Laws and in accordance with the terms of this Deed, only after obtaining prior written approval from the Licensor.

27.5 The Licensee hereby agrees and acknowledges that any and all alterations, structural additions/ modifications/ expansion work made and/or to be made by the Licensee at the Licensed Premises shall become part of the Licensed Premises and for the purposes of this Deed, any reference to the Licensed Premises, shall on and from the date of such additions/ modifications shall deem to include such additions/ modifications to the Licensed Premises. Further, at the expiry of the License Period or early termination of this Deed, the Licensed Premises shall be transferred by the Licensee to the Authority along with such additions/

modifications, and such additions/ modifications shall not make any right in favour of the Licensee at any time during or after the License Period.

## **28. LIABILITY AND INDEMNITY**

### **28.1 General indemnity**

The Licensee shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities or enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Licensee of any of its obligations under this Deed or any related agreement or on account of any defect or deficiency in the provision of services by the Licensee to the Authority or to any User or from any act and/or omission by the Licensee arising out of gross negligence, fraud or wilful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Deed on the part of the Authority Indemnified Persons.

### **28.2 Indemnity by the Licensee**

28.2.1 Without limiting the generality of Article 28.1 the Licensee shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Licensee to comply with Applicable Laws and Applicable Permits;
- (b) payment of Taxes required to be made by the Licensee in respect of the income or other Taxes of the Contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Licensee or any of its Contractors which are payable by the Licensee or any of its Contractors;
- (d) its omissions or acts of fraud, gross negligence and wilful misconduct;
- (e) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Deed; or
- (f) loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Deed.

28.2.2 Without limiting the generality of the provisions of this Article 28, the Licensee shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Licensee or by the Contractors in performing the Licensee’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Licensee shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Licensed

Premises, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Licensee shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorising continued use of the infringing work. If the Licensee is unable to secure such license within a reasonable time, the Licensee shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non- infringing.

### 28.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 28 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### 28.4 Defense of claims

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

28.4.2 If the Indemnifying Party has exercised its rights under Article 28.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

28.4.3 If the Indemnifying Party exercises its rights under Article 28.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;

- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Deed:

Provided that if Sub-Clauses (b), (c) or (d) of this Article 28.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

#### **28.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 28, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Deed.

#### **28.6 Limitation of Liability**

Notwithstanding anything to the contrary in this Deed, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Deed, shall not exceed the Construction Costs or the Building Value, whichever is lower. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Licensee's liability will be uncapped in case of any liabilities arising due to:

- (a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and wilful misconduct;
- (b) breach of any Applicable Laws or any Applicable Permits;
- (c) any claims or loss on account of Intellectual Property rights violation by the Licensee;
- (d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Deed; or
- (e) any loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Deed.

#### **28.7 Survival on Termination**

The provisions of this Article 28 shall survive Termination.

### **29. RIGHTS TO THE LICENSED PREMISES**

#### **29.1 Rights to the Licensed Premises**

For the purpose of this Deed, the Licensee shall have rights to use the Licensed Premises in accordance with this Deed and to this end, it may regulate the entry and use of the Licensed Premises by third parties, to the extent allowed under Applicable Law, in accordance with and subject to the provisions of this Deed.

#### **29.2 Access rights of the Authority and others**

The Licensee shall allow free access to the Licensed Premises at all times to the Authority and its representatives and to the persons duly authorised by any Government Instrumentality to inspect the Licensed Premises and to investigate any matter within their authority, and upon reasonable notice as per Clause 27 of this Deed,, the Licensee shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

#### **29.3 Property Taxes**

All taxes under Applicable Laws in connection with or for use of the Licensed Premises including Taxes relating to the buildings constructed on the Licensed Premises shall be to the account of, and shall be payable by, the Licensee and shall not be reimbursed or payable by the Authority. The Parties agree that stamp duties under Applicable Laws, payable on the Deed (and rights granted pursuant hereto) shall be paid by the Licensee.

#### **29.4 Restriction on sub-licensing**

- (a) The Licensee shall not sub-license the whole or any part of the Licensed Premises, save and except as may be expressly set forth in this Deed; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Licensee to appoint Contractors for the performance of its obligations hereunder including for development, operation and maintenance of all or any part of the Licensed Premises.
- (b) Notwithstanding the provisions of sub-Article 29.4 (a), the Licensee may sub-license the Licensed Premises (either in parts or in full) to single or multiple parties for undertaking permissible activities / operating facilities within the Licensed Premises as per Annexure C.
- (c) Any sub-licensing of the Licensed Premises (either in parts or in full) undertaken in accordance with Article 29.4 (b) shall not absolve the Licensee of any of its responsibilities, liabilities, and obligations under this Deed.

### **30. GOVERNING LAW AND DISPUTE RESOLUTION**

30.1 The Licensed Premises is a public premise as defined under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, as amended from time to time.

30.2 This Deed shall be governed in accordance with the laws of India. Subject to Article 30.3, courts at Delhi having competent jurisdiction alone shall have the exclusive jurisdiction to entertain any application or suit in connection with this Deed.

#### **30.3 Amicable Resolution**

- 30.3.1 Save where expressly stated to the contrary in this Deed, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Deed (the “**Dispute**”) shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Article 30.3.2 below.
- 30.3.2 Either Party may require such Dispute to be referred to the Vice Chairman of the Licensor and the Person duly authorised by the Board of Directors of the Licensee, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any case within 30 (thirty) days of such reference to discuss and attempt to amicably resolve the Dispute, as evidenced by the signing of written terms of settlement within 30 (thirty) days of such meeting or such longer period as may be mutually agreed by the Parties.

## **31. DISCLOSURE**

### **31.1 Disclosure of Documents relating to safety**

The Licensee shall make available for inspection by any person copies of all Documents and data relating to safety of the Licensed Premises, free of charge, during normal business hours on all working days, at the Licensee's registered office. The Licensee shall make copies of the same available to any person upon payment of copying charges on a no profit no loss basis.

### **31.2 Withholding disclosure of Protected Documents**

Notwithstanding the provisions of Articles 31.1, the Authority shall be entitled to direct the Licensee, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

*Explanation:*

The expression Protected Documents shall mean such documents, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

## **32. MISCELLANEOUS**

### **32.1 Waiver of immunity**

Each Party unconditionally and irrevocably:

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

any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

## 32.2 **Interest**

32.2.1 Unless otherwise specified, any interest payable under this Deed shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rates.

