

**Development of Transport Nagar at Tewar Village, Jabalpur on  
DBFOT (Design, Built, Finance Operate and Transfer)  
Basis under PPP Mode**

**Request for Qualification cum Proposal (RFP)  
Volume III: Draft Concession Agreement**

**Issued By:**

**The Executive Director,  
Jabalpur Smart City Ltd,  
Jabalpur - 482001**

**June 2015**

**Project Consultants:-**



**BENGAL SREI INFRASTRUCTURE DEVELOPMENT LIMITED**  
(A Joint Venture Company of WBIDC & SREI)



## Table of Content

<b>1. DEFINITIONS &amp; INTERPRETATION:</b> .....	6
1.1 Definitions .....	6
1.2 Interpretation.....	12
<b>2. Concession</b> .....	14
2.1 Grant of Concession: .....	14
2.1.6 Concession Period.....	15
2.2 License of the Project Land .....	16
<b>2.3 Obligations</b> .....	17
<b>3. Conditions Precedent</b> .....	18
3.6 Termination due to failure to achieve Conditions Precedent.....	19
<b>PERFORMANCE SECURITY</b> .....	20
<b>EQUITY HOLDING</b> .....	21
<b>5. Equity Holding Requirement</b> .....	21
<b>CONSTRUCTION OBLIGATIONS</b> .....	22
<b>6.1 Minimum Facilities</b> .....	22
<b>6.2 Minimum Development Obligations</b> .....	22
<b>6.3 Additional Facilities</b> .....	23
6.4 Construction Monitoring and Inspection.....	24
6.5 Water, Power and Utilities.....	24
6.6 Further Sub-contracts in relation to the Facilities .....	25
6.7 Changes in the Approved Drawings and Plan .....	26
6.8 During the Construction Period, the Developer shall: .....	26
<b>6.9 Completion</b> .....	26
<b>6.10 Operations Manual</b> .....	27
<b>Operations</b> .....	<b>Error! Bookmark not defined.</b>
7.1 Operations and Services .....	28
7.2 Operating Procedure.....	28
7.3 User Charges.....	29
7.4 Sub-contracting of Services .....	29
7.5 Leasing of facilities .....	30
7.6 Personnel .....	30
7.7 Security.....	30
7.8 Maintenance Standards.....	30
7.9 Performance Standards.....	31
7.10 Interaction of the Parties.....	31
<b>ARTICLE 8</b> .....	32
<b>REPRESENTATIONS AND WARRANTIES</b> .....	32
<b>8.1 Representations and Warranties</b> .....	32
<b>8.2 Representations and Warranties of Developer</b> .....	32
<b>8.3 Disclosure</b> .....	33
<b>EVENTS OF DEFAULT AND TERMINATION</b> .....	35
<b>9.1 Developer Event of Default</b> .....	35
<b>9.2 Board Event of Default</b> .....	36

9.4	Transfer Information Notice .....	37
9.5	Lenders' Rights of Substitution.....	37
9.5.2	Direct Agreement with Lenders .....	38
9.6	Procedure for appointing an Appraising Team.....	38
<b>Article 10.....</b>		<b>40</b>
<b>TRANSFER PROVISIONS .....</b>		<b>40</b>
10.1	Normal Transfer/Early Termination.....	40
10.8	Treatment of and valuation approach to Immovable and Movable Facility Assets.....	42
10.9	Transfer of the facilities and Licensed Premises .....	44
INDEMNITY .....		45
INSURANCE.....		46
FORCE MAJEURE.....		47
13.1	Application .....	47
13.2	Performance Obligation.....	48
13.3	Notification .....	48
13.4	Mitigation .....	49
13.5	Liability for other losses, damages etc. ....	49
<b>ARTICLE 14 .....</b>		<b>50</b>
<b>DISPUTE RESOLUTION .....</b>		<b>50</b>
14.1	Disputes - Amicable Settlement.....	50
<b>14.2 Arbitration.....</b>		<b>50</b>
<b>14.3 Continued performance .....</b>		<b>50</b>
<b>ARTICLE 15 .....</b>		<b>51</b>
<b>MISCELLANEOUS .....</b>		<b>51</b>
<b>15.1 Governing Law and Jurisdiction .....</b>		<b>51</b>
<b>15.2 Approvals.....</b>		<b>51</b>
<b>15.3 Amendments.....</b>		<b>51</b>
<b>15.4 Agreement to Override Other Agreements; Conflicts .....</b>		<b>51</b>
<b>15.5 No Waiver; Remedies.....</b>		<b>51</b>
<b>15.6 Severance of Terms .....</b>		<b>51</b>
<b>15.7 Language .....</b>		<b>52</b>
<b>15.8 Counterparts .....</b>		<b>52</b>
<b>15.9 Assignment .....</b>		<b>52</b>
<b>15.10 Survival.....</b>		<b>52</b>
<b>15.11 Costs and Expenses .....</b>		<b>52</b>
<b>15.12 No Agency.....</b>		<b>52</b>
<b>15.13 Notices.....</b>		<b>53</b>
<b>15.14 Third Party Benefit .....</b>		<b>53</b>
15.15 Performance of all acts for compliance with the Applicable Laws- .....		53
<b>15.16 Exclusion of Implied Warranties etc. - .....</b>		<b>53</b>
15.17 Local Taxes.....		54
<b>SCHEDULES .....</b>		<b>55</b>
Schedule (1) .....		56
Project Land.....		56
The Project Land shall not exceed area of 80.65 Acres .....		56
Schedule (2) .....		70

Minimum Facilities .....	70
Schedule (3) .....	71
Schedule (4) .....	73
Schedule (5) .....	74
Schedule (6) .....	78
Schedule (7) .....	79
Schedule (8) .....	88

### VOLUME III: DRAFT CONCESSION AGREEMENT

This concession agreement (“**Agreement**”) is made at [insert] on this the [insert] day of [insert], 201..;

#### BETWEEN

1. **The \*\*\*\*\***, acting through [insert] (hereinafter referred to as the “\*\*\*\*\*”, which expression unless repugnant to the context or meaning thereof shall be deemed to mean and include its successors and permitted assigns) of the **FIRST PARTY**;

#### AND

2. [**Name of Developer**] a company incorporated under the (Indian) Companies Act, 1956 and having its registered office at [insert] (hereinafter referred to as the “**Developer**”, which expression unless repugnant to the context or meaning thereof shall be deemed to mean and include its successors and permitted assigns) of the **SECOND PARTY**.

The above named are hereinafter individually referred to as a “**Party**” - i.e. first party & second party and collectively as the “**Parties**”.

#### WHEREAS

- A. The \*\*\*\*\* is a statutory authority constituted under the \*\*\*\*\* with the obligation, *inter alia*, of development of infrastructure for agricultural marketing and warehousing in the state of \*\*\*\*\*
- B. The \*\*\*\*\* is desirous of setting up \*\*\*\*\* comprising, *inter alia*, the Facilities (hereinafter defined). In furtherance of the above, the \*\*\*\*\* is desirous of appointing a developer for designing, financing, procurement, construction, development, operation, maintenance, management and transfer of the Facilities.
- C. The \*\*\*\*\* has, vide Request for Proposal dated [insert] (“**RFP**”) invited interested parties (including the consortium comprising of [●]/selected tenderer (“**Consortium/Selected Tenderer**”) to bid for the concession for design, finance, procurement, construction, development, operation, maintenance, management and transfer of the Facilities as per the terms hereof for a period of \*\* years from the Execution Date (the “**Project**”). The said term of the \*\* years is extendable for a maximum period of \*\*\* years, in accordance with the terms of this Agreement.
- D. The Consortium/Selected Tenderer had submitted their/its proposal dated [●] for their/its selection for design, finance, procurement, construction, development, operation, maintenance, management and transfer of the Facilities in accordance with its proposal

as set out in their/its Bid and in accordance with the terms and conditions of this Agreement.

- E. After evaluation of the bids received, the \*\*\*\*\* had accepted the bid of the [Consortium/Selected Bidder] and issued its Letter of Award No. \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter called the “LOA”) to the [Consortium/ Selected Bidder] requiring, inter alia, the incorporation of a special purpose company and causing such special purpose company to execute this Concession Agreement within [●] days of the date of issue thereof.
- E. [The Consortium/Selected Bidder] has since promoted and incorporated a special purpose company under the Companies Act 1956 as the Developer, and has requested the \*\*\*\*\* to accept the Developer as the entity which shall undertake and perform the obligations and exercise the rights of the [Consortium/ Selected Bidder] under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for implementing the Project.
- F. [By its letter dated \_\_\_\_\_, the Developer has also confirmed its assumption of the rights and obligations of the [Consortium/Selected Tenderer]. The Developer has further represented to the effect that it has been promoted by the [Consortium/ Selected Bidder] for the purposes hereof.
- G. The \*\*\*\*\* has agreed to the said request of the [Consortium/ Selected Bidder and the Developer, and has accordingly agreed to enter into this Agreement with the Developer for execution of the Project, subject to and on the terms and conditions set forth hereinafter.
- H. The Developer has, in accordance with the terms of the Request for Proposal, furnished to the \*\*\*\*\*at the time of execution hereof the following:
- (i) a sum of Rs.[insert] amounting to 50 % of the Upfront Concession Fee,
  - (ii) the Development Fee and
  - (iii) the Performance Security.
- I.

Now therefore, in consideration of the mutual covenants, terms, conditions and understandings with the intent to be legally bound thereby, the Parties hereto agree as follows:

## **1. DEFINITIONS & INTERPRETATION:**

### **1.1 Definitions**

In this Agreement, the following words , expressions and abbreviations shall have the following meaning stated herein:

**“Additional Facilities”** shall mean the facilities set out in Schedule (5) on Technical Specifications as may be amended by the mutual written consent of the parties, to be developed by the Developer in accordance with this Agreement.;

**“Agreement”** shall mean this concession agreement dated [●] together with all its schedules, and appendices and annexes hereto in each case as from time to time, supplemented, modified or replaced by any amendment thereto from time to time, in accordance with the terms hereof;

**“Applicable Laws”** shall mean all laws, statutes, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, /decrees or other requirements or official directive of any all central, state, municipal and local governmental authorities/bodies (whether administrative, legislative, executive or otherwise) or person acting under the authority of any governmental authority and / or of any statutory authority and other municipal and local authorities whether in effect on the date of execution hereof or thereafter;

**“Applicable Permits”** shall mean all authorizations, consents, approvals, notifications and permissions and any license, permit, ruling, exemption or other authorization of whatsoever nature which is required to be obtained under Applicable Laws for or in respect of this Agreement, including the performance of any obligation or exercise of any right by a party under this Agreement and any registration or filing with any authority under Applicable Laws, and the approvals and consents required from any authority pursuant to this Agreement;

**“Appraising Team”** shall have the meaning set forth in Clause 9.6.1;

**"Approved Drawings and Plan"** means the detailed technical drawings and master plan for the Facilities prepared by the Developer and approved by the \*\*\*\*\* for the phased development of the Facilities comprising of, inter-alia, business model, layout plans for Facilities and detailed drawings, and shall include any amendments to the Approved Drawings and Plan submitted by the Developer and approved by the\*\*\*\*\* in accordance with the terms of this Agreement.

**“Commercial Activities”** shall mean commercial operations at the Facilities including terminal handling, warehousing, weigh bridge, cold storage, pre-cooling, parking, but does not include activities in relation to Common Facilities.

**“Common Facilities”** shall mean the facilities for common usage at the Composite \*\*\*\*\* including water treatment plant, facilities for sanitation and water supply, power supply, power back up, and garbage collection and disposal, to be developed and operated by the Developer in accordance with the terms of this Agreement.

**“Completion Certificate”** shall mean the certificate issued by the \*\*\*\*\* Representative to the Developer, certifying Completion of Minimum Facilities, Minimum Development Obligations or Additional Facilities, as the case may be, and requiring the Developer to commence the commercial operations of the respective Facilities, in accordance with the terms hereof;

**“Completion”** shall mean the completion of the design, development, construction and other activities of the Minimum Facilities, Minimum Development Obligations, and Additional Facilities, as the case may be, in accordance with this Agreement, including without limitation, Technical Specifications and Approved Drawings and Plan, including receipt of Applicable Permits in relation to Minimum Facilities, Minimum Development Obligations, and Additional Facilities, as the case may be;

**“Commercial Operation Date”** or **“COD”** shall mean the date on which the \*\*\*\*\* Representative issues to the Developer relevant Completion Certificate;

**“\*\*\*\*\*”** shall mean

**“Upfront Concession Fee”** shall mean the sum of Rs.[insert] payable by the Developer to the \*\*\*\*\* as consideration for grant of the Concession, 50% of which equivalent to Rs. [●] (Rupees [●]) has been paid on or before the date hereof and the balance 50 % equivalent to Rs. [●] (Rupees [●]) shall be paid by the Developer to \*\*\*\*\* , on or before achieving Financial Close;

**“Annual Concession Fee”** shall mean the sum of Rs.[insert] payable by the Developer to the \*\*\*\*\* every year as consideration for grant of the License and Development Rights during the entire period of concession and shall be paid by the Developer to \*\*\*\*\* before the 31<sup>st</sup> March of the financial year.

