

**REQUEST FOR QUALIFICATION cum PROPOSAL
(RfQ-cum-RfP)**

Notice No.: Film City- YEA/PLNG/234/2022

Volume II

Draft Concession Agreement

**Development of Film City on Design, Build, Finance,
Operate and Transfer**

At

**Sector 21, Yamuna Expressway Industrial Development
Area**

(Phase – 1), Uttar Pradesh

15th October 2022

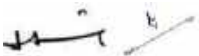


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Part 1

Preliminary

CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this theday of
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BETWEEN

1. [The Governor of Uttar Pradesh] represented by Yamuna Expressway Industrial Development Authority and having its principal office at office no GM Planning Department, First Floor, Commercial Complex, P-2, Sector- Omega I, Greater Noida, Gautam Budh Nagar, Uttar Pradesh, 201308 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part;


AND

2. [●], a company incorporated under the provisions of the Companies Act, 1956/ 2013 and having its registered office at [insert address of concessionaire], (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

As the context may require, the Authority and the Concessionaire will hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:


- A. Government of Uttar Pradesh has procured clearances/ approvals from the concerned authorities for development of a film city having constituents such as the filming facility, film institute, amusement park/ family recreation centre, hospitality, retail, serviced residencies and commercial offices and other filming and supporting assets in the State of Uttar Pradesh in accordance with local building bye laws (herein referred to as the “**Project**” or “**Film City**”) on design, build, finance, operate and transfer (the “**DBFOT**”) basis in accordance with the terms and conditions to be set forth in this Agreement.
- B. The Government of Uttar Pradesh (“**GoUP**”) vide its Government Resolution No. [Yet to conveyed post pre – bid meeting] dated [Yet to conveyed post pre – bid meeting] (“**GoUP Approval**”), approved the implementation of the Project and assigned as Yamuna Expressway Industrial Development Authority as the concerned authority.
- C. Based upon the representations and submissions made by the Authority, the Applicable Permits that are required prior to the implementation of the Project were granted to the Authority from the concerned Government Instrumentalities.
- D. The Authority, had prescribed the technical and commercial terms and conditions, and invited Bids (Request for Qualification cum Proposal or RFQ cum RFP for development,



operation and maintenance of Film the Film City on DBFOT basis), and invited applications by its Request for Qualification cum Proposal No. YEA/PLNG/234/2022 dated 23rd November 2021, as amended from time to time (collectively, “**Request for Qualification cum Proposal**” or “**RFQ cum RFP**”).

- E. After evaluation of the Bids received, the Authority had accepted the Bid of the {selected bidder/ Consortium}, inter alia, {the selected bidder/consortium comprising and (collectively the “**Consortium**”) with as its lead member (the “**Lead Member**”). The Authority issued its Letter of Award No._dated (hereinafter called the “**LOA**”) to the {selected bidder/ Consortium} requiring, inter alia, the execution of this Concession Agreement within 45 (forty five) days of the date of issue thereof.
- F. {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956/ 2013, and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.
- G. {By its letter dated [●], the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof}.
- H. The Authority has {agreed to the said request of the selected bidder/ Consortium and the Concessionaire, and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:



ARTICLE 1

1. DEFINITIONS AND INTERPRETATION


1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 41) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules


1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires,

- a) references to any legislation or any provision thereof shall include amendment or re- enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) references to a **“person”** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e) the words **“include”** and **“including”** are to be construed without limitation and shall be deemed to be followed by **“without limitation”** or **“but not limited to”** whether or not they are followed by such phrases;
- f) references to **“construction”** or **“building”** include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **“construct”** or **“build”** shall be construed accordingly;
- g) references to **“development”** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and **“develop”** shall be construed accordingly;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to **“hour”** shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- j) any reference to day shall mean a reference to a calendar day;



- k) reference to a **“business day”** shall be construed as a reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- n) any reference to any period commencing **“from”** a specified day or date and **“till”** or **“until”** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- o) the words importing singular shall include plural and vice versa;
- p) references to any gender shall include the other and the neutral gender;
- q) **“lakh”** means a hundred thousand (100,000) and **“crore”** means ten million (10,000,000);
- r) **“indebtedness”** shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- s) references to the **“winding-up”, “dissolution”, “insolvency”, or “reorganisation”** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (t) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- u) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- w) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- x) the damages payable by either Party to the other of them, as set forth in this



Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”). In no event shall the aforesaid Damages be more than 10% (ten percent) of the Performance Security; and

- y) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Independent Engineer shall be provided free of cost and in 3 (three) copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3. **Measurements and arithmetic conventions**

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

1.4. **Priority of agreements, clauses and schedules**

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

- a) this Agreement; and
- b) all other agreements and documents forming part hereof or referred to herein,
i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2. Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- f) between any value written in numerals and that in words, the latter shall prevail.



Part II

The Concession

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V. Chand




ARTICLE 2

2. SCOPE OF PROJECT

2.1. Scope of Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:

- (a) design, development and construction of the Film City/ Project on the Site set forth in **Schedule A** together with provision of respective Project Facilities as specified in **Schedule B**, and in conformity with the Specifications and Standards set forth in **Schedule C**;
- (b) operation, maintenance and management of the Film City/ Project in accordance with the provisions of this Agreement;
- (c) development, operation and maintenance of Site as specified in **Schedule–A** and in accordance with the provisions of this Agreement; and
- (d) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.



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ARTICLE 3

3. GRANT OF CONCESSION

3.1. The Concession

- 3.1.1. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire, the concession set forth herein including the exclusive right, licence and authority to develop, operate and maintain the Film City/ Project (“**Concession**”) for an initial period of 60 (sixty) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project.

Provided further that, at any time not earlier than 55th (Fifty fifth) anniversary of the Appointed Date and no later than 57th (Fifty seventh) anniversary of the Appointed Date, intimate the Authority about its interest and request for renewing/ extending the term of this Concession by another period of 30 (thirty) years in accordance with the provisions in Clause 30.6. While making such request, the Concessionaire shall submit a confirmation that it is agreeable to participate in the international competitive bidding process for the determination of the Annual Premium for an additional period of 30 (thirty) years, in the form and manner, as may be prescribed by the Authority, at such time, and in any such case of international competitive bidding: the Concessionaire shall have a right to match the highest bid, if its bid is within 10.00% of the highest bid that may be offered at that time in accordance with the terms and conditions of the bidding documents issued at such time,


- a. the Affiliate(s) of the Concessionaire shall not be qualified, either directly or indirectly, participating in any such bidding process; and
- b. it is clarified the Concessionaire shall be deemed to be qualified to submit the financial bid without being required to participate in the pre-qualification process and shall not be required to submit any documents for pre-qualification.

Provided further that, in the event the Project is not expanded by the Concessionaire in accordance with the provisions of this Agreement or the Concessionaire has been in material default of the provisions of this Agreement, then, the Authority shall not be under any obligation to extend the Concession Period or provide the right to match the highest bid to the Concessionaire in accordance with this Clause 3.1.1.

In any event, at all times, any decision concerning the extension of the Concession Period shall vest with the Authority.

- 3.1.2. Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- a) Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- b) design, finance and construct the Film City/ Project;
- c) operate, manage and maintain the Project and regulate the use thereof by third parties;
- d) collect Gross Revenue from the Project or any part thereof;
- e) perform and fulfil all of the Concessionaire’s obligations under and in accordance



with this Agreement;

- f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- g) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Film City/ Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.



ARTICLE 4

4. CONDITIONS PRECEDENT

4.1. Conditions Precedent

4.1.1. Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 22, 27, 37 and 40, or unless the context otherwise requires, 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 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

4.1.2. The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 90 (ninety) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 180 (one hundred eighty) days of the notice, or such longer period not exceeding an additional 180 (one hundred eighty) days, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) procured for the Concessionaire the 90% Right of Way to the Site in accordance with the provisions of Clauses 10.3.1 and 10.3.2;
- (b) procured all Applicable Permits relating to environmental protection and conservation in respect to at least 90% (ninety percent) of the land required for the Project and forming part of the Site; and
- (c) procured forest clearance for and in respect of at least 90% (ninety per cent) of the land required for the Project and forming part of the Site.
- (d) caused the execution of the following relevant agreements:
 - i. Escrow agreement in the form provided in Schedule L
 - ii. Substitution Agreement in the form provided in Schedule O
 - iii. Shareholders Agreement in the form provided in Schedule P

by itself, GoI or other Government Instrumentalities, as the case may be, upon receiving its duly executed copy from the Concessionaire and compliance of all the terms thereunder respectively, which may be necessary for the execution thereof.