## 32.3 **Waiver**

32.3.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Deed:

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

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

## 32.4 **Liability for review**

Except to the extent expressly provided in this Deed:

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

## 32.5 **Exclusion of implied warranties**

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

## 32.6 **Survival**

Termination shall:

- (a) not relieve the Licensee or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Deed expressly limiting the liability of either Party, 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.

All obligations surviving Termination shall only survive for a period of 1 (one) years following the date of such Termination.

### **32.7 Entire Deed**

This Deed, the Schedule and the Annexures together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Deed are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Licensee arising from the RFP, shall be deemed to form part of this Deed and treated as such.

### **32.8 Severability**

If for any reason whatever, any provision of this Deed is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth in Article 30 or otherwise.

### **32.9 No partnership**

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

### **32.10 Third parties**

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

### **32.11 Notices**

Except as may be otherwise provided herein, all notices, requests, waivers and other communications made pursuant to this Deed shall be in writing and signed by or on behalf of the Party giving it. Such notice shall be served by delivering it by hand, mail (physical or electronic) or courier to the address set forth below. In each case it shall be marked for the attention of the relevant Party set forth below. Any notice so served shall be deemed to have been duly received (a) when delivery is made by hand, when hand delivered to the other Party; or (b) when sent by physical mail, where ten (10) days have elapsed after deposit in the mail with certified mail receipt requested postage prepaid; or (c) when sent by courier on the fifth day after deposit with an overnight delivery service, postage prepaid, with next day delivery guaranteed, provided that the Party sending it receives a confirmation of delivery from the delivery service provider; or (d) when sent by electronic mail notification with return receipt requested, upon the obtaining of a valid return receipt from the recipient.

**To the Licensor:**

Attention : [●]  
 Address : [●]  
 Telephone : [●]  
 Email : [●]

**To the Licensee:**

| Description | Primary Contact | Additional Contact |
|-------------|-----------------|--------------------|
| Attention   | [●]             | [●]                |
| Address     | [●]             | [●]                |
| Telephone   | [●]             | [●]                |
| Email       | [●]             | [●]                |

**32.12 Language**

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

**32.13 Confidentiality**

32.13.1 Each Party shall keep the Confidential Information confidential and shall not disclose the same to any other person without the prior written consent of the other Party.

32.13.2 Sub-Clause (a) shall not apply in the following circumstances:

- (a) any disclosure required by Applicable Laws or in respect of information already in the public domain;
- (b) any disclosure required by any applicable stock exchange listing rule; and
- (c) disclosure by the Senior Lenders, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.

32.13.3 Either Party shall have the right to disclose Confidential Information pursuant to this Deed or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.

32.13.4 In the event a disclosure is required by Applicable Law, upon reasonable request by the non-disclosing Party, the disclosing Party shall use all reasonable efforts and co-operate with other Party's efforts to obtain confidential treatment of material so disclosed.

32.13.5 Each Party shall utilise the same degree of care to preserve and protect the other Party's Confidential Information from disclosure that they use to protect their own Confidential Information, which shall not be less than reasonable care.

32.13.6 Confidential Information disclosed shall be and remain the property of the disclosing Party. The obligations of the Parties to protect Confidential Information shall survive 3 (three) years from Termination.

**32.14 Stamp Duty**

Any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Deed shall be borne by the Licensee.

**32.15 Authority of Parties**

Each of the Parties hereto hereby represent to each other that the Person signing this Deed on behalf of the concerned Party has full and complete authority to do so on its behalf and execution hereof by him creates a legal and binding obligation on the concerned Party.

**32.16 Counterparts**

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



## ANNEXURE A - DEFINITIONS

### 1. DEFINITIONS

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

“**Affected Party**” shall have the meaning set forth in Article 20.1;

“**ALF Due Date**” shall have the meaning set forth in Article 18.3.4(c);

“**Applicable Laws**” shall mean all laws, brought into force and effect by GOI or the Government of Delhi including rules, regulations, notifications, directives, policies and office memorandums, made thereunder, including the Delhi Urban Art Commission Act, 1973 (as amended from time to time) and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Deed and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect from time to time;

“**Applicable Permits**” shall mean Construction Permits and/or Operational Permits, as applicable;

“**Construction Permits**” shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the development and construction of the Licensed Premises during the subsistence of this Deed and upon termination, the transfer of the Licensed Premises to the Authority;

“**Operational Permits**” shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the operations and maintenance of the Licensed Premises during the subsistence of this Deed and upon termination, the transfer of the Licensed Premises to the Authority;

“**Appointed Date**” shall mean the date on which the Conditions Precedent are either satisfied and/or waived in accordance with the terms of this Deed, and shall be deemed to be the date of commencement of the License Period;

“**Associate**” or “**Affiliate**” shall mean, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “**control**” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Authority**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Authority Default**” shall have the meaning set forth in Article 23.2.1;

**“Authority Indemnified Persons”** shall have the meaning set forth in Article 28.1;

**“Bank”** shall mean a bank incorporated in India and having a minimum net worth of Rs 1,000 crore (Rupees one thousand crore) or any other bank acceptable to the senior Lenders, but does not include a bank in which the Senior Lender has an interest;

**“Bid”** shall mean the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof;

**“Bidding Process”** shall have the meaning as set out in the Request for Proposal;

**“Bid Security”** shall mean the security provided by the Selected Bidder to the Authority along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

**“Board of Directors of the Licensee”** shall mean the board of directors of the Licensee;

**“Building Value”** in relation to the asset constructed on the Project Site as part of the Licensed Premises, means the replacement cost of the building, fittings and fixtures constituting such asset, of the condition, quality and specification as existing on the Transfer Date without attributing any value for the business. The Building Value of the asset constructed on the Project Site as part of the Licensed Premises will be determined by two valuers (either CAG empanelled chartered accountant or IBBI approved valuers), one each to be appointed by the Authority and Licensee. The methodology of the valuation shall be determination of the replacement cost of the building, fittings and fixtures constituting such asset of the condition, quality and specification as existing on the Transfer Date without attributing any value to the Licensee’s business;

**“Change in Ownership”** shall mean a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {existing promoters/selected bidder/Consortium Members}, together with {its/their} Associates in the total equity to decline below (i) 51% (fifty one per cent) at any time during the Construction Period and until the expiry of the 5<sup>th</sup> (fifth) anniversary of the Project COD; (ii) the shareholding of each of the Member of the Consortium, whose Technical Capacity and Financial Capacity was evaluated for qualification during the Bidding stage, declines below 26% (twenty six per cent) until the expiry of the 5<sup>th</sup> (fifth) anniversary of the Project COD; (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining License Period; and (iv) the shareholding of the Lead Member of the Consortium, declines below 26% (twenty six per cent); provided that any material variation (as compared to the representations made by the Licensee during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be) in the proportion of the equity holding of {existing promoters/Selected Bidder/ any Consortium Member} to the total equity, if it occurs prior to the 5<sup>th</sup> (fifth) anniversary of Project COD;

**“Companies Act”** shall mean, as applicable, the Companies Act, 1956 and the Companies Act, 2013 as amended from time to time;

**“Completion Certificate”** shall have the meaning set forth in Article 13.2;

**“Conditions Precedent”** shall have the meaning set forth in Article 4.1;

**“Confidential Information”** shall mean all information that either party discloses to the other party, whether in writing, electronically, or orally and in any form (tangible or intangible), that is confidential, proprietary, or relates to the Project and/or this Deed.