**“Concession Period”** shall have the meaning set forth in Clause 2.1 hereof;

**“Conditions Precedent”** shall have the meaning set forth in Clause 3.1 hereof;

**“Construction Period”** shall mean the construction period of Minimum Facilities, Minimum Development Obligations or the Additional Facilities, as the case may be;

**“Depreciated Historical Cost”** or **“DHC”** shall have the meaning ascribed to the term in **Schedule (6)**;

**“Development Fee”** shall mean the sum of Rs. [insert] paid by the Developer concurrent with the execution hereof, towards pre-award expenses in relation to the Project;

**“Drawings and Plans”** shall mean the technical drawings and master plan for the Facilities prepared by the Developer and submitted with \*\*\*\*\* for its approval.



**“Effective Date”** shall mean the date on which the Conditions Precedent are fulfilled to the satisfaction of the \*\*\*\*\* Representative;

**“Encumbrances”** means, in relation to the Facilities, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Facilities, where applicable herein;

**“Essential Movable Facility Assets”** means such movable assets as are necessary for the smooth operation of the Facilities, as determined in accordance with Clause 10.8.2;

**“Facilities”** shall mean the Minimum Facilities, Minimum Development Obligations, and Additional Facilities comprising of, inter-alia, Truck Parking Bays – 500 nos in Phase -1 and another 500 nos in Phase- II, Boundary Wall, Toll Gate, 2 nos Weigh Bridge of 80T Capacity each, support services like warehouse, repair shops, petrol pumps, shops, lodging, restaurants and common infrastructure like internal roads, drainage, water supply, power etc.to be developed by the Developer in accordance with the Approved Drawings and Plan, and the other terms of this Agreement.

**“Financial Close”** shall mean the availability of funds (drawdown) under legally binding Financing Documents, for the purposes of completion of Minimum Facilities and Minimum Development Obligations under this Agreement;

**“Financing Documents”** means all the loan agreements, notes indentures, security agreements, suppliers credits, buyers credits, letters of credit, share subscription agreements, subordinated debt agreements and other documents entered into by the Developer relating to the financing, or refinancing, of the Project as the same may be amended, supplemented or modified from time to time;

**“GoI”** shall mean the Government of India and includes any of its duly authorised agencies, authorities, departments, ministries or persons (whether autonomous or not) or instrumentality of the central government which is under its control, supervision and performs its sovereign functions under its authority;

**“\*\*\*\*\*”** shall mean the \*\*\*\*\* and includes any of its duly authorised agencies, authorities, departments, ministries or persons (whether autonomous or not) or instrumentality of the \*\*\*\*\* which is under its control, supervision and performs its sovereign functions under its authority;

**“Good Industry Practice”** means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety, services and performance, as may change from time to time and which would

reasonably and ordinarily be expected to be used by a skilled and experienced operator engaged in designing, procurement, construction, development, operation and maintenance of a logistic facilities similar to the Facilities;

**“Immovable Facility Assets”** shall mean all immovable assets including material therein, structures, buildings, edifices, ways, walls, compounds and all other immovable assets relatable to the Facilities excluding land;

**“Performance Security”** shall have the meaning set forth in Clause 4.1;

**“Letter of Award”** shall mean the letter of award issued by \*\*\*\*\* to the Selected Bidder intimating the acceptance of the Selected Bidder’s proposal for award of the Concession;

**“License Agreement”** shall mean the license agreement to be entered into between \*\*\*\*\* and the Developer in the form set out in Schedule (4) pursuant to which license of the Project Land shall be given to the Developer, subject to the terms and conditions thereof.

**“\*\*\*\*\*”** shall have the meaning ascribed to it in Clause 2.8.1 hereof;

**“Minimum Development Obligations”** shall mean the facilities set out in Schedule (3), to be developed by the Developer in accordance with this Agreement.;

**“Minimum Facilities”** shall mean the facilities set out in Schedule (2), to be developed by the Developer in accordance with this Agreement;

**“Nationalized Bank”** shall mean any of the nationalized bank listed in schedule II to the Reserve Bank of India Act, 1934;

**“Normal Transfer”** means the transfer of the Facilities by the Developer to the \*\*\*\*\* upon expiry of the Term of this Agreement in accordance with Articles 10;

**“Novated Agreement”** shall have the meaning set forth in Clause 9.5.1 (c);

**“Nominated Sub-Licensee” or “NSL”** shall have the meaning set forth in Clause 9.5.1 (A);

**“Operations Manual”** shall mean the operation manual for the relevant facility submitted by the Developer to the \*\*\*\*\* in accordance with Clause 6.10 hereof, including any amendments thereof as may be approved by the \*\*\*\*\*..

**“Project”** shall mean design, finance, procurement, construction, development, operation, management, maintenance and transfer of the Facilities as per the terms hereof;

**“Project Land”** or the **“Licensed Premises”** means the land measuring 80.65 acres licensed to the Developer under the License Agreement, details of which are set forth in **Schedule (1)** hereto and any land to be licensed in the future, for the purpose of the Project;

**“Remaining Concession Fee”** shall mean the balance 50% of the Concession Fee to be paid by the Developer to the\*\*\*\*\*on or before the Financial Close;

**“Re.”**, **“Rs.”** or **“Rupees”** or **“Indian Rupees”** means the lawful currency of the Republic of India;

**“Request for Proposals”** or **“RFP”** shall have the meaning set forth in Recital ‘C’;

**“Services”** shall mean the Commercial Activities to be performed by the Developer at the \*\*\*\*\* for the benefit of the Users, including the provision of Common Facilities.

**“Scheduled Construction Period- Minimum Facilities”** shall have the meaning set forth in Clause 6.1;

**“Scheduled Construction Period-MDO”** shall have the meaning set forth in Clause 6.2;

**“Scheduled Construction Period – Additional Facilities”** shall have the meaning set forth in Clause 6.3;

**“Selected Bidder”** shall mean [insert the name of the selected bidder/consortium members.

**“Substitution Agreement”** shall have the meaning set forth in Clause 9.5.2.

**“Technical Specifications”** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the relevant Facilities including the zoning plan for the Facilities, as set forth in Schedule (5), and any modifications thereof, or additions thereto, as included in the design and engineering for the relevant Facilities submitted by the Developer to, and expressly approved by, the \*\*\*\*\*

**“Drawings and Plan”** has the meaning given to the term in Recital I above;

**“Total Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the lenders under the Financing Documents for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;

- (b) all accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in Subclause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Documents to the lenders, and (iii) any pre-payment charges in relation to accelerated repayment of debt; and

Provided that if all or any part of the Total Debt Due is convertible into equity share capital of the Developer at the option of lenders and/or the Developer, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

**“Transfer Date”** shall have the meaning set forth in Clause 9.6.2;

**“User(s)”** shall mean the person or persons using the \*\*\*\*\*and the Services provided by Developer in relation to the Facilities;

**“User Charges”** shall mean the charges for Services, to be levied by the Developer, in accordance with Clause 7.3.

## **1.2 Interpretation**

1.2.1 In this Agreement, unless the context otherwise requires:

- (a) words denoting the singular number shall include the plural and vice versa;
- (b) The descriptive headings or sub-headings are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of the content thereof and shall not be used to interpret the provisions of this Agreement; heading and sub heading are inserted only for convenience and shall be ignored for the purposes of interpretation;
- (c) references to the word “include” or “including” shall be construed without limitation;
- (d) references to this Agreement or to any other Agreement, deed or other instrument shall be construed as a reference to such Agreement, agreement, deed, or other instrument as the same may from time to time be amended, varied or supplemented by the parties;
- (e) reference to any Party to this Agreement or any other Agreement or deed or other instrument shall include its successors or and permitted assigns;

- (f) a reference to a clause or schedule is, unless indicated context otherwise requires to the contrary, a reference to a clause or annexure of this Agreement.
- (g) A reference to statutes shall be construed as including all statutory provisions consolidated, amending, modifying, supplementing or replacing the statute referred to;
- (h) A reference to a “writing” or “written” includes printing, typing, lithography and other means of reproducing words in a visible form;
- (i) The rule of interpretation which requires that an agreement be interpreted against the Person or Party drafting it shall have no application in the case of this Agreement.
- (j) words denoting a person shall include an individual, corporation, company, partnership, trust or other entity;
- (k) references to dates and times shall be construed to be references to Indian dates and times;
- (l) references to the word “days” shall, unless context otherwise requires otherwise indicated, mean calendar days; and where a payment to be made under this Agreement on a given date falls on a public holiday, the payments shall be made on a day immediately preceding such public holiday or the previous working day.
- (m) The schedules to this Agreement shall form an integral part of this Agreement and shall be read along with this Agreement.

**ARTICLE 2**  
**CONCESSION**

**2. Concession**

**2.1 Grant of Concession:**

2.1.1 In consideration of the Concession Fee payable by the Developer as specified under this Agreement, and the Developer's covenants hereinafter reserved and contained in this Agreement the \*\*\*\*\* hereby grants to the Developer, with effect from the Execution Date, and the Developer hereby accepts from \*\*\*\*\* the concession to design, finance, develop and construct the Facilities on the Project Land and to operate, maintain and manage the same during the Concession Period (the "Concession") from the Effective Date.

2.1.2 Subject to terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle the Developer to enjoy, and oblige the Developer to undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:

- (i) access and license to the Project Land solely in order to undertake the Project and develop the Facilities thereat;
- (ii) Undertake the construction and development of the Facilities on its own or through sub-contracts, in accordance with the terms hereof;
- (iii) enjoy possession of the Project Land for the purpose of undertaking the Project;
- (iv) To apply for and obtain all requisite Applicable Permits, including from all Governmental Authorities concerned, for the development of the Site, including plans for construction of building/s and other structure/s thereon for such uses and purposes as described herein;
- (v) Enjoy all the rights, privileges and benefits in accordance with the provisions of this Agreement and Applicable Laws and subject to receipt of approval and authorization in accordance with the terms hereof to design, engineer, finance, procure, construct, erect, own, operate and maintain the Facilities, and, for that purpose to remove, renovate, use or demolish any structures with prior approval from \*\*\*\*\* that may be existing on the Project Land as of the date of this Agreement;
- (vi) determine, set, demand, collect, retain and appropriate a tariff from the Users of the Facilities;

- (vii) enforce the collection of tariff from delinquent Users of Facilities in accordance with Applicable Law;
- (vii) appoint subcontractors or agents to assist the Developer in performance of its obligations under this Agreement.

2.1.3 The Parties agree that the Developer shall be entitled to proceed with the development of the Facilities and shall execute the Project on its own account and at its own risk and costs and shall be solely responsible and liable to all the Governmental Authorities.

2.1.4 The Parties agree that to facilitate the execution of the Project the Developer shall be entitled, in its own name to obtain loans or raise funds from any lender and as security for the same to create an Encumbrance on the Facilities built upon the Project Land, but not upon the Project Land provided that the Developer shall require prior approval and consent of the \*\*\*\*\* before the creation of any Encumbrance upon the Facilities which consent shall not be unreasonably withheld and that the Encumbrance shall not subsist at the time of handing over of the Facilities on expiry of the Concession Period or termination hereof.

2.1.5 The Parties agree that the \*\*\*\*\* further reserves to itself, provided that the same is not inconsistent with the development in accordance with this Agreement, the right to grant any easements over or rights of access or rights of way on, over, under, through or across the Project Land to any entities it deems fit, including *inter alia* for:

- (i) the purpose of supply of electricity, gas, telecommunication cables, water, sewerage, drainage or any other services and utilities; or
- (ii) the purpose of transport

#### **2.1.6 Concession Period**

The Concession hereby granted is for a period of 30 (thirty) years commencing from the Date of fulfilling the conditions precedent called the Effective Date, during which the Developer is authorized and obliged to implement the Project and to provide Services in accordance with the provisions hereof.

Provided that: -

- (a) The Concession Period may be extended by Jabalpur Smart City Ltd at its sole discretion for a period it may deem necessary subject to the condition that concessionaire is not in material default in the Concession Agreement and agree to pay the Annual Concession Fee at incremental rates as specified in the Volume – II Clause 2.21 of the RFP for the extended concession period, in

which event the Concession Period shall include the period by which the Concession is so extended, and

- (b) in the event of an early termination/determination of the Concession/ this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the date which is 180 days after the Date of Execution of Concession and ending with the date of termination/determination of the Concession/this Agreement.