Provided that upon request in writing by the Authority, the Concessionaire may, in its discretion, grant extension of time, not exceeding 180 (one hundred and eighty) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3. The Conditions Precedent required to be satisfied by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

- a) provided Performance Security to the Authority;
- b) executed and procured execution of the Escrow Agreement in the form provided in Schedule L;
- c) executed and procured execution of the Substitution Agreement in the form provided



in Schedule O;

- d) executed and procured execution of the Shareholders' Agreement in the form provided in Schedule P;
- e) procured all the Applicable Permits as specified in Schedule D unconditionally, or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full, and such Applicable Permits are in full force and effect;
- f) executed the Financing Agreements for Phase I and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- g) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- h) delivered to the Authority {from the selected bidder/ Consortium Members, their/its respective} confirmation of the correctness of the representations and warranties set forth in Sub-clauses (j), (k), (l) and (m) of Clause 7.1 of this Agreement; and
- i) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.1.4. Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5. The Parties shall notify each other in writing at least once in a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2. Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.

4.3. Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the



Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4. **Deemed Termination upon delay**

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.




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ARTICLE 5

5. OBLIGATIONS OF THE CONCESSIONAIRE

5.1. Obligations of the Concessionaire

- 5.1.1. Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Film City/ Project, in accordance with the provisions of this Agreement, and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2. The Concessionaire shall make the investment in the Project in a phased manner as set out in Annexure – I hereto.
- 5.1.3. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.4. The Concessionaire shall, at all times during the subsistence of this Agreement, comply with all the conditions stipulated in the Applicable Permits/Approvals or any substitute and/ or consequential approvals necessary to fulfil its obligations under this Agreement.
- 5.1.5. Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.6. The Concessionaire shall, from time to time, undertake expansion or augmentation of the Project Facilities in accordance with the provisions of this Agreement and Good Industry Practice
- 5.1.7. The Concessionaire shall, at all times (including during the Construction Period), comply with all instructions and requirements of Authority and allow the Authority to inspect the Site and the Project from time to time at their own cost and with reasonable advance notice to the Concessionaire.
- 5.1.8. Save and except as expressly provided in this Agreement, the Concessionaire shall, at all times during the subsistence of this Agreement, pay all taxes, levies, duties, cesses and all other statutory charges, dues, assessments or outgoings payable in respect of the Film City/ Project, and other services, or in respect of the materials stored therein, which may be levied by any Government Instrumentality.
- 5.1.9. The Concessionaire shall comply with the building bye laws of YEIDA.
- 5.1.10. The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
 - (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Film City/ Project;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;



- (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (f) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
- (g) procure that all facilities and amenities within the Project are operated and maintained in accordance with Good Industry Practice and have non-discriminatory access for use of the same in accordance with the provisions of this Agreement and Applicable Laws;
- (h) procure the supply of electricity to the Project from the grid, including procuring standby arrangements for supply of electricity necessary for maintenance of Film City in the event of outages or failure of electricity supply from the grid;
- (i) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (j) transfer the Project Assets to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.
- (k) The concessionaire shall ensure the Internal development of the site as per the building bye laws of the authority (i.e. YEIDA)
- (l) The concessionaire shall not allot any plot without the approved layout plan
- (m) The minimum extent of sub licensing of land shall be 4,000 sqms. However, this limit shall not be applicable for built up spaces given on rent.