**“Consortium”** shall have the meaning as set forth in Recital;

**{“Consortium Member(s)” or “Member”}** shall mean a company specified in Recital as a member of the Consortium;}

**“Construction Costs”** shall mean the aggregate of the amounts spent by the Licensee in undertaking activities in relation to the implementation of the Project till the Transfer Date, which amounts will include but not be limited to: (a) expenditure incurred in respect of filing applications for and obtaining and maintaining Applicable Permits; (b) fees of all consultants, experts, accountants, lawyers, Lenders and other independent persons hired in relation to the Project; (c) costs of maintaining offices of the Licensee that are attributable to the Project; and (d) costs of any contractors appointed by the Licensee in relation to the implementation of the Project;

**“Construction Period”** shall mean the period beginning from the Appointed Date and ending on Project SCOD;

**“Contractor”** shall mean the person or persons, as the case may be, with whom the Licensee has entered into any of the EPC Contracts, the O&M Contracts, or any other material agreement for the construction, operation and/or maintenance of the Licensed Premises or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Licensee;

**“Covenant”** shall have the meaning set forth in Article 5.2.4;

**“Cure Period”** shall mean the period specified in this Deed for curing any breach or default of any provision of this Deed by the Party responsible for such breach or default and shall:

- a. commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- b. not relieve any Party from liability to pay damages or compensation under the provisions of this Deed; and
- c. not in any way be extended by any period of Suspension under this Deed;

provided that if the cure of any breach by the Licensee requires any reasonable action by the Licensee that must be approved by the Authority, the applicable Cure Period shall be extended by the period taken by the Authority after the receipt of the relevant information to accord their approval;

“**Custom Bonded Warehouse**” shall have the meaning as set out in [.];

“**Damages**” shall have the meaning set forth in Article 1.2.1 (r);

“**Deed**” shall mean this Deed, its Recitals, the Schedule and Annexures, hereto and any amendments thereto made in accordance with the provisions contained in this Deed;

“**Developed**” shall have the meaning ascribed to such term in the RFP;

“**Development Works**” shall mean all construction works and things necessary to complete the Minimum Development Obligation in accordance with this Deed;

“**Dispute**” shall have the meaning set forth in Article 30.1;

“**Dispute Resolution Procedure**” shall mean the procedure for resolution of Disputes set forth in Article 30;

“**Document**” or “**Documentation**” shall mean documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“**EPC Contract**” shall mean the engineering, procurement and construction contract or contracts entered into by the Licensee with one or more EPC Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Deed;

“**EPC Contractor**” shall mean the person with whom the Licensee has entered into an EPC Contract;

“**Emergency**” shall mean a condition or situation that is likely to endanger the security of the individuals on or about the Licensed Premises, including Users thereof, or which poses an immediate threat of material damage to the Licensed Premises;

“**Encumbrances**” shall mean, in relation to the Licensed Premises, any encumbrances such as charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, where applicable herein but excluding utilities referred to in Article 11.1;

“**Equity**” shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Licensee for meeting the equity component of the total debt, and for the purposes of this Deed shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital

of the company, and any interest- free loans advanced by any shareholder of the company for meeting such equity component;

**“Escalation“** shall mean the rate of escalation applicable the during the License Period as set out in **Annexure I**;

**“Estimated Project Cost”** shall have the meaning ascribed to such term in the RFP;

**“Execution Date”** shall mean the date on which this Deed is executed by the Parties;

**“Financing Agreements”** shall mean the agreements executed by the Licensee in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the actual cost of the Project;

**“Financial Capacity”** shall have the meaning ascribed to such term in the RFP;

**“Financial Closure”** shall mean: (i) the fulfilment of all Conditions Precedent to the initial availability of funds under the Financing Agreements (together with equity commitments) to meet the project costs; or (ii) documentary evidence demonstrating that the Licensee has necessary financial resources available to it to meet the project cost including by way of internal accruals or equity share capital;

**“Financial Year”** shall mean a year commencing on 1st April of a calendar year and ending on 31st March of the immediately succeeding calendar year;

**“Fiscal Quarter”** shall mean the 03 (three) month period beginning on April 1, July 1, October 1 and January 1 of each calendar year;

**“Force Majeure”** or **“Force Majeure Event”** shall have the meaning ascribed to it in Article 20.1;

**“Force Majeure Costs”** shall have the meaning ascribed to it in Article 20;

**“Grade A Warehouse”** shall have the meaning as set out in [.];

**“GOI”** shall mean the Government of India;

**“Good Industry Practice”** shall mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Deed and which would be expected to result in the performance of its obligations by the Licensee in accordance with this Deed, Applicable Laws and Applicable Permits and includes prudent practices generally accepted by the ~~hotel and hospitality~~ warehousing / logistics industry for ensuring reliable, safe, economical and efficient construction, operation and maintenance of the Licensed Premises;

**“Government Instrumentality”** shall mean any department, division or sub-division of the Government of India or the Government of Delhi and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the Government of Delhi, as the case may be, and having jurisdiction over the Licensed Premises or the performance of all or any of the services or obligations of the Licensee under or pursuant to this Deed;

**“GRAP Order”** shall mean graded responses action plan by Commission for Air Quality Management in National Capital Region and Adjoining Regions which prohibits the construction activity in the National Capital Region or such other similar rule or regulation enacted under the Applicable Law, as updated from time to time;

**“Indemnified Party”** shall mean the Party entitled to the benefit of an indemnity pursuant to Article 28.3;

**“Indemnifying Party”** shall mean the Party obligated to indemnify the other Party pursuant to Article 28.3;

**“Insolvency Event”** in respect of a Party shall mean:

- a. such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party’s ability to perform its obligations under this Deed; (E) commenced proceedings (voluntary or involuntary) under the (Indian) Insolvency and Bankruptcy Code, 2016 (the “**Code**”); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or
- b. a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking: (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts; (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of 90 (ninety) days; or (C) directions with the same or similar effect happen under the provisions of the Companies Act or the Code in relation to the winding up of the company;