## **2.2 License of the Project Land**

- 2.2.1 In furtherance of the Concession granted under this Agreement, \*\*\*\*\* agrees to grant to the Developer, under the License Agreement, for consideration of annual license fee of Rs. \*\*\*\*\*) (“**Annual License Fee or Annual Concession Fee**”), and with effect from the Effective Date, a license in respect of the Project Land for the sole purpose of executing the Project and the Developer hereby accepts such license and agrees to execute the Project in accordance with the terms and conditions of this Agreement. The Developer hereby agrees and undertakes that the said license, together with the Concession granted under this Agreement shall be solely for the purpose of discharging its obligations under this Agreement and for not any other purpose.
- 2.2.2 The Annual Concession Fee shall be payable by the Developer every year before 31<sup>st</sup> March of that financial year. Provided that the annual concession fee for the first year shall be paid before 31<sup>st</sup> March of that financial year after 180 days from the Effective Date.
- 2.2.3 It is expressly agreed that the license granted under the concession agreement shall terminate automatically and forthwith, without the need for any action to be taken by the \*\*\*\*\* to terminate the license and without any liability on the \*\*\*\*\* , upon the expiry or termination of this Agreement for any reason whatsoever.
- 2.2.4 This Agreement shall not create any interest in the Project Land in favour of the Developer other than the right to implement the Concession and \*\*\*\*\* has not made any representation as to the suitability of the Project Land for such purpose or the profits to be generated from the implementation of the Concession.
- 2.2.5 The Developer agrees that prior to the execution of this Agreement it has, after a complete and careful examination, made an independent evaluation of the Project Land as a whole and has determined the nature and extent of the difficulties, costs, risks and hazards that are likely to arise or may be faced by it in implementing the Concession at and in the course of the performance of its obligations under this Agreement. The Developer further acknowledges and agrees that \*\*\*\*\* has not guaranteed, whether express or implied, in respect of the scope of the business under the Concession and the Developer shall not have any right to bring any claim against, or recover any



compensation or other amount from \*\*\*\*\* other than in respect of those matters of which express provision is made in this Agreement.

## **2.3 Obligations**

2.3.1 The Jabalpur Smart City Ltd agrees to provide support to the Developer and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- (i) Within 7 days hereof, appoint a representative (“\*\*\*\*\*”) who shall have the responsibility of overseeing the Project, approving all development schemes/proposals/plans in relation to the Project and to monitor the implementation of the Project by the Developer for compliance with the provisions of this Agreement;
- (ii) upon written request from the Developer, and subject to the Developer complying with Applicable Laws, provide all reasonable support and assistance to the Developer in procuring Applicable Permits required from any Government Authority for implementation and operation of the Project;
- (iii) upon written request from the Developer, provide reasonable assistance to the Developer in obtaining access to all necessary infrastructure facilities and utilities; but developer will bear its cost
- (iv) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (v) support, cooperate with and facilitate the Developer in the implementation of the Project in accordance with the provisions of this Agreement.

## ARTICLE 3

### CONDITIONS PRECEDENT

#### 3. Conditions Precedent

- 3.1 Save and except as expressly provided in Article 3, 4, Clause 2.2, Article 13, 14 and 15, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 3 (the “**Conditions Precedent**”).
- 3.2 The Conditions Precedent required to be satisfied by the Developer shall be deemed to have been fulfilled when the Developer shall have:
- (i) executed the Financing Documents and delivered to the \*\*\*\*\* in 3 (three) true copies thereof, duly attested by a Director of the Developer;
  - (ii) achieved Financial Close in respect of the Project;
  - (iii) on or before achievement of Financial Close, made payment to the \*\*\*\*\* of the Remaining Upfront Concession Fee, by way of a bank draft drawn on a Scheduled Bank, in favour of *The Executive Director, Jabalpur Smart City Ltd.*
  - (iv) delivered to the \*\*\*\*\* from [the Consortium Members, their respective] confirmation, in original, of the correctness of representations and warranties set forth in Article 8 hereof; and
  - (v) delivered to the \*\*\*\*\* a legal opinion from the legal counsel of the Developer with respect to the authority of the Developer to enter into this Agreement and the enforceability of the provisions thereof:

Provided that upon request in writing by the Developer, the \*\*\*\*\* may, in exceptional circumstances and in its sole discretion, waive in writing any of the Conditions Precedent set forth in this Clause 3.1.

- 3.3 The Conditions Precedent required to be satisfied by the \*\*\*\*\* shall be deemed to have been fulfilled when the \*\*\*\*\* shall have:
- (i) executed the License Agreement and handed over the possession of the Land, free from all Encumbrance to the Developer.

- 3.4 On achieving the Conditions Precedent under Clause 3.2, the Developer shall issue to the \*\*\*\*\* Representative notice of the same (“**CP Satisfaction Notice**”), the date of issue of the Construction Commencement Certificate being the Effective Date.
- 3.5 The Developer hereby agrees and undertakes that it shall achieve all of its Conditions Precedent under Clause 3.2, within one hundred and eighty (180) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 days, subject to payment of Damages to the Government in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 120 days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in achieving the Conditions Precedent has occurred solely as a result of Force Majeure. But a certificate of any government authorised agency to its effect shall be filed immediately.

### **3.6 Termination due to failure to achieve Conditions Precedent**

- 3.6.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that any of the Condition Precedent under Clause 3.2, is not achieved by the Developer, for any reason whatsoever, within the period set forth in Clause 3.5, all rights, privileges, claims and entitlements of the Developer under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Developer, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Further, immediately upon termination of this Agreement, the Developer shall hand-over the peaceful possession of the Project Land to the \*\*\*\*\* immediately without any delay.
- 3.6.2 Upon Termination under Clause 3.6.1, the Government shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages.

**ARTICLE 4**  
**PERFORMANCE SECURITY**

- 4.1 The Developer has, for the performance of its obligations hereunder for a period commencing on the date hereof until one year from the Commercial Operation Date of the Minimum Facilities, provided to the\*\*\*\*\* on or before the execution of this Agreement, an irrevocable and unconditional guarantee from a Scheduled Bank for a sum equivalent to Rs.4,50,00,000/- in the format specified in the RFP (the “**Performance Security**”).
- 4.2 Upon occurrence of a Developer Event of Default, the \*\*\*\*\* shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the Performance Security as damages for such Developer Event of Default. Upon such encashment and appropriation from the Performance Security, the Developer shall, within \*\*\*\*\*days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the \*\*\*\*\*shall be entitled to terminate this Agreement in accordance with Article - 9. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Developer shall be entitled to an additional Cure Period of such number of days for which the damages are paid by the Developer, for remedying the Developer Event of Default, and in the event of the Developer not curing its default within such Cure Period, the \*\*\*\*\* shall be entitled to encash and appropriate such Performance Security as damages, and to terminate this Agreement in accordance with Article 9.
- 4.3 The Performance Security shall, if not invoked earlier, be released by the\*\*\*\*\*, upon completion of a period of one year from the Commercial Operation Date of the Minimum Facilities after the 12<sup>th</sup> Year from the effective date.

**ARTICLE 5**  
**EQUITY HOLDING**

**5. Equity Holding Requirement**

Developer shall be under an obligation to ensure that:

- 5.1 the aggregate equity share holding of the entities comprising the Successful Bidder in the issued and paid-up equity share capital of the Developer shall not be less than Fifty One percent (51%) up to a period of 12 years after the Commercial Operations Date of Minimum Facilities or until the COD of the Minimum Development Obligations, whichever is later;
- 5.2 where the Successful Bidder was a consortium of entities, the Lead Member shall hold not less than 26% of the total paid-up equity share capital of the Developer and each of the remaining entities comprising the Successful Bidder shall each hold not less than 10% of the issued and paid up equity share capital of the Developer for a period of 12 years from the Commercial Operations Date of the Minimum Facilities or until the COD of the Minimum Development Obligations, whichever is later.
- 5.3 in case the Successful Bidder or in case of a consortium, any member of the Successful Bidder has drawn the credentials of its holding/subsidiary company, the holding company shall maintain the holding/subsidiary relationship as defined in the Companies Act, 1956, till a period of 12 years after the Commercial Operations Date of the Minimum Facilities or until the COD of the Minimum Development Obligations, whichever is later. Further, the holding/subsidiary company whose credentials had been drawn shall continue to provide requisite support to the Developer for such period for the successful implementation of the Project.

**ARTICLE 6**  
**CONSTRUCTION OBLIGATIONS**

**6.1 Minimum Facilities**

- 6.1.1 The Developer shall not undertake any construction activities on the Project Land except in accordance with the Approved Drawings and Plan and after obtaining the Applicable Permits. The Developer shall be obliged to complete the construction of the Minimum Facilities in accordance with this Agreement, including without limitation, the Technical Specifications, Approved Drawings and Plan and the Applicable Permits, within 2 (two) years from the date of (“**Scheduled Construction Period- Minimum Facilities**”). Upon occurrence of a \*\*\*\* Event of Default or an Event of Force Majeure which substantially prevents the Developer from achieving Completion within the Scheduled Construction Period- Minimum Facilities (subject to the Developer having complied with all its obligations set forth herein), the Developer shall be entitled to a day by day extension equivalent to the time taken by the \*\*\*\* to complete its obligations hereunder or for the period the Force Majeure event continues.
- 6.1.2 In the event that the Developer does not achieve Completion of the Minimum Facilities, prior to expiry of the Scheduled Construction Period-Minimum Facilities unless the delay is on account of reasons solely attributable to the \*\*\*\* or due to Force Majeure, the Developer shall pay damages to the \*\*\*\* of a sum calculated at the rate of 0.1% of the amount of Performance Security for delay of each day until Completion is achieved.
- 6.1.3 In the event that the Minimum Facilities are not completed within 2 years from the expiry of the Scheduled Construction Period-Minimum Facilities, unless the delay is on account of reasons solely attributable to the \*\*\*\* or due to Force Majeure, otherwise the \*\*\*\* shall be entitled to terminate this Agreement.

**6.2 Minimum Development Obligations**

- 6.2.1 The Developer shall be obliged to complete the construction of the Minimum Development Obligations in accordance with this Agreement, including without limitation, the Technical Specifications, Approved Drawings and Plan, and Applicable Permits, within 2 (two) years prior to the Commercial Operations Date of the Minimum Facilities (“**Scheduled Construction Period-MDO**”).
- 6.2.2 In the event that the Developer does not achieve the Completion of the Minimum Development Obligations prior to expiry of the Scheduled Construction Period-MDO unless the delay is on account of reasons solely attributable to the \*\*\*\* or due to Force Majeure, otherwise the Developer shall pay damages to the \*\*\*\* of a sum

calculated at the rate of **Rs. 61644.00** for delay of each day until Completion of Minimum Development Obligation is achieved.

- 6.2.3 In the event that the Minimum Development Obligations are not completed within 360 days from the expiry of the Scheduled Construction Period-MDO, unless the delay is on account of reasons solely attributable to the \*\*\*\*\*or due to Force Majeure, otherwise the \*\*\*\*\* shall be entitled to terminate this Agreement.

### **6.3 Additional Facilities**

- 6.3.1 The Developer would be required to communicate in writing to the \*\*\*\*\*, prior to the COD of the Minimum Facilities, whether or not the Developer would develop any Additional Facilities. The Developer may chose to develop one or more Additional Facilities, as specified under the Technical Specifications.

- 6.3.2 Parties agree that out of the total Project Land of 80.65 acres, the land available for development of Additional Facilities is 20 acres, as earmarked in the Technical Specifications. The part of the said 60 acres of Project Land remaining, as reduced by the land required for the Additional Facilities to be developed by the Developer, shall revert to the \*\*\*\*\* on the date (not later than the COD of Minimum Facilities) on which the Developer communicates its decision of developing the Additional Facilities, to the \*\*\*\*\*.

Provided that in the event, Developer decides not to develop any Additional Facilities, then the entire 20 acres of Project Land shall revert to the \*\*\*\*\*on the date (not later than the COD of Minimum Facilities) on which the Developer communicates such decision.

- 6.3.3 In the event Developer choose to develop any Additional Facilities and communicates its decision to the \*\*\*\*\* in the manner provided under Clause 6.3.1, then Developer shall prepare and submit with the\*\*\*\*\* for its approval, technical drawings and plan for such Additional Facilities. The Developer shall modify the said technical drawings and plan, as per the suggestions given by the \*\*\*\*\*. The technical drawings and plan for the Additional Facilities, as approved by the \*\*\*\*\*, shall become part of the Approved Drawings and Plans. It is agreed that the Developer shall undertake all and any construction or development in relation to such Additional Facilities, in accordance with the Approved Drawings and Plans, Technical Specifications, and other terms and conditions of this Agreement.

- 6.3.4 The Developer shall be obliged to complete the construction of the Additional Facilities in accordance with this Agreement, including without limitation, the Technical Specifications and the Approved Drawings and Plan, within 12 (twelve) years from Commercial Operations Date of the Minimum Facilities (“**Scheduled Construction Period- Additional Facilities**”).

- 6.3.5 In the event that the Additional Facilities are not completed within 360 days from the expiry of the Scheduled Construction Period-Additional Facilities, unless the delay is on account of reasons solely attributable to the \*\*\*\*\* or due to Force Majeure, then immediately upon expiry of the aforesaid period of 360 days, the undeveloped portion of the land shall revert to the \*\*\*\*\*.

#### **6.4 Construction Monitoring and Inspection**

The Parties hereby undertake and agree that, from the Effective Date till the COD of the relevant Facilities:

- (a) After reasonable notice to the Developer, the Jabalpur Smart City Ltd or its nominee may monitor and inspect any construction activities on the Licensed Premises to ensure conformance with the requirement of the Approved Drawings and Plan and to ensure compliance with the terms and conditions of this Agreement.
- (b) Subject to Clause (a) above, the Developer shall provide access and offer reasonable co-operation to the \*\*\*\*\* (and its respective representatives) requesting monitoring and inspection of construction activities.
- (c) the Developer shall provide periodic status reports to the Jabalpur Smart City Ltd relating to the key milestones and the obligations at the time and in the manner as envisaged in Approved Drawings and Plan. Further, the Developer shall obtain and maintain at all times Applicable Permits required in relation to construction, development, operation, maintenance and management of the Facilities.
- (d) Such inspection and monitoring of the construction activities shall not relieve the Developer from performing any of its obligations under this Agreement.