5.2. Obligations relating to Project Agreements

- 5.2.1. It is expressly agreed that the Concessionaire shall, at all times during the Concession Period, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreements or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2. The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3. The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any



replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (“**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(s) of each of the Project Agreements, where under such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.5. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of all EPC Contractors or O&M Contractors and execution of all EPC Contracts or O&M Contracts shall be subject to the prior approval of the Authority, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. The Authority shall not unreasonably withhold its approval. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

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

5.3.1. The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

5.3.2. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the Concessionaire; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority/Government of India (as the case may be), the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. The Authority shall not unreasonably withhold its approval. It is also agreed that the Authority shall not be liable in any manner on account of grant or



otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

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


5.4. Obligations relating to Golden Share

5.4.1. The Concessionaire and the {selected bidder/ Consortium Members} shall execute an agreement with the Authority, substantially in the form specified at **Schedule-P** (the “**Shareholders’ Agreement**”), providing for the issue and allotment of one non-transferable Equity share of the Company (the “**Golden Share**”) in favour of the Authority, and shall provide for the following:

- (a) appointment of 2 (two) nominees of the Authority on the Board of Directors of the Company;
- (b) an irrevocable undertaking that the rights vested in the Authority shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Company or any of its Associates or Affiliates;
- (c) an irrevocable undertaking that any divestment of Equity in the Company shall not in any manner affect the rights of the Authority herein and that the successors, assigns and substitutes of the Company shall be bound by such undertaking; and
- (d) any other matter mutually agreed upon between the Parties.

5.4.2. The Parties expressly agree that the Shareholders’ Agreement shall further provide that so long as the Authority holds the Golden Share, an affirmative vote of the Authority or the Directors appointed by the Authority shall be necessary and required for the passing of, by the General Meeting of the Company or the meeting of Board of Directors thereof, as the case may be, any resolution providing for all or any of the following or any matter incidental or consequential thereto:

- (a) to alter or add to the provisions of the memorandum;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Company;
- (d) to purchase the Company’s own shares or specified securities;



- (e) to issue sweat equity shares;
- (f) to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
- (g) to reduce the share capital;
- (h) to remove the registered office of the Company outside the limits of the State;
- (i) to commence any new lines of business;
- (j) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- (k) to consent to a director or his relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the Company;
- (l) to make inter-corporate-loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10% (ten per cent) of the Company's paid-up share capital;
- (m) to apply to a court to wind-up the Company;
- (n) to wind-up the Company voluntarily;
- (o) for various other matters pertaining to the winding up of the Company;
- (p) to change the name of the Project; and
- (q) any other matter which is required by the Companies Act, 2013 (or the relevant Act in force) or any statutory re-enactment thereof to be passed by a special resolution of the shareholders of the Company.
- (r) The Parties agree that the Shareholders' Agreement shall provide that till the time the Authority holds the Golden Share, it shall be entitled to nominate two persons of its choice for appointment as non-retiring Directors on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such persons as Directors in accordance with Applicable Laws.

5.5. Obligations relating to procurement of goods and services

5.5.1. The Concessionaire agrees and undertakes that it shall procure contracts, goods and services for the construction and operation of the Project in a fair, transparent and efficient manner, and without any undue favour or discrimination in this behalf. In pursuance hereof, it shall frame a procurement policy specifying the principles and procedures that it shall follow in awarding contracts for supply of goods and services, and shall place the policy on its website for the information of general public and all interested parties. The policy shall also include the principles and procedures to be followed for leasing, licensing, sub-licensing, or grant or allocation of any space, building, rights or privileges to private entities.

5.5.2. For procurement of goods, works or services and for award of leases, licences, sub-licences or any other rights or privilege where the consideration exceeds Rs. 25 Crore (Rupees Twenty Five Crore) in any Accounting Year (collectively the "**Contracts**"), the Concessionaire shall invite offers through open competitive bidding by means of e-tendering and shall select the awardees in accordance with the policy specified under Clause 5.5.1. For the avoidance of doubt, the Parties agree that the Concessionaire may, in its discretion, pre-qualify and short-list the applicants in a fair and transparent manner for ensuring that only experienced and qualified applicants are finally selected in a manner that is commercially prudent and protects the interests of the users. The Parties further agree that the Concessionaire shall not enter into any Associated Firm except with



the prior consent of the Authority, which consent shall not be unreasonably withheld. The Parties also agree that before granting any consent hereunder, the Authority shall be entitled to seek such information as it may reasonably require in relation to the Contract and the Associated Firm with whom the Contract is proposed to be executed and in the event the Authority does not approve or reject the proposal within 30 (thirty) days of the date on which the required information has been provided, it shall be deemed that the Authority has no objection to such Contract.