**“Intellectual Property”** shall mean all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or

unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

**“Lead Member”** shall have the meaning as set forth in Recital;

**“Lender’s Representative”** shall mean the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Deed, and includes his successors, assigns and substitutes;

**“Licensee”** shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recital;

**“Licensee Default”** shall have the meaning set forth in Article 23;

**“License Period”** shall have the meaning set forth in Article 3;

**“Licensed Premises”** shall have the meaning attributed thereto in Recital as set forth;

**“Liquidated Damages”** has the meaning assigned to in Article 23.4.1;

**“LOA” or “Letter of Award”** shall mean the letter of award referred to in Recital;

**“Material Adverse Effect”** shall mean a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Deed and which act or event causes a material financial burden or loss to either Party;

**“Master Plan”** means the master plan for Delhi as in force from time to time;

**“Minimum Development Obligations”** shall have the meaning set forth in Article 12.1;

**“Nominated Company”** shall mean a company selected by the Lenders' Representative and proposed to the Authority for substituting the Licensee in accordance with the provisions of the Substitution Deed;

**“O&M”** shall mean the operation and maintenance of the Licensed Premises and includes all matters connected with or incidental to such operation and maintenance of the Project in accordance with the provisions of this Deed;

**“O&M Contract”** shall mean the operation and maintenance contract that may be entered into between the Licensee and an O&M Contractor for performance of the O&M obligations in accordance with this Deed;

**“O&M Contractor”** shall mean a contractor with whom the Licensee has entered into an O&M Contract, if any;

**“Operation Period”** shall mean the period commencing from Project COD and ending on the Transfer Date;

**“Occupation Takeover Letter”** shall mean the letter issued by the Licensor substantially in the form specified in Annexure H hereto on the Transfer Date of takeover of occupation of the Licensed Premises from the Licensee by the Licensor in accordance with the terms of this Deed;

**“Parties”** shall mean the parties to this Deed collectively and **“Party”** shall mean any of the parties to this Deed individually;

**“Performance Security”** shall have the meaning set forth in Article 9.1;

**“Presently Maximum Permissible FAR”** shall mean 80.

**“Project”** shall mean construction, development, designing, equipping, operation and maintenance of the Licensed Premises and undertaking Minimum Development Obligation in accordance with the provisions of this Deed;

**“Project Agreements”** shall mean this Deed, the Financing Agreements, EPC Contract, O&M Contract, sub-licensing agreements and any other material agreements or contracts that may be entered into by the Licensee with any person in connection with matters relating to, arising out of or incidental to the Licensed Premises, but does not include the Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to INR 1,00,00,000 (Indian Rupees One Crore only) for each such agreement;

**“Project COD”** shall have the meaning set forth in Article 13.3 and shall include commercial operations date of Mandatory Development Obligations;

**“Project SCOD”** means the date falling on the expiry of 24 (twenty four) months from the Appointed Date, being the scheduled date for achievement of the Project COD as may be extended on account of GRAP Extension or such other extension as determined as per the terms of this Deed subject to Project SCOD not exceeding 36 (thirty six) months from the Appointed Date;

**“Protected Documents”** shall have the meaning set forth in Article 31.2;

**“Request for Proposals”** or **“RFP”** shall have the meaning set forth in Recital;

**“Right of Way”** shall mean the constructive possession of the Licensed Premises, together with all way leaves, easements unrestricted access and other rights of way howsoever described, necessary for development, operation and maintenance of the Licensed Premises in accordance with this Deed;

**“Rs.”** or **“Rupees”** or **“Indian Rupees”** shall mean the lawful currency of the Republic of India;

**“Safety Requirements”** shall have the meaning set forth in Article 17.1;

**“Selected Bidder”** shall mean the bidder selected by the Authority to award the Project following the completion of the Bidding Process (as defined under the RFP);

**“Senior Lenders”** shall mean the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their

successors and assignees, who have agreed to guarantee or provide finance to the Licensee for meeting all or any part of the cost of construction and/or operation and maintenance of the Licensed Premises and who hold pari passu charge on the assets, rights, title and interests of the Licensee;

**“Specifications and Standards”** shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Licensed Premises, as set forth in Annexure D, and any modifications thereof, or additions thereto, as per the terms of this Deed;

**“State”** means the State of Delhi and **“State Government”** means the Government of NCT of Delhi;

**“Substitution Agreement”** shall have the meaning set forth in Article 26.3;

**“Suspension”** shall have the meaning set forth in Article 22.1;

**“Taxes”** shall mean any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Licensed Premises charged, levied or imposed by any Government Instrumentality, on the Project or the Licensed Premises but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever.

**“Termination”** shall mean the expiry or termination of this Deed and the license hereunder;

**“Termination Notice”** shall mean the communication issued in accordance with this Deed by one Party to the other Party terminating this Deed;

**“Technical Capacity”** shall have the meaning ascribed to such term in the RFP;

**“Transfer Date”** shall mean the date on which this Deed and the license hereunder expires pursuant to the provisions of this Deed or is terminated by a Termination Notice; and

**“Users”** shall mean the third parties which use the Licensed Premises or any part thereof, in accordance with the provisions of this Deed and Applicable Laws.

## ANNEXURE B - LICENSED PREMISES

(See Article 2)