#### **6.5 Water, Power and Utilities**

The Jabalpur Smart City Ltd shall co-ordinate on a reasonable effort basis between other state government agencies as may be required for the provision of water, power and other utilities to the Developer provided the Developer complies to the existing rules and laws. The Jabalpur Smart City Ltd shall not however be liable in any manner whatsoever for the non-provision of utilities. All cost or expenses on water, power and utilities are to be borne by the Developer.



## **6.6 Further Sub-contracts in relation to the Facilities**

- (a) The Developer may fulfill its obligation to construct, and operate the Facilities by entering into sub-contracts with third parties. However, the Developer shall be at all times be responsible to the Jabalpur Smart City Ltd for all its obligations under this Agreement.
- (b) The Developer shall obtain the prior written consent of the Jabalpur Smart City Ltd for entering into sub-contracts, which consent shall not be unreasonably withheld.
- (c) Unless otherwise agreed to by the other Parties, all further sub-contracts granted by the Developer to third parties and long term commercial agreements entered into by the Developer with third parties shall not be inconsistent with the terms and conditions of this Agreement and shall specifically recognize all rights of the Jabalpur Smart City Ltd under this Agreement, and further, shall be liable to be terminated upon termination of this Agreement.
- (d) The Developer shall:
  - (i) ensure that the assets created and/or constructed pursuant to the sub contract vest in the \*\*\*\*\* at the expiry or termination of this Agreement;
  - (ii) ensure that the further sub-contractor performs its obligations in the same manner that Developer is required to perform its obligations under this Agreement; and
  - (iii) deliver copies of all contracts with further sub-contractors to the Jabalpur Smart City Ltd immediately upon their execution and in no event no later than 30 days after their execution.
- (e) Unless otherwise agreed, the Jabalpur Smart City Ltd shall not be liable for any costs whatsoever in relation to such sub-contracts and long term commercial agreements entered into by the Developer with third parties as a result of the expiry of this Agreement.
- (f) The Developer shall construct and operate or cause to be constructed and operated all assets comprised in the Facilities in accordance with Good Industry Practice.

## **6.7 Changes in the Approved Drawings and Plan**

- (a) The Developer hereby agrees that all construction shall be undertaken in accordance with the Approved Drawings and Plan. The Parties hereby agree that, the Developer shall be required to obtain prior written approval of the Jabalpur Smart City Ltd for any changes or material deviations from the Approved Drawings and Plan during all stages of development and construction of the Project.
- (b) Consequent adjustment to the milestones if requested by the Developer shall be subject to the prior approval of the Jabalpur Smart City Ltd. The Developer shall implement the approved changes in conformity with this Agreement.
- (c) In the event the Jabalpur Smart City Ltd fails to communicate its decision regarding such changes, within 30 (thirty) days of the receipt of such request, such changes shall be deemed to have been approved by the Jabalpur Smart City Ltd.

## **6.8 During the Construction Period, the Developer shall:**

- (i) co-operate with the other developers/occupants of land/site in Tewar Village, within Jabalpur Smart City Ltd so that the other facilities therein/thereat and works are not detrimentally affected by the construction undertaken by the Developer;
- (ii) co-ordinate access within the common corridors within the Jabalpur Smart City Ltd.
- (iii) make reasonable endeavours to attend all co-ordinating meetings called by the Jabalpur Smart City Ltd and work faithfully with the Jabalpur Smart City Ltd and cooperate with the Jabalpur Smart City Ltd and other developers in the interest of overall development of the Project.
- (iv) comply with reasonable requests from the other developers in connection with the development of their facility within the boundary limits of Jabalpur Smart City Ltd.

## **6.9 Completion**

6.9.1 The following provisions shall apply in respect of Completion of the respective Facilities:

- (i) Upon the Completion of the Minimum Facilities, the Minimum Development Obligations and the Additional Facilities, as the case may be, the Developer shall intimate the Jabalpur Smart City Ltd representative in writing (**“Completion Date Notice”**).

- (ii) The Jabalpur Smart City Ltd Representative shall, within 30 days of the receipt of the Completion Date Notice, carry out an inspection of the relevant Facilities, and, if satisfied that the terms of this Agreement, including without limitation, Technical Specifications and Approved Drawings and Plan, have been complied with, issue a completion certificate to the Developer, permitting the Developer to commence commercial operations of the relevant Facilities constructed upon the Site (“**Commercial Operations Notice**”).
- (iii) If the Jabalpur Smart City Ltd Representative is not satisfied that the construction of the relevant Facilities is in accordance with the terms of this Agreement, including without limitation, Technical Specifications and Approved Drawings and Plan, it shall issue such instructions to the Developer as it may deem appropriate for compliance with terms of this Agreement, including without limitation, the Technical Specifications and Approved Drawings and Plan, and the Developer shall carry out such instructions. The Parties shall then follow the procedure described in sub-clause (i) and (ii) above for issue of Commercial Operations Notice.
- (iv) The Developer shall not commence utilization or occupancy of the relevant Facilities, in whole or in part, prior to receiving a Commercial Operations Notice from the Jabalpur Smart City Ltds Representative in accordance with this Article 6.

## **6.10 Operations Manual**

6.10.1 The Developer shall, on or before submission of the Completion Date Notice for the relevant Facility, furnish to the Jabalpur Smart City Ltd Representative for its information the Operations Manual in respect of such Facility. Jabalpur Smart City Ltd may suggest any changes in the Operations Manual which developer needs to comply by the Developer. The Developer shall operate, maintain and manage the Facilities in accordance with the terms of the Operations Manual so submitted, in relation to operation of the relevant Facilities for the duration of this Agreement. Further, any subsequent amendments to the operations manual shall be intimated to the Jabalpur Smart City Ltd.

## **Article 7**

## **OPERATIONS**

7. The provisions of this Article 7 shall be applicable from COD of Minimum Facilities.

### **7.1 Operations and Services**

- (a) The Developer shall, in accordance with the principles of Good Industry Practice:
  - (i) efficiently operate, manage and maintain Facilities and provide Services, consistent with prudent standards of safety and technical sufficiency; and
  - (ii) provide to the Users, access to the Facilities and the Services, on a non-discriminatory and open access basis;
  - (iii) provide right of way right to lay pipelines, electricity lines and other work for utilities etc.,
  - (iii) provide the necessary resources for the operation and maintenance of the Facilities; and
  - (iv) operate the Facilities in accordance with the Applicable Law, Approved Drawings and Plan and the terms of this Agreement.

### **7.2 Operating Procedure**

- (a) The Developer shall submit to the Jabalpur Smart City Ltd such draft rules as it deems necessary for the efficient management and smooth operation of the Facilities.
- (b) Unless otherwise agreed between the Parties:
  - (i) all commercial contracts entered into by the Developer with third parties shall not be inconsistent with the terms and conditions of this Agreement; and
  - (ii) no Party other than the Developer shall be liable for any costs or liabilities whatsoever that may arise on the expiry or termination of such commercial contracts.

### **7.3 User Charges**

(a) User Charges for Commercial Activities:

The Developer shall be entitled to levy and collect charges for providing the Services in relation to Commercial Activities as per the rates published by the Developer for the Services and ensure that the Users are provided Services at the Facilities commensurate with the excellent productivity levels of the operations.

(b) User Charges for the Common Facilities

The Developer may levy the following User Charges in relation to usage of Common Facilities

- (i) Maintenance charges for sanitation and water supply
- (ii) Supply charges for power back up
- (iii) Supply charges for power supply - If provided
- (iv) Garbage collection & disposal charges
- (v) Parking charges
- (vi) Premium/Rent of commercial shops etc.
- (vii) Premium / Rent from restaurants, eateries etc.

Provided that the Developer shall not levy the User Charges in relation to Common Facilities unless the same are approved by Jabalpur Smart City Ltd prior to the levy.

### **7.4 Sub-contracting of Services**

(a) The Developer may engage sub-contractors for the provision of Services. The Developer shall ensure that all sub-contractors, agents and/or employees shall comply with all the relevant provisions of this Agreement. The Developer acknowledges that it shall remain fully and primarily responsible for the performance of all acts, omissions or faults of such sub-contractors, agents and/or employees performed during the course of and in respect to the sub-contract, as if they were the acts, omissions, faults of the Developer. To the extent that the terms of such agreements are inconsistent with the terms of this Agreement, they shall be declared null and void.

(b) The Parties hereby agree that Developer shall alone be liable for any costs or liabilities whatsoever that may arise in relation to such contracts as a result of the expiry or early termination of this Agreement.

## **7.5 Leasing of facilities**

- (a) The Developer may lease or license the use of the assets constructed by it on the Licensed Premises to third parties to be operated and /or used by such third parties/ lessee. The ownership of such assets shall remain vested in the Developer subject to the terms of this Agreement.
- (b) The Developer shall be required to ensure that such third parties/ the lessees comply with Applicable Law, regulatory directives and the terms of this Agreement.
- (c) All contracts and documents pertaining to licensing the use of any part of the Licensed Premises or of assets shall be governed by the terms of this Agreement and the rights of any Person thereunder shall not extend beyond the expiry of the Concession Period or early termination of this Agreement for any reason unless the Jabalpur Smart City Ltd has given its written consent to the term of the relevant contract.

## **7.6 Personnel**

- (a) The Developer or its sub-contractors or lessee or licensee may hire personnel and determine the work practices including the compensation that may be payable to such personnel employed at the Licensed Premises in accordance with Applicable Law.
- (b) The Developer shall be liable for any liabilities, expenses, damages and costs that may arise as a result of accidents at work, occupational diseases and any contingency that may arise from the employment of such personnel. Where such liabilities or costs arising solely due to any act or omission, negligence, misrepresentation or misconduct on part of the \*\*\*\*\*, for which the \*\*\*\*\*shall be liable.

## **7.7 Security**

The Developer shall provide reasonable security at the Licensed Premises. If it is required by the Jabalpur Smart City Ltd, then the Jabalpur Smart City Ltd shall engage additional security forces, at the Developer's sole cost, in certain locations within the Licensed Premises to protect national interests.

## **7.8 Maintenance Standards**

The Developer shall maintain and replace the Facilities and all assets comprised therein in good repair and order.

## **7.9 Performance Standards**

The Developer acknowledges that the Jabalpur Smart City Ltd shall be entitled to appoint a committee of its representative and/or independent experts to assess, the performance of the Facilities, at its cost, and publish a periodic report for the information of Users, but prior reasonable notice be provided to developer and without any interference in the operation of the facilities.

## **7.10 Interaction of the Parties**

The Developer shall submit the following material to the Jabalpur Smart City Ltd:-

- (i) bi-annual reports of the third parties operating in the Facilities including the sub-contractors, licensee and Users with long term contracts;
- (ii) bi-annual reports of the land occupancy pattern at the Licensed Premises including a summary of the change in such occupancy over such six-monthly period; and
- (iii) cargo vehicle movement reports.
- (iv) the Developer shall provide any additional information, as may be reasonably required by the Jabalpur Smart City Ltd so as to ensure that the Developer is in compliance with the terms of this Agreement.
- (v) the Developer shall ensure reasonable access and offer necessary co-operation to the Jabalpur Smart City Ltd and its representatives for monitoring and inspection of operations at Facilities.
- (vi) the Developer shall provide appropriate office space and tele-communication facilities, at its own cost, for such representatives as may be stationed by the Jabalpur Smart City Ltd at the Licensed Premises for providing data and reporting information.

## ARTICLE 8

### REPRESENTATIONS AND WARRANTIES

#### 8.1 Representations and Warranties

8.1.1 \*\*\*\*\* hereby represents and warrants to the Developer that, as of the date of this Agreement:

- a. It is duly organized and validly existing under the laws of India and \*\*\*\*\* has been in continuous existence since constitution;
- b. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- d. The obligations of \*\*\*\*\* under this Agreement will be legally valid, binding and enforceable obligations against \*\*\*\*\* in accordance with the terms hereof;
- e. 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 Governmental Authority which may result in any material adverse effect or impairment of \*\*\*\*\* ability to perform its obligations and duties under this Agreement.
- f. To the best of \*\*\*\*\* knowledge and belief, the Project Land is free from all Encumbrances and is available for development, in accordance with the terms of this Agreement.
- g. To the best of \*\*\*\*\* knowledge and belief, there are no actions, suits, proceedings or investigations pending against the project in hand, at law or in equity, before any court or Governmental Authority, the outcome of which may result in the breach of \*\*\*\*\*under this Agreement, due to above action or result in impairment of \*\*\*\*\* ability to perform its obligations and duties under this Agreement.

#### 8.2 Representations and Warranties of Developer

8.2.1 The Developer hereby represents and warrants to the Jabalpur Smart City Ltd that on the date of this Agreement and as on the Effective Date:

- a. It is duly organized and validly existing under the laws of India and has been in continuous existence since incorporation;
- b. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;



- d. It is incorporated as a special purpose company for implementation of the Project and therefore it shall not undertake any other business other than what is contemplated in this Agreement;
- e. It has the financial standing and capacity to undertake the Project;
- f. The obligations of Developer under this Agreement will be legally valid, binding and enforceable obligations against the Developer in accordance with the terms hereof;
- g. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its Memorandum and Articles of Association of or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- h. There are no actions, suits, proceedings, or investigations pending or, to the best of the Developer's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of Developer under this Agreement or which individually or in the aggregate may result in any material adverse effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;
- i. 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 Governmental Authority which may result in any material adverse effect or impairment of Developer's ability to perform its obligations and duties under this Agreement or to undertake the Project;
- j. It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have material adverse effect on its financial condition or its ability to perform its obligations and duties under this Agreement and undertake the Project; and
- k. The Selected Bidder/Consortium shall maintain the level of equity shareholding in the manner and for the time period, provided in the RFP and Article 5.
- l. No representation or warranty by Developer contained herein or in any other document furnished by it to Jabalpur Smart City Ltd or to any Governmental Authority in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

### **8.3 Disclosure**

In the event at any time after the date hereof, any event or circumstance comes to the attention of either Party that renders any of its abovementioned representations or

warranties untrue or incorrect, then such Party shall immediately notify the other Party of the same. 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 or adversely affect or release any obligation of either Party under this Agreement.

**ARTICLE 9**  
**EVENTS OF DEFAULT AND TERMINATION**

**9.1 Developer Event of Default**

9.1.1 Each of the following events or circumstances, to the extent not caused by a default of the \*\*\*\*\* or Force Majeure shall be considered for the purposes of this Agreement as events of default of the Developer ("**Developer Event of Default**") which, if not remedied within the Cure Period upon receipt of written notice from Jabalpur Smart City Ltd, shall provide the Jabalpur Smart City Ltd the right to terminate this Agreement in accordance with Clause 9.3:

- (a) the Performance Security has been encashed and appropriated in accordance with this Agreement and the Developer fails to replenish or provide fresh Performance Security within a cure period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with this Agreement, the Developer fails to cure, within a cure period of 30 (thirty) days, the Developer default for which whole or part of the Performance Security was appropriated;
- (c) Completion of the relevant Facilities does not occur within the period specified in Clause 6.1.3 or Clause 6.2.3, as the case may be;
- (d) any material breach by the Developer of its obligations under this Agreement and such breach is not remedied within 30 days of receipt of written notice from the Jabalpur Smart City Ltd specifying such breach and requiring the Developer to remedy the same;
- (e) a breach of any representation or warranty by the Developer which materially adversely affects the Jabalpur Smart City Ltd ability to perform its obligations under this Agreement and such breach, if capable of being remedied, is not remedied within 30 days of receipt of written notice from the Jabalpur Smart City Ltd specifying such breach and requiring the Developer to remedy the same;
- (f) suspension by the Developer of the performance of the obligations under this Agreement for a period exceeding 30 consecutive days (except during the subsistence of an event of Force Majeure);
- (g) commencement of the construction of Minimum Facilities or Minimum Development Obligations by the Developer without having Applicable Permits or Approved Drawings and Plan for the relevant Facility;
- (h) construction of Minimum Facilities, Minimum Development Obligations and/or Additional Facilities in contravention of the Applicable Permits and/or Approved Drawings and Plans.
- (i) Failure by the Developer to operate and maintain the Facilities and the Project Land in accordance with the Applicable Laws, and such breach is not remedied within 30 days of receipt of written notice from Jabalpur Smart City Ltd specifying such breach and requiring the Developer to remedy the same;

- (j) Failure of Developer to maintain insurance(s) in respect of the Project which failure is not remedied within a period of 30 days from the date of such failure.
- (k) Developer is ordered to be wound up by a court; the Developer files a petition for voluntary winding up; or levy of an execution or restraint on the Developer's assets; or appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of Developer by a court of competent jurisdiction.
- (l) the Developer using or permitting or causing the use of the Project Land for purposes other than for the development of Facilities or development of Facilities in violation of this Agreement;
- (m) the Developer doing or permitting to be done any act, matter, deed or thing in violation of Applicable Law;
- (n) the Developer setting up an interest in the Project Land or any portion thereof not authorized under this Agreement and/or the License Agreement or adverse to that of Jabalpur Smart City Ltd or in a third person or claiming an interest in the Project Land or any portion thereof absolute in itself;
- (o) non-compliance of equity lock-in provisions set forth in Article 5.
- (p) failure to return the peaceful possession of the Project Land upon termination of this Agreement or failure to return the peaceful possession of the Project Land in accordance with Clause 6.3.2 or 6.3.5, ;
- (q) non-payment of any Damages payable under this Agreement;
- (r) non-payment of Annual License Fees;
- (s) material breach of any obligation by the Developer under this Agreement and/or the License Agreement.

## **9.2 Board Event of Default**

Each of the following events or circumstances, to the extent not caused by a default of the Developer or Force Majeure shall be considered for the purposes of this Agreement as events of default of the Jabalpur Smart City Ltd which, shall provide the Developer the right to terminate this Agreement in accordance with Clause 9.3

- (i) any material breach by the Jabalpur Smart City Ltd of its obligations under this Agreement, including failure to provide to the Developer the possession and right to the Project Land before the Effective Date in accordance with this Agreement (provided that the Developer has fulfilled all the conditions precedent under Clause 3.1);
- (ii) a breach of any representation or warranty by Jabalpur Smart City Ltd which has a material adverse effect on the Developer's ability to perform its obligations under this Agreement.

9.3 Subject to Clause 9.5, upon the occurrence of either a Developer Event of Default or a Jabalpur Smart City Ltd Event of Default, the defaulting Party shall be liable for the breach caused and consequences thereof and the non-defaulting Party shall have the right to issue a notice expressing its intention to terminate this Agreement to the other

Party ("**Notice of Intention to Terminate**"). Upon the issuance of a Notice of Intention to Terminate, the defaulting Party shall have the right to rectify or cure the breach within 90 (ninety) days of receipt of such Notice of Intention to Terminate ("**Cure Period**"). If the breach is not rectified by the defaulting Party within the Cure Period, the non-defaulting Party shall have the right to terminate this Agreement by issuance of a termination notice ("**Termination Notice**").

#### **9.4 Transfer Information Notice**

9.4.1 upon service of the Termination Notice in accordance with the provisions of this Article 9 on the defaulting Party, and upon receipt of a written notice, the Developer shall be required to provide the following:

- (A) all or any data or records regarding the operation or maintenance of the Facilities and the Project;
- (B) any other information or records regarding the Developer, its business, assets and liabilities relating to the Facilities, and
- (C) statement of immovable and movable assets forming part of the Facilities,

to enable an estimation of the likely compensation, if any, payable by the Jabalpur Smart City Ltd to the Developer (the "**Transfer Information Notice**").

9.4.2 on receipt of the Transfer Information Notice, Jabalpur Smart City Ltd shall undertake a survey of the entire Facilities to ascertain the condition and quality of the various Facilities provided by the Developer and whether or not Developer has complied with the provisions of this Agreement.

#### **9.5 Lenders' Rights of Substitution**

9.5.1 if the Termination Notice is issued for an Developer Event of Default:

- (A) within 60 (sixty) days from the date of issuance of the Termination Notice, the Lenders may serve a written notice to the \*\*\*\*\* explaining their intent to replace the Developer by another entity (the "**Replacement Notice**") for implementing the Project under this Agreement. The Replacement Notice shall indicate the name(s) of the nominated entities (the "**Nominated Sub-Licensee(s)**" or "**NSL**") proposed to substitute the Developer for the purpose of this Agreement.
- (B) in the event the Jabalpur Smart City Ltd is satisfied of the legal, financial and technical capabilities of NSL to perform the obligations of the Developer in accordance with the terms of this Agreement, the Jabalpur Smart City Ltd shall,

within 90 (ninety) days from the date of such nomination, consent to the nomination of such NSL, which consent is not to be unreasonably withheld.

- (C) upon intimation of the abovementioned confirmation by the Jabalpur Smart City Ltd of the NSL this Agreement shall be novated in favour of the NSL and shall constitute an agreement between the NSL, the Jabalpur Smart City Ltd and the Developer on the terms and conditions of this Agreement as novated, amended and supplemented (the "**Novated Agreement**").
- (D) the Parties hereby agree that pursuant to the Novated Agreement:
  - (i) the Developer shall stand released and discharged from its existing rights and obligations hereunder, except such rights and obligations as may have accrued prior to such substitution of NSL; and
  - (ii) NSL shall assume the rights and obligations of the Developer.
  - (iii) if within two hundred and fifteen (215) days from the receipt of acceptance from the Jabalpur Smart City Ltd in accordance with Clause 9.5.1 (B), the NSL (acceptable to Jabalpur Smart City Ltd) does not execute the Novated Agreement, the Jabalpur Smart City Ltd shall have the right to terminate this Agreement, as if no Replacement Notice had been served.

### **9.5.2 Direct Agreement with Lenders**

- (A) it is hereby agreed that the Parties, if required, shall enter into an agreement with the Lenders whereby the rights specified in this Article 9.5.1 along with such other rights as may be mutually agreed shall be granted in favour of the Lenders ("**Substitution Agreement**"). The Substitution Agreement shall be substantially in the format set out in Schedule (7).
- (B) the Parties hereby undertake to enter into Substitution Agreement with the Lenders as may be required by Developer and/or the Lenders, for the purposes of implementation of the rights vested under this Article 9.5.1.

### **9.6 Procedure for appointing an Appraising Team**

- 9.6.1 within twenty one (21) days from the expiry of the Termination Notice in accordance with Article 9.3, the Jabalpur Smart City Ltd shall appoint individuals or firms or consortia of individuals or of firms or of a combination thereof to constitute the appraising team ("**Appraising Team**") who are experienced in the methods of valuation prescribed in Article 10 to carry out a determination of the Final Compensation Payable. The Appraising Team shall include a

(A) logistic expert; and

(B) financial expert.

9.6.2 Until such time as the Facilities and the Licensed Premises or any parts thereof, are handed over by the Developer to the Jabalpur Smart City Ltd (the "**Transfer Date**"), the Developer shall operate and maintain the Facilities as per the provisions of this Agreement. However, in the event of termination of this Agreement owing to Developer Event of Default, Developer shall account for and pay to the Jabalpur Smart City Ltd, all revenues, during the appraisal process referred to, in this Article 9.

## Article 10

### TRANSFER PROVISIONS

#### 10.1 Normal Transfer/Early Termination

- (a) Upon expiry or early termination of this Agreement, the Developer shall transfer, to the Jabalpur Smart City Ltd or its nominee, all Immovable Facility Assets and Essential Movable Facility Assets prevailing at the Licensed Premises as on the date of Transfer Information Notice with good title and without Encumbrances, which shall, *inter alia*, include:
- (i) all immovable assets comprised in the Facilities;
  - (ii) movable assets including plant and machinery and spare parts but excluding those movable assets which are not leased or are not essential for basic operation of the Facilities;
  - (iii) such deeds and documents as may be necessary for effectively transferring (in respect of the above) rights, title of and all other interests under this Agreement in favour of the Board;
  - (iv) the benefits of all rights and interest in all unexpired insurance, guarantees and contractor warranties if so desired by the Jabalpur Smart City Ltd and
  - (v) all documents, manuals, records etc. as may be required for the efficient operation of the Facilities.

Provided that \*\*\*\*\* shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of \*\*\*\*\* are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. In relation to all such contracts that are not transferred to \*\*\*\*\*, no third entity, including the counter-party of such contract shall have any right, license title, interest, benefit, claim or demand against or over any Facilities and such Facilities shall be transferred to \*\*\*\*\* or its nominee, clear of any Encumbrance and with good title.

- (b) The takeover and compensation shall relate only to tangible assets and such intangibles identified for the purposes of this Article in the Approved Drawings and Plan.
- (c) Unless otherwise specifically agreed to, miscellaneous assets and other intangible assets (such as goodwill) shall also stand excluded from the scope of asset takeover and compensation.



- (d) The Licensed Premises shall revert to the Jabalpur Smart City Ltd free of any consideration and Encumbrances.
  - (e) The provisions of this Article shall apply to all assets on the Licensed Premises, as reflected on the balance sheet of the Developer, its affiliates, and/or subsidiaries. The Developer undertakes to ensure that the provisions of this Article shall be reflected in any agreement that may be entered into between the Developer and a sub-licensees/sub-contractors or any other party for construction of assets or provision of Services at the Facilities.
- 10.2 Furthermore, notwithstanding anything contained in the Clause 10.1, no liability (accrued or contingent) of Developer or relating to the Facilities arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to Jabalpur Smart City Ltd or its nominees. Jabalpur Smart City Ltd or its nominees shall only be liable for liabilities in relation to the Facilities arising after the handing over the asset.
- 10.3 Without prejudice to the foregoing, Developer agrees to indemnify and keep indemnified Jabalpur Smart City Ltd from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by Jabalpur Smart City Ltd as a result of any actions or omissions of Developer prior to the transfer of the Facilities. It is expressly understood by the Parties that this Article shall survive the termination or expiry of this Agreement.
- 10.4 Developer shall in accordance with Good Industry Practice ensure that all property, assets, rights and other items (constituting Facilities) which are vested in or transferred to \*\*\*\*\*shall be in good working order and in a good state of repair.
- 10.5 Expiry or termination of this Agreement shall be without prejudice to all rights and obligations then having accrued to Jabalpur Smart City Ltd and/or Developer (or which may thereafter accrue in respect of any act or omission prior to such expiry or termination) and without prejudice to those provisions which expressly provide for continuing obligations or which are required to give effect to such expiry or termination or the consequences of such expiry or termination.
- 10.6 The Parties' rights to terminate this Agreement shall be limited to those expressly set out in this Agreement.
- 10.7 Transfer costs and taxes, if applicable, for the transfer of the Facilities consequent to termination of this Agreement shall be borne by the Developer.