### 1. Details of the Licensed Premises

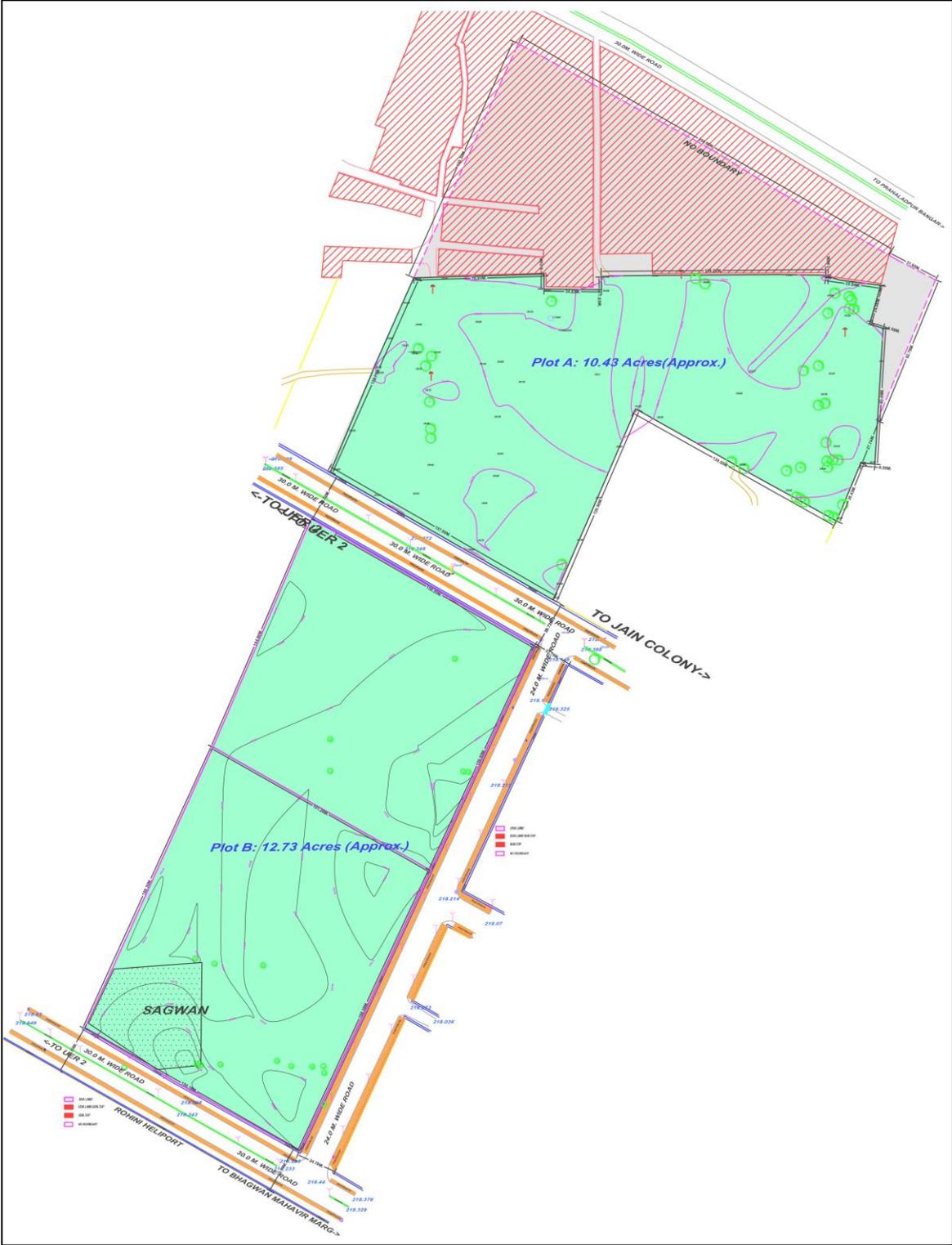
A land parcel measuring around 23.2 acres, located in Sector 36, Rohini, New Delhi

### 2. The Project Site

2.1 The Project Site shall include land, as tabulated below:

| Licensed Premises   | Area   |
|---|--|
| Sector 36, Rohini, New Delhi<br>Google Map Link:<br><a href="https://maps.app.goo.gl/tGz45oCK5QH6VKhk8">https://maps.app.goo.gl/tGz45oCK5QH6VKhk8</a> | Approximately 23.2 acres<br>across two plots (Plot A :<br>10.43 Acres approximately &<br>Plot B: 12.73 acres<br>approximately) |

Figure 1: Plot Layout



## ANNEXURE C - DEVELOPMENT OF THE LICENSED PREMISES

(See Article 2)

1. The Licensee will have to develop an energy efficient Warehouse Complex on the Plot Location which may include:
  - (a) Grade A Warehouse
  - (b) Wholesale Market(s) (as defined in extant provisions of Master Plan)
  - (c) Commercial Office Space(s) (to the extent permissible under extant provisions of Master Plan)
  - (d) Custom Bonded Warehouses (as permitted under Applicable Laws)
2. In addition to the facilities set out above, the Licensee undertakes to develop the following supporting facilities for the Project:
  - (a) Internal roads and paved areas for circulation
  - (b) Parking facilities for trucks and other vehicles of users who come to avail the services of the Licensed Premises
  - (c) services and utilities such as rest rooms, water supply and rainwater harvesting, storm water drains, sewage treatment plant, solid waste management, electrical substation and distribution network, street lighting, yard lighting, fire water supply with hydrants as per Applicable Laws at the Licensed Premises
  - (d) Open landscape and horticulture area at the Licensed Premises
  - (e) Adequate power backup at the Licensed Premises

Indicative List of Consents/ Permits/ Licenses

| Sl. No. | Indicative List of Consents/ Permits/ Licenses (During construction)  |
|---------|---|
| 1       | Building Permit from Local Authority (MCD or DDA whichever is applicable).                                      |
| 3       | Occupancy Certificate from Local Authorities (MCD or DDA whichever is applicable)                               |
| 4       | NOC from AirPort authority of India (if applicable)   |
| 5       | Environmental Clearance from environment department (if applicable)   |
| 6       | Fire Safety NOC Certificate from Delhi Fire Department.   |
| 7       | Consent from Heritage Conservation Committee and Delhi Urban Art Commission wherever applicable (if applicable) |
| 8       | Pollution Control Board Consent to Establish (CTE)  |

|    |  |
|----|--|
| 9  | Electricity Department registration for connection.              |
| 10 | Delhi Jal Board Permits for water supply and sewerage connection |
| 11 | GST Certificate  |
| 12 | Income Tax Registration  |
| 13 | CLRA Registration (if applicable)                                |
| 14 | NOC from Traffic Police  |

| <b>Sl. No.</b> | <b>Indicative List of Consents/ Permits/ Licenses (During Operations)</b> |
|----------------|---|
| 1              | Business Registration & commencement/License and Trade License            |
| 2              | Food Safety License (FASSI) & Health Department Permit (if applicable)    |
| 3              | Signage Licenses (if applicable)  |
| 4              | Pollution Control Board (consent to operate)                              |
| 5              | GRIHA or LEED certification as mentioned in the concession agreement.     |
| 6              | Relevant consents for Approval for DG Set Installation & operations       |
| 7              | Registration under the Employees Provident Fund and Pension Schemes       |
| 8              | CLRA Registration (if applicable)   |
| 9              | NOC from Traffic Police   |

Note: The above list is indicative. The Bidders/ Licensee may have to obtain additional Consents/ Permits/ Licenses based on the Applicable Laws.