## 10.8 Treatment of and valuation approach to Immovable and Movable Facility Assets

### 10.8.1 Immovable Facility Assets and Essential Movable Facility Assets

(i) *Normal Transfer*

The Immovable and Essential Movable Facility Assets shall be transferred to and shall vest in the Developer at the end of the Concession Period, free from all Encumbrances, for a consideration of Rs. 1 (Rupees one).

(ii) *The Developer Event of Default*

(a) in the event of termination due to Developer Event of Default, the \*\*\*\*\* shall purchase the all Immovable Facility Assets and Essential Moveable Facility Assets, to the extent provided, for a consideration equivalent to the lower of:

(1) fifty percent (50%) of the Depreciated Historical Cost (the "DHC"); and

(2) the Total Debt Due.

(b) if termination is on account of Clause 9.1.1 (f), the consideration shall be fifty percent (50%) of the DHC, payable only upon recovery of such amounts upon re-tender of the Facilities.

Provided however, in case of Developer Event of Default, interest payments and charges accrued prior to the date of giving of Termination Notice shall not be taken into account while calculating the Total Debt Due.

(iii) *The\*\*\*\*\* Event of Default, and extended Force Majeure*

(a) in the case of a termination following a \*\*\*\*\* Event of Default, and extended Force Majeure, the Developer may require the \*\*\*\*\* to purchase the Immovable Facility Assets and Essential Movable Facility Assets for a consideration equivalent to the higher of

(1) hundred percent (100%) of the of the Depreciated Historical Cost (the "DHC") and

(2) the Total Debt Due.

## 10.8.2 Movable Facility Assets

- (i) Developer and the Jabalpur Smart City Ltd shall:
  - (a) in case of early termination, within thirty (30) days of issue of Termination Notice; and
  - (b) in case of Normal Transfer, at least one (1) month prior to expiry of Concession Period;

mutually agree on a list of Essential Movable Facility Assets. In the event of failure to arrive at a mutually acceptable list within the stipulated time, the same shall be determined by the \*\*\*\*\*.
- (ii) the Developer shall be responsible for take away all movable assets other than Essential Movable Facility Assets from the License Premises, at its own cost:
  - (i) in case of Normal Transfer, within a period of one (1) month from the expiry of the Concession Period; or
  - (ii) in case of early termination of this Agreement, within a period of two (2) months from the date of appointment of the Appraising Team;

as the case may be.

## 10.8.3 Compensation Payable

- (i) on early termination of this Agreement as a result of occurrence of or Developer Event of Default, or Force Majeure, as the case may be, the aggregate of the compensation payable in respect of each asset under Clause 10.8.1 shall be hereafter defined to be the "**First Estimate of Compensation**".
- (ii) the First Estimate of Compensation shall stand reduced by the amount of any insurance proceeds received and/or any compensation received from any body and/or any amount paid by the Central/State Government, to the Developer and shall be corrected in respect of any adjustments that may be deemed necessary by the Appraising Team. Any outstanding insurance or insurance claim shall be assigned to the \*\*\*\*\* in a form and manner satisfactory to the \*\*\* at no additional cost to the\*\*\*\*\*
- (iii) Notwithstanding anything contained herein, in the event of a Force Majeure Event occurring after a Termination Notice on account of Developer Event of Default has been issued, Developer shall not be entitled to any compensation and

the transfer of the Facilities, Immovable Facility Assets and the Essential Movable Facility Assets shall be transferred as in case of Normal Transfer.

- (iv) The final amount so arrived at after the aforesaid adjustments would be the "**Final Compensation Payable**".

#### **10.9 Transfer of the facilities and Licensed Premises**

- (a) In the event of Normal Transfer, the final transfer of the Immovable Facility Assets and Essential Movable Facility Assets and the Licensed Premises shall be effected within sixty (60) days of the Scheduled Date of Normal Transfer.
- (b) In the event of early termination of this Agreement, the final transfer of the Immovable Facility Assets and Essential Movable Facility Assets and the Licensed Premises shall be effected within \*\*\*\*\* days of the Termination Notice.
- (c) However, notwithstanding anything contained in this Agreement, the Developer shall continue to maintain and operate the Facilities and abide by the terms of this Agreement until the actual transfer of the Facilities by the Developer to the \*\*\*\*\*

## **ARTICLE 11**

### **INDEMNITY**

- 11.1 The Developer shall indemnify and keep indemnified and otherwise hold harmless Jabalpur Smart City Ltd from and against all claims, demands made against and/or loss caused and/or damages suffered and/ or cost, charges/ expenses incurred to and/or penalty levied and/or any claim arising out of and as a result of failure on the part of the Developer to perform any of its obligations under this Agreement or on the Developer committing breach of any of the terms and conditions of this Agreement or on the failure of the Developer to perform any of its statutory duty and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any third party or government authority or as a result of any failure or negligence or default of the Developer or its contractor(s), or employees, servants, agents of such contractor(s) as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Developer's use and occupation of the Project Land and/or implementation of the Concession.
- 11.2 Without limiting the generality of clause 11.1 above the Developer shall fully indemnify and defend the Jabalpur Smart City Ltd from and against any and all loss, damages or cost arising out of or with respect to: (a) failure of the Developer to comply with Applicable Law and Approvals, (b) payments of taxes relating to the Concession or (c) any other claims arising out of implementation of the Concession and operation of the Facilities.

**Article 12**  
**INSURANCE**

- 12.1 At all times during the Concession Period, the Developer shall obtain and maintain, at its own cost, such insurances as the Developer may reasonably consider necessary or prudent in accordance with Good Industry Practice (“**Developer Insurances**”), including the insurances listed at Schedule (8) hereof. The Developer shall ensure that each policy taken out pursuant to this Clause 12, shall be increased from time to time to such amounts as would be effected in accordance with Good Industry Practice and as may be reasonably required, taking into account, amongst other things, market availability in respect of risks, liabilities and amounts of insurance. The insurance policies so procured shall mention the \*\*\*\*\* as one of the co-insured.
- 12.2 The Developer shall furnish to 3 ( three) copies of such policy certificates and evidence that the insurance premium has been paid in respect of such insurance as may be requested by Jabalpur Smart City Ltd from time to time. The Developer shall not do or omit to do anything whereby such insurance may be modified, cancelled or allowed to expire or by which any rights under any such policy are affected. It is understood between the parties that if the Developer fails to effect and keep in force all such insurances that it is responsible for pursuant hereto, Jabalpur Smart City Ltd shall have, without prejudice to any other rights that it may have under this Agreement, the option to either keep in force any such insurance and pay such premium and recover the cost thereof from the Developer.
- 12.3 The Developer shall notify Jabalpur Smart City Ltd of any claim made against it and shall defend such claim with good faith and best efforts. The Developer also covenants that in the event of any claim made against it, or which may be made by it, and which in the reasonable opinion of Jabalpur Smart City Ltd is covered by any of the insurance policies of the Developer, the Developer, notwithstanding any other insurance policy undertaken by Jabalpur Smart City Ltd will promptly make claim under the relevant insurance policy of the Developer and take all necessary steps to pursue such claim.

**ARTICLE 13**

## **FORCE MAJEURE**

### **13.1 Application**

13.1.1 This Clause 13 shall apply if the performance by any Party (the “Affected Party”) of its obligations under this Agreement is prevented, hindered or delayed in whole or in part by reason of Force Majeure.

13.1.2 In this Agreement, “**Force Majeure**” means any event or circumstance or a combination of events and circumstances, which satisfies all the following conditions:

- (a) materially and adversely affects the performance of an obligation;
- (b) are beyond the reasonable control of the affected Party;
- (c) such Party could not have prevented or reasonably overcome with the exercise of Good Industry Practice or reasonable skill and care;
- (d) do not result from the negligence or misconduct of such Party or the failure of such Party to perform its obligations hereunder; and
- (e) (or any consequence of which), have an effect described in Clause 13.1.1.

13.1.3 “**Force Majeure**” includes the following events and/ or circumstances to the extent that they, or their consequences satisfy the requirements set forth in Clause 13.1.1 and Clause 13.1.2:

- (i) war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting this part of India or site;
- (ii) revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case affecting this part of India or site;
- (iii) nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Site and/or the Assets, unless the source or cause of the explosion, contamination, radiation or hazardous thing is brought to or near the Site by the Developer or any Affiliate of the Developer or any sub-contractor of the Developer or any such Affiliate or any of their respective employees, servants or agents;
- (iv) strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political;
- (v) any effect of the natural elements, including lighting, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, drought, within this part of India or site;
- (vi) explosion (other than a nuclear explosion or an explosion resulting from an act of war) affecting this part of India;
- (vii) epidemic or plague affecting this part of India or site;
- (viii) any event or circumstances of a nature analogous to any events set forth in paragraphs (i) to (vii) of this Clause 13.1.3 above within this part of India or site.

## **13.2 Performance Obligation**

13.2.1 Provided it complies with this Clause 13, if the Affected Party is rendered wholly or partially unable to perform any of its obligations under this Agreement because of an event of Force Majeure, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure provided that:

- (i) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the event of Force Majeure;
- (ii) the Affected Party shall make all reasonable efforts to prevent and to minimise the effect of an event of Force Majeure caused to the Works and the Services;
- (iii) the Affected Party shall use its best endeavours to minimise the effects of the Force Majeure and to remedy the situation as soon as possible, including duly prosecuting and exhausting all such remedies available to the Affected Party under the Applicable Laws.
- (iv) the time allowed for the performance of any such obligations (including, without limitation, achieving the Commencement Date) shall be extended accordingly.

## **13.3 Notification**

13.3.1 As soon as reasonably practicable but not more than seventy two (72) hours after a Party coming to know of any event of Force Majeure, if the Party desires to invoke such event of Force Majeure as a cause for delay or failure in the performance of any obligation hereunder, it shall notify the other Party in writing of such date and the nature and expected duration of such event of Force Majeure. Within a reasonable time following the date of such notice of such event of Force Majeure, the Party having invoked such event of Force Majeure as a cause for such delay shall submit to the other Party sufficient proof of the nature of such delay or failure and its anticipated effect upon the time for performance.

13.3.2 The Affected Party shall continue to perform such of its obligations which are not affected by the event of Force Majeure and which are capable of being performed in accordance with this Agreement.

13.3.3 The Parties agree and acknowledge that in the event a Force Majeure continues for more than 180 days continuously and the obligations under this Agreement cannot be performed, executed and implemented as a result thereof either Party may terminate this Agreement or provisions of Article 9 shall apply.



#### **13.4 Mitigation**

The Affected Party shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of the event of Force Majeure.

#### **13.5 Liability for other losses, damages etc.**

Save and except as expressly provided in this Clause 13.5, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any event of Force Majeure.

**ARTICLE 14**  
**DISPUTE RESOLUTION**

**14.1 Disputes - Amicable Settlement**

The Parties shall endeavour to settle any dispute amicably. If a dispute is not resolved within 90 (ninety) days after written notice of a dispute by one Party to the other Party then the provisions of Clause 14.2 shall apply.

**14.2 Arbitration**

14.2.1 All disputes arising under this Agreement, that remain unresolved pursuant to Clause 14.1, shall be referred to a tribunal comprising three (3) arbitrators under the Indian Arbitration and Conciliation Act, 1996. Each Party to the arbitration shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the “**Arbitral Tribunal**”).

14.2.2 The decision(s) of the Arbitral Tribunal, shall be final and binding on the Parties.

14.2.3 The venue of arbitration shall be Bhopal.

14.2.4 The governing law of the arbitration shall be the laws of India and language of arbitration shall be English.

**14.3 Continued performance**

14.3.1 While any dispute under this Agreement is pending, including the commencement and pendency of any dispute referred to arbitration, the Parties shall continue to perform all of their respective obligations under this Agreement without prejudice to the final determination in accordance with the provisions under this Article 14.

## ARTICLE 15

### MISCELLANEOUS

#### **15.1 Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of India. Subject to Article 14, the courts at Madhya Pradesh shall have exclusive jurisdiction on matters pertaining to or arising from this Agreement.

#### **15.2 Approvals**

The Parties agree that any approvals required to be given by the Jabalpur Smart City Ltd and/or its Representative hereunder, shall be provided within a period of 30 days from the date of receipt of request for approval from the Developer, failing which such approval shall be deemed to have been granted by the Jabalpur Smart City Ltd or its Representative, as the case may be.

#### **15.3 Amendments**

No amendment or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be effective unless the same shall be in writing and signed by the Parties hereto and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

#### **15.4 Agreement to Override Other Agreements; Conflicts**

This Agreement supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto. This Agreement, Schedules and Annexures together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof.

#### **15.5 No Waiver; Remedies**

No failure on the part of any Party to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other of further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

#### **15.6 Severance of Terms**

If for any reasons whatsoever any provisions of this Agreement are declared to be void, invalid, unenforceable or illegal by any competent arbitral tribunal or court of competent jurisdiction, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect and in such event, the Parties shall endeavour in good faith to forthwith agree upon a legally enforceable substitute provision as will most closely correspond to the legal and economic contents of the unenforceable provision.

### **15.7 Language**

All notices, certificates, correspondence or other communications under or in connection with this Agreement or the Project shall be in English.

### **15.8 Counterparts**

This Agreement is made in two (2) original copies, each having the same contents and the Parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses. All counterparts shall constitute but one and the same Agreement.

### **15.9 Assignment**

- (i) By Developer: Save and except otherwise permitted by this Agreement, Developer shall not assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, sub-license or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities under this Agreement.
- (ii) By \*\*\*\*\* shall have the right to assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, sub-license or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities under this Agreement to any entity.

### **15.10 Survival**

Notwithstanding anything to the contrary contained in this Agreement, any expiry or termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights and remedies of either Party, which it may have in law or contract. All obligations of Developer under this Agreement, including transfer of the Immovable Facility Assets and the Essential Movable Facility Assets, shall survive the Termination to the extent such survival is necessary for giving effect to such obligations.

### **15.11 Costs and Expenses**

Each Party shall bear its own costs (and expenses, including without limitation any fees payable to its advisors) in connection with the negotiation, preparation and execution of this Agreement. Provided that all the taxes including the stamp duty and registration charges with respect to this Agreement shall be borne by the Developer. The Parties expressly agree that it shall be the responsibility of the Developer to comply with the requirements in relation to the registration of this Agreement with any relevant Governmental Authority.

### **15.12 No Agency**

The Parties agree that nothing in this Agreement shall be in any manner interpreted to constitute an agency or partnership for and on behalf of any other Party and the relationship between the Parties is as a principal to principal and on an arm's length basis. Except as otherwise expressly agreed to, nothing contained herein shall confer, on any Party, the authority to incur any obligation or liability on behalf of the other Party or bind the other.

### **15.13 Notices**

All notices, requests, demands or other communication required or permitted to be given under this Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by registered speed post, postage prepaid or transmitted by facsimile transmission, electronic mail or courier to the other Parties at the address indicated below:-

- (i) In the case of Jabalpur Smart City Ltd to:  
Attention: The Executive Director  
E mail: commjabalpur@mpurban.gov.in , Ceojscl@mpurban.gov.in  
Facsimile: [to insert]
- (ii) In the case of notices to Developer, to:  
Attention: [to insert]  
E mail: [to insert]  
Facsimile: [to insert]

or at such other address as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified the Party giving the same in the manner provided in this Section, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Section [insert] shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:-

- (i) Sent by mail, except air mail, 10 (Ten) Business Days after posting it;
- (ii) Sent by air mail, 6 (Six) Business Days after posting it; and
- (iii) Sent by facsimile or e-mail, when confirmation of its transmission within next working day has been recorded by the sender's facsimile machine or e-mail account.

### **15.14 Third Party Benefit**

Nothing herein expressed or implied is intended, nor shall it be construed to confer upon or give to any third party any right, remedy or claim under or by reason of this Agreement or any part hereof.

### **15.15 Performance of all acts for compliance with the Applicable Laws-**

The Parties shall perform all acts including signing any documents, papers, returns, etc. as may be required for compliance with all Applicable Laws or terms of any Applicable Permits for the development, construction and completion of the Project on the Project Land and also the operation and maintenance thereof.

### **15.16 Exclusion of Implied Warranties etc. -**

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

**15.17 Local Taxes**

The Developer shall also be liable to pay to relevant Government Authorities all local and other taxes including but not limited to the property tax as may be applicable to the Project Land or to the implementation of the Concession as the case may be from the [Effective Date].

IN WITNESS WHEREOF this Agreement has been executed by the duly authorized representatives of the Parties hereto on the day and year first above written.

For and on behalf of the Jabalpur Smart City Ltd

BY: \_\_\_\_\_

Name:

Title:

For and on behalf of [*insert* name of the Developer]

BY: \_\_\_\_\_

Name:

Title:

## **SCHEDULES**

*Schedule (1)*

*Project Land*

*The Project Land shall not exceed area of 80.65 Acres*

Specific Documentation related to land are provided below:































*Schedule (2)*

*Minimum Facilities*

S. No.	Component	Minimum Facilities (to be developed within 1 years from Effective Date ) before COD	Minimum Facilities (to be developed within 2 years from Effective Date ) before COD	Minimum Facilities (to be developed after 10 years from COD
1	Truck Parking Bays	500 nos		500 nos
2	Weigh Bridge of 80 T Capacity.	1 no	1 no	
3	Boundary Wall	Entire		
4	Toll Gate	1		
5	Warehouses	2500 sqmt	2500 sqmt	
6	Repair Shops			
7	Petrol Pumps	1 no		
8	Shops	As required	As required	
9	Lodging	As required	As required	
10	Restaurants	As required	As required	
11	Common Infrastructure – roads, drainage, water and power	As required	As required	As required

*Schedule (3)*

Minimum Development Obligations

S. No.	Component	Minimum Facilities (to be developed within 1 years from Effective Date ) before COD	Minimum Facilities (to be developed within 2 years from Effective Date ) before COD	Minimum Facilities (to be developed after 10 years from COD
1	Truck Parking Bays	500 nos		500 nos
2	Weigh Bridge of 80 T Capacity.	1 no	1 no	
3	Boundary Wall	Entire		
4	Toll Gate	1		
5	Warehouses	2500 sqmt	2500 sqmt	
6	Repair Shops			
7	Petrol Pumps	1 no		
8	Shops	As required	As required	
9	Lodging	As required	As required	
10	Restaurants	As required	As required	
11	Common Infrastructure – roads, drainage, water and power	As required	As required	As required





*Schedule (4)*

License Agreement

*Schedule (5)*

Technical Specifications

Minimum Technical Specification expected for proposed facilities are mentioned below as

**Minimum Technical Specifications**

**1. Specifications for Container Paved area**

Minimum specification for the container paved is specified based on the soil profile in this area. The soil is black cotton soil with 10 Tonnes/ sq meter. For this safe bearing capacity, 575 mm thick pavement shall be required with following strata thickness.

- i. Compacted sub grade 500 mm thick up to the required level.
- ii. 230 mm thick compacted Granular Sub- Base in two layers.
- iii. 250 mm thick Wet Mix Macadam (WMM) compacted thickness with aggregates of size 37.5 mm down.
- iv. 55 mm thick bituminous macadam and 40 mm thick semi – dense bituminous concrete.

**2. Specifications for Bituminous circulating area**

- i. For roads, trucking hub, other important roads where Reach stacker shall not work and where 3 to 4 stacks loaded containers are not stacked, the following specifications shall be adopted with total thickness 575 mm.
- ii. Compacted 500 mm sub grade to required level with camber.
- iii. 230 mm thick compacted thickness Granular Sub- Base in two layers.
- iv. 250 mm thick compacted thickness Wet Mix Macadam.
- v. 55 mm thick bituminous macadam and 40 mm thick semi –dense bituminous concrete.

**3. Specifications for Empty yard paved area :**

- i. For empty container yard and for lighter handling area initially only soling and Water bound macadam shall be provided to a total thickness of 575 mm for up to 3 high empty container stacking.
- ii. Compacted sub grade 500 mm thick to required level with camber.
- iii. 230 mm thick compacted thickness Granular Sub- Base in two layers.

- iv. 250 mm thick compacted thickness Wet Mix Macadam.
- v. 55 mm thick bituminous macadam and 40 mm thick semi –dense bituminous concrete.

#### **4. Specifications for Warehouses**

- i. Earthwork in excavation for foundation.
- ii. Anti termite treatment 6 stages as per IS code.
- iii. PCC 1:4:8 levelling course
- iv. RCC foundation for columns as per requirement of PEB supplier.
- v. RCC work in columns and beams and brickwork over plinth beams.
- vi. Damp proof course at FFL 50 mm thick.
- vii. Flooring 150 mm thick 1:5:10 PCC , 100 mm RCC M 25 tremix with ironite heavy duty flooring .
- viii. Rolling shutters with 1.20 mm thick sheet thickness.
- ix. Brick work in CM 1:6 in cladding with plaster CM 1:4 including gable ends.
- x. Pre Engineered building with complete design, EPC of the reputed vendors like Tata Blue scope, Kirby, Interact, Era, NISA etc.
- xi. PMP sheets and drainage gutter as per design of PEB manufacturer.
- xii. Intermediate Poly carbonate / Acrylic sheets for day light.
- xiii. Steel section windows & ventilators.
- xiv. Exterior cement based paint finishing over walls and all steel work enamel painted.

#### **5. Specifications for the main circulatory roads where braking forces , acceleration etc :**

This shall be adopted for the main approach roads with RCC surface.

- i. Compacted sub grade 500 mm thick to required levels.
- ii. 230 mm thick compacted thickness Granular Sub- Base in two layers.
- iii. 250 mm thick compacted thickness Wet Mix Macadam.

- iv. 55 mm thick bituminous macadam and 40 mm thick semi –dense bituminous concrete.

**6. Specifications for RCC pipes & RCC manholes for electrical cable through out the yard :**

- i. For Electrical cables to be passed all through the yard for supplying to mains of individual location buildings , high mast towers, street lights , warehouses etc electric cables have to be taken in underground RCC pipes with RCC manholes every 30 to 50 meters and at all corners . The specifications for this work shall be as below:
- ii. RCC pipe ISI marked ( IS : 458 ) class NP4 200 mm diameter with base concrete 100 mm thick 1:3:6 and duly encased in concrete 1:3:6 having a minimum earth cover / pavement cover of 500 mm from top of pavement to top of encased concrete .
- iii. RCC manholes in M20 concrete with hinged chequered plate cover with MS frame work as per enclosed drawing. The depth and size of RCC manhole has been kept 1000 x 1000 mm for maintenance purposes.

**7. Specifications for RCC drainage pipes & RCC manholes through the yard :**

The minimum pipe diameter at the start shall be 250 mm Nominal diameter and up to 600 mm at the end. RCC manholes should be provided every 50 meter and all corners. The specifications of this work shall be as below:

- i. RCC pipe ISI marked ( IS : 458 ) class NP4 250 mm to 600 mm diameter with base concrete 100 mm thick 1:3:6 and duly encased in concrete 1:3:6 having a minimum earth cover / pavement cover of 750 mm from top of pavement to top of encased concrete .
- ii. RCC manholes in M20 concrete with hinged square MS bars cover with MS frame work as per enclosed drawing. The cover shall be able to take load of all equipments like Reach stacker. The depth and size of manholes shall be as per detailed drainage drawing.
- iii. Rain water harvesting chambers shall be provided intermittently.

**8. Specifications for the Boundary wall :**

- i. Earthwork in excavation.

- ii. PCC 1:4:8 levelling course.
- iii. RCC foundations for columns.
- iv. Plinth beam RCC M 20.
- v. RCC columns every 5 meter interval and brickwork above the plinth beam.
- vi. Angle iron & Concertina coil fencing as per drawing 9 ft for bonded area and 1.95 meter for non bonded area.
- vii. Plaster in CM 1:3:3 and finishing coats of cement based paint

9. **Specifications for Additional Facilities :** Any additional facilities developed must be specifically linked to activities related to development of container yard, container and container cargo handling, warehousing, CFS operations, bulk cargo operations, cold storage and provision of value added services for these activities. The technical specifications for any such development will need to meet the criteria already laid down in the clause 1 to 9 above.

10. **Specifications for Zoning Specifications:** It is to be noted that the layout of the facility has been divided into various zones based on activities to be carried out keeping in mind the most suitable cargo flows that would need to be planned to suit the master plan. In the preparation of his Operations Manual and Technical Specifications, the successful bidder will need to clearly identify the land he wishes to earmark for future expansion of activities. As per the current master plan, there are two areas earmarked in the layout for possible future expansions. The first of these areas which lies in the Zone with Warehouses and CFS facility can be planned for development of warehousing, CFS expansion, Cold storage or expansion of container yard for specialized container storage. The other area can be utilized for development of warehousing or container yard. In case the successful developer wishes to modify the master plan he will be permitted to club all future expansion area into one group and demarcate the same. In no case, however will the bidder be permitted to modify the overall land area that has been provided to him for future expansion activities.