## ANNEXURE D – SPECIFICATIONS AND STANDARDS

### 1. Specification and standards

The building shall be designed in accordance with the latest Indian Standard Codes and shall be designed to resist wind and seismic forces and should comply with the following:

- (a) Applicable National Building Code (NBC)
- (b) Applicable Bureau of Indian Standards specifications
- (c) Applicable Building Bye-Laws
- (d) Applicable Master Plan regulations
- (e) Relevant Bureau of Indian Standards (BIS), Standards, National Building Code, relevant Central Public Works Department (CPWD) norms (wherever applicable), Ministry of Road Transport and Highways (MoRTH), Indian Road Congress (IRC)
- (f) Guidelines as prescribed in the Warehouse Standards (Annexure 01 and Annexure 02) of the “E-handbook On Warehousing Standards” published by Ministry of Commerce and Industry, Government of India in 2022 as currently available on:

<https://warehousingindia.org/wp-content/uploads/2022/09/Handbook-on-Warehousing-Standards.pdf>

or any other such applicable guidelines / standards that may be published by relevant Government Instrumentality.

## ANNEXURE E - PERFORMANCE SECURITY

*(See Article 9.2)*

### WHEREAS:

- A. ...., (the “**Licensee**”) and ..... (“**Authority**”) and having its principal offices at.....have entered into a License Deed dated.....(the “**Deed**”) whereby the Authority has agreed to the Licensee undertaking the Project at the Licensed Premises through Public Private Partnership , subject to and in accordance with the provisions of the Deed.
- B. The Deed requires the Licensee to furnish a Performance Security to the Authority in a sum of [Rs.\_\_\_\_\_ cr. (Rupees \_\_\_\_\_ crore)] (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Deed, for the License Period from the Appointed Date.
- C. We, ..... through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

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

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Licensee before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Deed or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Licensee contained in the Deed or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Licensee, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Deed and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Licensee or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Deed or for the fulfilment, compliance and/or performance of all or any of the obligations of the Licensee under the Deed.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect after expiry of the License Period, and provided the Licensee is not in breach of this Deed. Upon request made by the Licensee for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Licensee, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was

posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for the License Period from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Deed.
12. Signed and sealed this .....day of ..... 202.... at .....

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature) (Name) (Designation) (Code Number) (Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

**ANNEXURE F - FORMAT FOR COMPLETION CERTIFICATE**

**To whom it may concern**

In consideration of the requirements of conditions of [●] of the Deed and the Licensee's application for a Completion Certificate, the Authority hereby grants the Completion Certificate

This Completion Certificate is issued on the understanding that the conditions of the Deed have been met except for minor outstanding work that does not affect the use and safety of the and the [Licensed Premises / Project ] can be put to commercial use.

Completion Certificate does not relieve the Licensee of any requirements or obligations within the Deed.

Signed this ..... day of ....., 20 ..... at .....

AGREED, ACCEPTED AND SIGNED SIGNED,  
SEALED AND DELIVERED

For and on behalf of

For and on behalf of

Licensee by:

Authority by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

## ANNEXURE G - SAFETY REQUIREMENTS

*(See Article 17.1)*

### 1. Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2 Safety Requirements apply to all phases of construction, development, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Appendix - I of this Annexure G.

### 2. Obligations of the Licensee

The Licensee shall abide by the following:

- (a) Applicable Laws and Applicable Permits;
- (b) provisions of this Deed;
- (c) relevant Standards/Guidelines contained in nationally accepted codes; and
- (d) Good Industry Practice.

### 3. Safety measures during Operation Period

- 3.1 The Licensee shall develop, implement and administer a safety programme for the Licensed Premises, staff, Users and other persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Deed.
- 3.2 The Licensee shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Licensee shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.
- 3.3 The Licensee shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in 3 (three) copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Financial Year and the measures taken by the Licensee pursuant to the provisions of Clause 3.1 of this ~~Schedule~~ Annexure G for averting or minimising such accidents in future.

**4. Costs and expenses**

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of clause 2 of this Annexure, shall be borne by the Licensee in accordance with the provisions of this Deed.

**Appendix - I  
(Annexure-G)**

**Safety Guidelines**

**1. System integrity**

In the design of the Licensed Premises, particular care shall be taken to minimise the likely incidence of failure.

**2. Safety management**

A safety statement shall be prepared by the Licensee once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. 2 (two) copies of the statement shall be sent to the Authority within 15 (fifteen) days of the close of every year.

**3. Emergency**

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the Disaster Management Manual) to be prepared and published by the Licensee prior to Project COD. The Licensee shall provide 5 (five) copies each of the Disaster Management Manual to the Authority no later than 30 (thirty) days prior to Project COD.

**4. Fire safety**

- 4.1 To prevent fire in the Project, the Licensee shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

**5. Surveillance and Safety Manual**

The Licensee shall, no later than 30 (thirty) days prior to Project COD, evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection.

**6. Watch and Ward**

The Licensee shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety of the Project and all persons affected by it.

## ANNEXURE H - OCCUPATION TAKEOVER LETTER

Date:

To,

[Insert the name and the address of the Licensee] (“Licensee”)

Subject: Takeover of the physical occupation of the Licensed Premises at [●].

Re: License Deed dated [●] entered into between the Delhi Development Authority and [insert name of the Licensee] (“License Deed”)

Dear Sir / Madam,

With reference to the License Deed dated [insert date], we declare and record as follows:

1. That the License Deed [was terminated on [insert date] vide notice dated [insert date]/ expired on [insert date] (delete whichever is not applicable);
2. That within [insert the timeline] from the date of [termination/ expiry] (delete whichever is not applicable), the erstwhile Licensee (being [insert name of erstwhile Licensee]) is obligated to handover the vacant and peaceful occupation of the Licensed Premises to the Authority in accordance with the terms of the License Deed;
3. Accordingly, with effect from [insert date] the Authority has taken over/resumed the exclusive physical occupation and possession of the Licensed Premises to the exclusion of all Person including the erstwhile Licensee (being [insert name of erstwhile Licensee]);
4. [Additional clauses to be incorporated by the Authority];
5. That the keys to all locks placed/installed at the Licensed Premises have been handed over to the authorised representative [insert name] of the Authority<sup>1</sup>;
6. That the Authority has liberty to break open the locks for which keys have not been handed over by the Licensee<sup>2</sup>;
7. That with effect from [insert date], the Authority shall not be responsible for any goods, belongings or fixtures of the Licensee left within the Licensed Premises;
8. This letter constitutes conclusive evidence of exclusive possession by the Authority over the Licensed Premises; and
9. Capitalised terms not defined herein shall have the meanings assigned to them in the Licence Deed.