*Schedule (6)*

**Depreciated Historical Value**

- 1 The Depreciated Historical Cost (DHC), wherever applicable, shall be computed based on the following norms:

The depreciation shall be calculated on straight line, basis. Life span of the assets for the purpose of depreciation shall be in accordance with the provisions of the Companies Act 1956, as may be amended from time to time

- 2 The date of existence of asset for the computation of the depreciated value shall be the date on which it was scheduled to be completed in all respects or the date on which it becomes capable of being put to or used for commercial operation, whichever is earlier. In respect of replacement assets, the assets shall be deemed to have come into existence when the same is capable of being put to use or used for commercial operation as the replacement asset or the date when it was actually put to use, whichever is earlier.
- 3 Wherever the Depreciated Historical Cost is applicable, the original cost of such assets and those which have come in as replacement assets shall be that cost, established by the Developer, to the satisfaction of the Jabalpur Smart City Ltd with Chartered Accountant's, and valuer's certificates and duly supported by bills and other documents of manufacturers/suppliers/civil works contractors, at the time of installation of the new assets or replacement of the assets as the case may be.

*Schedule (7)*

**SUBSTITUTION AGREEMENT**

This **SUBSTITUTION AGREEMENT** is entered into on this the [●] day of [●].

AMONGST

- (1) **The\*\*\*\*\*** acting through [insert] (hereinafter referred to as the \*\*\*\*\*, which expression unless repugnant to the context or meaning thereof shall be deemed to mean and include its successors and permitted assigns) of the **FIRST PART**;
- (2) [●], a company incorporated under the Companies Act, 1956 and having its registered office at [●] (hereinafter referred to as “**Developer**”, which expression shall, unless repugnant to or inconsistent with the context, mean and include its successors and permitted assigns) of the **SECOND PART**; and
- (3) [insert name and particulars of Lenders’ Representative] and having its registered office at [insert], acting for and on behalf of the 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) of the **THIRD PART**.

WHEREAS:

- (A) The \*\*\*\*\* is desirous of setting up a\*\*\*\*\* comprising, *inter alia*, the Facilities (hereinafter defined). In furtherance of the above, the \*\*\*\*\* is desirous of appointing a developer for designing, financing, procurement, construction, development, operation, maintenance, management and transfer of the Facilities.
- (B) The \*\*\*\*\* has entered into a Concession Agreement dated [●] with the Developer (the “**Concession Agreement**”), whereby the \*\*\*\*\* has granted to the Developer the license to undertake the development of the Project (the “**Grant**”), a copy of which Concession Agreement is annexed hereto as Annexure A.
- (B) The Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- (C) The Lenders have requested the \*\*\*\*\* to enter into this Substitution Agreement for securing their interests through assignment, novation, transfer of the Grant and substitution of the Developer by a NSL in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the \*\*\*\*\* has agreed and undertaken to transfer and assign the Grant to a Nominated Sub Licensee (hereinafter defined) in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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**” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Developer Event of Default**” shall have the meaning ascribed to in the Concession Agreement;

“**Facilities**” are the facilities required to be constructed by the developer under the Concession Agreement, having the meaning ascribed to in the Concession Agreement.

“**Financing Documents**” means all the loan agreements, security agreements, share subscription agreements, subordinated debt agreements and other documents entered into by the Developer relating to the financing, or refinancing, of the Project as the same may be amended, supplemented or modified from time to time; The parties with whom such Financing Documents are entered into by the Developer shall hereinafter be referred to as the “**Lenders**”.

“**Grant**” shall have the meaning ascribed thereto in Recital (B) above;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Sub-Licensee**” or “**NSL**” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of the Lenders, and proposed to the \*\*\*\*\* for assignment/transfer of the Grant as provided in this Agreement;

“**Notice of Intent**” shall have the meaning ascribed to the term in Article 7.2.2 hereof;

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually;

“**Project**” shall mean design, finance, procurement, construction, development, operation, management, maintenance and transfer of the Facilities as per the terms hereof;

“**Replacement Notice**” shall have the meaning ascribed to the term in the Concession Agreement;

“**Termination Notice**” shall have the meaning ascribed to the term in the Concession Agreement;

### 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 the Lenders.

- 1.2.2 References to Articles are, unless stated otherwise, references to Articles 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 Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Article 1.2 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

## **2 ASSIGNMENT**

### **2.1 Assignment of rights and title**

The Developer hereby assigns the rights, title and interest in the Grant to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the Financing Documents.

## **3 SUBSTITUTION OF THE DEVELOPER**

### **3.1 Rights of substitution**

- 3.1.1 Pursuant to the rights, title and interest assigned under Article 2.1, the Lenders' Representative shall be entitled to substitute the Developer by a NSL under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The \*\*\*\*\* hereby agrees to substitute the Developer by assignment and novation of the Concession Agreement in favour of the NSL selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Lenders or the Lenders' Representative shall not be entitled to operate as the Developer either individually or collectively.

### **3.2 Substitution upon occurrence of Developer Event of Default**

- 3.2.1 Where upon the occurrence of a Developer Event of Default, the\*\*\*\*\* has issued a Termination Notice under the Concession Agreement, then within one hundred and eighty (180) days from the date of issuance of the said Termination Notice, the Lenders (acting directly or through the Lenders' Representative) shall be entitled to intimate the \*\*\*\*\* through the Replacement Notice, and state their intention to substitute the Developer by a NSL, and specifying the name(s) of the NSL that they nominate/propose.

### **3.3 Procedure for substitution**

- 3.3.1 The \*\*\*\*\* and the Developer hereby agree that on or after the date of the Termination Notice being issued, by the \*\*\*\*\*in relation to a Developer Event of Default, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders under the Financing Documents, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Grant to the NSL

upon such NSL's assumption of the liabilities and obligations of the Developer towards the\*\*\*\*\*under the Concession Agreement and towards the Lenders under the Financing Documents, subject to such NSL meeting and conforming to the qualification criteria prescribed by the \*\*\*\*\*at the time of selection of the Developer.

3.3.2 Upon selection of a NSL, the Lenders' Representative shall, through the means of the Replacement Notice, request the \*\*\*\*\*

- (a) transfer the Grant to the NSL, on the same terms and conditions, for the residual Term of the Concession Agreement; and
- (b) enter into a Substitution Agreement with the Lenders' Representative and the NSL on the same terms as are contained in this Agreement.

3.3.3 In the event that the Lenders issue the Replacement Notice to the \*\*\*\*\* within the period specified in Article 3.2.1, the \*\*\*\*\*shall examine the legal, financial and technical capabilities of the NSL to perform the obligations of the Developer in accordance with the terms of the Concession Agreement. Upon the above examination, where the \*\*\*\*\* is so satisfied, as to financial and technical capabilities of the NSL to perform the obligations of the Developer in accordance with the terms of the Concession Agreement, the \*\*\*\*\* shall, within forty five (45) days from the date of such Replacement Notice, consent to the nomination of such NSL, which consent is not to be unreasonably withheld. Provided that in the event of an objection by the \*\*\*\*\* , the Lenders' Representative may propose another NSL whereupon the procedure set forth in this Article 3.3 shall be followed for substitution of such NSL in place of the Developer.

3.3.4 Upon the intimation of the confirmation of the\*\*\*\*\*of the NSL as specified in the Concession Agreement and Clause 3.3.3 above, the\*\*\*\*\* the Developer, the NSL and the Lenders' Representative shall take all due steps, for novation of the Concession Agreement in favour of NSL, transfer of the Grant in favour of NSL, upon which the Concession Agreement shall constitute an agreement between the NSL, the \*\*\*\*\* and the Developer, as novated, amended and supplemented (the "Novated Agreement).

3.3.5 The parties agree that pursuant to the Novated Agreement, all rights and obligations of the Developer under the Concession Agreement (except such rights and obligations as may have accrued prior to the Novated Agreement and the substitution of the Developer by the NSL), shall vest with and be assumed by the NSL and the Developer shall have no rights and shall stand released and discharged in respect thereof.

### **3.4 Selection to be binding**

3.4.1 The decision of the Lenders' Representative and the \*\*\*\*\*in selection of the NSL shall be final and binding on the Developer and shall be deemed to have been made with the concurrence of the Developer. The Developer irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or the \*\*\*\*\*taken pursuant to this Agreement including the transfer, assignment and/or novation of the Grant (and the Concession Agreement) in favour of the NSL. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and the Developer shall have no right or remedy to prevent, obstruct or restrain the \*\*\*\*\* or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Grant as requested by the Lenders' Representative.

- 3.4.2 All actions of the Lenders' Representative hereunder shall be deemed to be by and on behalf of, and expressly authorized by, the Lenders, and be binding upon them.

## **4 TERMINATION OF CONCESSION AGREEMENT**

### **4.1 Termination when no NSL is selected**

In the event that the NSL (as consented to by the\*\*\*\*\* does not execute the Novated Agreement within a period of two hundred and fifteen (215) days from the receipt of the confirmation from the \*\*\*\*\* (to the nomination of the NSL in accordance with the Concession Agreement and Clause 3.3.3 above), the \*\*\*\*\* shall have the right to forthwith terminate this Agreement and the Concession Agreement, as if no Replacement Notice had been issued by the Lenders.

## **5 DURATION OF THE AGREEMENT**

### **5.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earlier to occur of the following events:

- (a) termination of all the Financing Documents; or
- (b) no sum remains to be paid, or is outstanding to the Lenders, under any of the Financing Documents.

## **6 INDEMNITY**

### **6.1 General indemnity**

6.1.1 The Developer will indemnify, defend and hold the \*\*\*\*\*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 Developer of any of its obligations under this Agreement or on account of failure of the Developer to comply with Applicable Laws and Applicable Permits.

6.1.2 The Lenders' Representative will indemnify, defend and hold the \*\*\*\*\*and the Developer 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 Developer's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of lawful acts done in discharge of their functions by the Lenders' Representative, its officers, servants and agents.

### **6.2 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 Article 6.1 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.

## **7 DISPUTE RESOLUTION**

### **7.1 Disputes - Amicable Settlement**

The Parties shall use their respective reasonable endeavours to settle any dispute amicably. If a dispute is not resolved within sixty (60) days after written notice of a dispute by one Party to the other Party then the provisions of Article 7.2 shall apply.

### **7.2 Arbitration**

7.2.1 All disputes arising under this Agreement, which cannot be resolved under Article 7.1 shall be referred to shall be referred to a tribunal comprising three (3) arbitrators under the Indian Arbitration and Conciliation Act, 1996. Each Party to the arbitration shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the “**Arbitral Tribunal**”).

7.2.2 The decision(s) of the Arbitral Tribunal shall be final and binding on the Parties.

7.2.3 The venue of arbitration shall be \*\*\*\*\*.

7.2.4 This Article 7 shall survive the termination or expiry of this Agreement.

7.2.5 The governing law of the arbitration shall be the substantive laws of India and language of arbitration shall be English.

### **7.3 Continued performance**

7.3.1 While any dispute under this Agreement is pending, including the commencement and pendency of any dispute referred to arbitration, the Parties shall continue to perform all of their respective obligations under this Agreement without prejudice to the final determination in accordance with the provisions under this Article 7.

## **8 MISCELLANEOUS PROVISIONS**

### **8.1 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to Article 7, the Courts at \*\*\*\*\*shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **8.2 Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### **8.3 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.

### **8.4 Waiver**

8.4.1 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.

8.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation 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.

### **8.5 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.

### **8.6 Survival**

8.6.1 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.

8.6.2 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.

### **8.7 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 Article 8 of this Agreement or otherwise.

## **8.8 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.

## **8.9 Notices**

All notices, requests, demands or other communication required or permitted to be given under this Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by registered post, postage prepaid or transmitted by facsimile transmission or courier to the other Parties at the address indicated below:-

- (i) In the case of notices to the \*\*\*\*\*  
to: Attention: [●]  
E mail: [●] Facsimile: [●]
- (ii) In the case of notices to Developer, to: Attention: [●]  
E mail: [●] Facsimile: [●]
- (iii) In the case of notices to Lenders' Representative, to: Attention: [●]  
E mail: [●] Facsimile: [●]

or at such other address as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified the Party giving the same in the manner provided in this Article, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Article 8.9 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:-

- (i) sent by mail, except air mail, 10 (Ten) Business Days after posting it;
- (ii) sent by air mail, 6 (Six) Business Days after posting it; and
- (iii) sent by facsimile or e-mail, when confirmation of its transmission has been recorded by the sender's facsimile machine or e-mail account.

## **8.10 Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

## **8.11 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.

**8.12 Original Document**

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement. All counterparts shall constitute but one and the same Agreement.

**IN WITNESS WHEREOF** this Agreement has been executed by the duly authorized representatives of the Parties hereto on the day and year first above written.

FOR AND ON BEHALF OF DELHI INTERNATIONAL AIRPORT PRIVATE LIMITED

BY:  
Name:  
Title:

FOR AND BEHALF OF [●]  
DULY AUTHORISED VIDE RESOLUTION OF THE BOARD OF DIRECTORS

BY:  
Name:  
Title:

SIGNED AND DELIVERED ON BEHALF OF LENDERS' REPRESENTATIVE

BY:  
Name:  
Title

ANNEXURE A  
*[Copy of Concession Agreement to be Inserted]*

*Schedule (8)*

List of Insurances

As per General industry practice like insurance for third party in case of

- Accident,
- For facility against fire, theft, disaster etc.,
- For cargo stored in the facility based on declared value of the same
- Any other insurance as per industry standards