Yours truly,

---

Authorised Signatory

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<sup>1</sup> To be retained as applicable

<sup>2</sup> To be retained as applicable

## ANNEXURE I - ESCALATIONS IN ALF

**Notes:**

1. ALF is to be paid quarterly in advance to the Authority
2. Amount of quarterly payment shall be determined by dividing the ALF mentioned in the schedule below by four (04).
3. ALF amounts may be updated in case there is any increase in the FAR area over and above the Presently Maximum Permissible FAR area.
4. All escalations shall be calculated on an annual compounded basis.

| Licence Year | Escalation Rate | Annual Licence Fee (Rs. Crores) |
|--------------|-----------------|---------------------------------|
| 1            | NIL             | NIL                             |
| 2            | NIL             | NIL                             |
| 3            | NIL             | NIL                             |
| 4            | NIL             | [●]                             |
| 5            | 5%              | [●]                             |
| 6            | 5%              | [●]                             |
| 7            | 5%              | [●]                             |
| 8            | 5%              | [●]                             |
| 9            | 5%              | [●]                             |
| 10           | 5%              | [●]                             |
| 11           | 5%              | [●]                             |
| 12           | 5%              | [●]                             |
| 13           | 5%              | [●]                             |
| 14           | 7%              | [●]                             |
| 15           | 7%              | [●]                             |
| 16           | 7%              | [●]                             |
| 17           | 7%              | [●]                             |
| 18           | 7%              | [●]                             |
| 19           | 7%              | [●]                             |
| 20           | 7%              | [●]                             |
| 21           | 7%              | [●]                             |
| 22           | 7%              | [●]                             |
| 23           | 7%              | [●]                             |
| 24           | 7%              | [●]                             |

| Licence Year | Escalation Rate | Annual Licence Fee (Rs. Crores) |
|--------------|-----------------|---------------------------------|
| 25           | 7%              | [●]                             |
| 26           | 7%              | [●]                             |
| 27           | 7%              | [●]                             |
| 28           | 7%              | [●]                             |
| 29           | 7%              | [●]                             |
| 30           | 7%              | [●]                             |
| 31           | 7%              | [●]                             |
| 32           | 7%              | [●]                             |
| 33           | 7%              | [●]                             |

## **ANNEXURE J - QUARTERLY PROGRESS REPORT**

**Quarterly construction progress report should contain the following details:**

- 1) Cost incurred till date
- 2) Status of Physical progress till date along with recent site photographs
- 3) Number of days of construction stoppage due to GRAP 3-4 Order (enclosed copy of GRAP orders)
- 4) Copy of modification of any building plans (if applicable)
- 5) Details of any other construction delays incurred
- 6) Details of any anticipated delays
- 7) Anticipated project COD
- 8) List and copies of all valid licence and permits

NOTE: All schematics (including utilities and services) and as built drawings needs to be submitted in hard copy and soft copy to the authority after completion of construction.

## **ANNEXURE K - ANNUAL STATUS REPORT**

**Annual status report (during operations) should contain the following details:**

- 1) Copy of modification of any building plans (if applicable)
- 2) List and copies of all valid licence and permits
- 3) Details of any force majeure events
- 4) Area statement
- 5) List of sub licensees along with built up areas allotted to each sub licensees and the remaining tenure of such sub-licenses

NOTE :All schematics (including utilities and services) and as built drawings needs to be submitted in hard copy and soft copy to the authority on expiry of the licence period or termination.

## ANNEXURE L - SUBSTITUTION AGREEMENT

This SUBSTITUTION AGREEMENT is entered into on this the ..... .. day of 20....

AMONGST,

The President of India which expression shall unless the context requires a different or another meaning, include his successors and assigns through Delhi Development Authority, a body constituted under Section 3 of the Delhi Development Act, 1957 (hereinafter referred to as the "DDA" or "Authority" or "Licensor" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

AND

[●], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....., (hereinafter referred to as the "Licensee" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

AND

..... .. (insert name and particulars of Lenders' Representative) and having its registered office at..... .., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- i. DDA is responsible for planning, development and construction of housing projects, commercial lands, land management, land disposal, land pooling, land costing etc. in Delhi. As a part of its objective, the DDA has decided to tender of land parcel for development, building, financing, operation & maintenance and transfer of a Warehouse Complex ("Project").
- ii. The Authority has entered into a License Deed dated [●] with the Licensee (the "License Deed") to grant the Licensee a licence for use of Project Site for development of the Project subject to the terms and conditions specified thereunder.
- iii. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- iv. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the License Deed to a Nominated Company in accordance with the provisions of this Agreement and the License Deed.
- v. In order to enable implementation of the Project including its financing, construction, development, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the License Deed to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the License Deed.

NOW IT IS HEREBY AGREED as follows:

### 1. DEFINITIONS AND INTERPRETATION

## **1.1. Definitions**

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

“Agreement” shall mean this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” shall mean occurrence of a material breach of the terms and conditions of the Financing Agreements;

“Indemnified Party” shall have the meaning ascribed thereto in Clause 7.2;

“Indemnifying Party” shall have the meaning ascribed thereto in Clause 7.2;

“Lenders’ Representative” shall mean the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” shall mean a company, incorporated under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/ transfer of the License Deed as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1;

“Parties” shall mean the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually; and

“Rules” shall have the meaning ascribed thereto in Clause 8.1.1.

## **1.2. Interpretation**

1.2.1. References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2. References to clauses are, unless stated otherwise, references to clauses of this Agreement.

1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the License Deed shall, unless repugnant to the context, have the meaning ascribed thereto in the License Deed .

1.2.4. The rules of interpretation stated in Article 1.2 of Schedule I of the License Deed shall apply, mutatis mutandis, to this Agreement.

## **2. ASSIGNMENT**

### **2.1. Assignment of rights and title**

The Licensee hereby agrees to assign the rights, title and interest in the Licensed Premises to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the License Deed by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

### **3. SUBSTITUTION OF THE LICENSEE**

#### **3.1. Rights of substitution**

Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Licensee by a Nominated Company under and in accordance with the provisions of this Agreement and the License Deed.

The Authority hereby agrees to substitute the Licensee by endorsement on the License Deed in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Licensee either individually or collectively.

#### **3.2. Substitution upon occurrence of Financial Default**

3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Licensee (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record, A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Licensee for the purposes of this Agreement.

3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Licensee by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Licensee and undertake the operation and maintenance of the Project in accordance with the provisions of Article 22.1 of the License Deed, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the License Deed. The aforesaid Suspension shall be revoked upon substitution of the Licensee by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the License Deed forthwith by issuing a Termination Notice in accordance with the provisions of the License Deed; provided that upon written request from the Lenders' Representative and the Licensee, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

#### **3.3. Substitution upon occurrence of Licensee Default**

3.3.1. Upon occurrence of a Licensee Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Licensee by a Nominated Company.

3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in clause 3.3.1, stating that it intends to substitute the Licensee by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Licensee by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders'

Representative and the Licensee, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

### **3.4. Procedure for substitution**

- 3.4.1. The Authority and the Licensee hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the License Deed to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Licensee towards the Authority under the License Deed and towards the Senior Lenders under the Financing Agreements.
- 3.4.2. To be eligible for substitution in place of the Licensee, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for pre-qualification of the bidders for award of the License Deed; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:
  - (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the License Deed;
  - (b) endorse and transfer the License Deed to the Nominated Company, on the same terms and conditions, for the residual License Period; and
  - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4. If the Authority has any objection to the transfer of the License Deed in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted, provided that the Nominated Company has paid to the Authority a non-refundable onetime transfer fee of Rs. 50,00,000 (Rupees Fifty Lakhs Only) plus applicable taxes. The Authority shall thereupon transfer and endorse the License Deed within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this clause 3.4 shall be followed for substitution of such Nominated Company in place of the Licensee.

### **3.5. Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Licensee. The Licensee

irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the License Deed in favour of the Nominated Company. The Licensee agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Licensee's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Licensee shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the License Deed as requested by the Lenders' Representative.

#### **4. PROJECT AGREEMENTS**

##### **4.1. Substitution of Nominated Company in Project Agreements**

The Licensee shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Licensee in the event of such Nominated Company's assumption of the liabilities and obligations of the Licensee under the License Deed.

#### **5. TERMINATION OF LICENSE DEED**

##### **5.1. Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the License Deed forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 22.5 of the License Deed.

##### **5.2. Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the License Deed forthwith in accordance with the provisions thereof.

##### **5.3. Realisation of Debt Due**

The Authority and the Licensee hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Licensee, without any further reference to or consent of the Licensee, the Debt Due upon Termination of the License Deed.

#### **6. DURATION OF THE AGREEMENT**

##### **6.1. Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

## 7. INDEMNITY

### 7.1. General indemnity

- i. The Licensee shall indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Licensee of any of its obligations under this Agreement or on account of failure of the Licensee to comply with Applicable Laws and Applicable Permits.
- ii. The Authority shall indemnify, defend and hold the Licensee harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Licensee's obligations under the License Deed or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- iii. The Lenders' Representative shall indemnify, defend and hold the Licensee harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Licensee's obligations under the License Deed, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

### 7.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## 8. DISPUTE RESOLUTION

### 8.1. Dispute resolution

- 8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be referred to the Vice Chairman of the Licensor and the Person duly authorised by the Board of Directors of the Licensee and a Lenders' Representative, for amicable settlement.
- 8.1.2. Upon such reference, the three shall meet at the earliest mutual convenience and in any case within 30 (thirty) days of such reference to discuss and attempt to amicably resolve the dispute, as evidenced by the signing of written terms of settlement within 30 (thirty) days of such meeting or such longer period as may be mutually agreed by the Parties.

## **9. MISCELLANEOUS PROVISIONS**

### **9.1. Governing law and jurisdiction**

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

### **9.2. Priority of agreements**

In the event of any conflict between the License Deed and this Agreement, the provisions contained in the License Deed shall prevail over this Agreement.

### **9.3. Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

### **9.4. Waiver**

Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### **9.5. No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

### **9.6. Survival**

Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive 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.

All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

**9.7. Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under clause 8 of this Agreement or otherwise.

**9.8. Successors and assigns**

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

**9.9. Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

**9.10. Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

**9.11. Authorised representatives**

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

**9.12. Original Document**

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

LICENSEE

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of THE AUTHORITY by

(Signature)

(Name)

(Designation)

(Address)

(Fax NO.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the  
Lenders'

Representative (Signature) (Name)

(Designation) (Address) (Fax No.)

(e-mail address)

**ANNEXURE M - SUB LICENCEE UNDERTAKING**

1. This Undertaking made on this.....day of.....two thousand ..... at Delhi between [●], a company registered under the Companies Act, 2013, having its registered office at [●] (hereinafter called the “Licensee”) and [●], a company registered under the Companies Act, 2013, having its registered office at [●] (hereinafter called the “Sub-Licensee”) which expression shall unless the context requires a different or another meaning, include their successors and assigns.
2. The Sub-Licensee hereby confirms that it has been explained the terms and conditions of the License Deed dated \_\_\_\_\_, 20\_\_ between the Licensee and Authority, including but not limited to Article 26.2.3 of the License Deed and all termination related clauses contained therein.
3. The parties hereby acknowledge and confirm that pursuant to Article 26.2.3 of the License Deed, the Licensee is permitted to sub-license third parties to operate [insert name of permitted activity(s)] within the Licensed Premises for a period that is coterminous with or less than the License Period.
4. The parties expressly agree and acknowledge that the sub-license arrangement constitutes only a sub-licence of the identified area of the Licensed Premises (subject to Article 25 of the License Deed) and any sub-licence arrangement does not constitute or gives rise to or shall be construed as a lease, development agreement, and does not give rise to any relationship (including joint venture, collaboration and/or agency) other than that of sub-licensor and sub-licensee. Should any clause of, or part of any clause within, the sub-licence documents be interpreted or construed otherwise for any reason by any Court of law of competent jurisdiction, such clause/provision shall be modified to restore the relationship of a licensor and licensee and aligning it with the intent of the parties in accordance with the License Deed.
5. Both parties expressly acknowledge and agree that the sub-licence arrangement is subject to the specific condition that upon expiry of the License Period or termination of the License Deed for any reason whatsoever, all permissions granted to the Sub-Licensee to operate or maintain any facilities or amenities within the Licensed Premises shall automatically cease and terminate forthwith without requiring any separate notice or legal proceedings.
6. The Sub-Licensee hereby confirms its understanding and acceptance of the automatic termination provision and waives any claim for compensation, notice period, or extension of tenure beyond the License Period or upon termination of the License Deed, acknowledging that such automatic cessation is an inherent and fundamental condition of the sub-licensing arrangement under the License Deed.

SIGNED, SEALED AND DELIVERED

For and on behalf of

LICENSEE

SIGNED, SEALED AND DELIVERED

For and on behalf of

SUB LICENSEE