Explanation:

As used in this Clause, the expression "**Associated Firm**" shall have the same meaning as ascribed to the expression "**Associate**", provided that the reference to 50% (fifty percent) of voting shares in respect of an Associate shall be read as 10% (ten per cent) of voting shares in the case of an Associated Firm.

5.6. Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.7. Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions. The Concessionaire shall comply with the Applicable Laws and the Applicable Permits in relation to the hiring of local personnel, and shall endeavor to employ as many local personnel preferably members of Project Affected Families during the implementation, development and operations of the Project.

5.8. Obligations relating to medical aid

For providing Emergency medical aid to users, the Concessionaire shall set up and operate a medical aid post at the Project equipped to render first aid and to assist in accessing Emergency medical aid from hospitals in the vicinity.

5.9. Obligations related to aesthetic quality of the Project


The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Film City and achieve integration of the Film City with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Concessionaire shall engage professional architects and town planners of repute for ensuring that the design of the Film City meets the aforesaid aesthetic standards.

5.10. Obligations relating to noise control

The Concessionaire shall take all such measures as may be necessary in accordance with Applicable Laws and Good Industry Practice to control and mitigate the noise arising from the Project and its impact on users and the neighborhood.

5.11. Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and



observing and performing its obligations and liabilities under this Agreement, the Concessionaire shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.12. Branding of the Project

The Film City or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. Save and except as may be necessary in the normal course of business, the Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Film City to advertise or display its own identity, brand equity or business interests, including those of its shareholders. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at the spots where other public notices are displayed for the users. It is further agreed that the Film City shall be known, promoted, displayed and advertised by the name [*insert name*] Film City.

5.13. Facilities for differently abled and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the differently abled and for elderly persons using the Project.



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ARTICLE 6

6. OBLIGATIONS OF THE AUTHORITY

6.1. Obligations of the Authority

6.1.1. The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2. The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for construction, operation and management of the Project, at the cost and expense of the Concessionaire;
- (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to similar utility customers receiving substantially equivalent services;
- (c) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, procure Applicable Permits, if any, relating to environmental protection and conservation of the Film City/ Project, at the cost and expense of the Concessionaire;
- (d) procure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
- (e) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Project;
- (f) subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate traffic at the Site;
- (g) assist the Concessionaire in procuring assistance from appropriate GOI agency for regulation of traffic, removal of trespassers and security on or at the Project;
- (h) not 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;
- (i) support, cooperate with and facilitate the Concessionaire in the construction, operation and maintenance of the Film City/ Project in accordance with the provisions of this Agreement and in accordance with Applicable Laws;
- (j) upon written request from the Concessionaire and subject to the provisions of Clause 5.7, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their respective obligations under this Agreement and the Project Agreements;
- (k) assist the Concessionaire in procuring at Concessionaire's cost, Right of Way for setting up of water pipes and electric cables to the Site;.

6.1.3. The Authority shall, on a best endeavour basis ensure the execution of State Government Support Agreement in the format set out in Annexure III.



6.1.4. The Authority shall provide the external infrastructure development activities namely road, sewer, drainage, power lines upto the project boundary.

6.2. Maintenance obligations prior to Appointed Date

During the Development Period, the Authority shall maintain the Site, at its own cost and expense, so that its condition is at no time materially inferior as compared to its condition 7 (seven) days prior to the Bid Date. For the avoidance of doubt, the Authority shall undertake only routine maintenance of the Site during the Development Period, and it shall undertake special repairs only in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rain.

6.3. Obligations relating to Reserved Services

6.3.1. The Authority agrees and undertakes that in order to enable the Concessionaire to discharge its obligations under this Agreement and Applicable Laws, the Authority shall discharge its own functions efficiently and in accordance with Good Industry Practice.

6.4. Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government of India or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1(one) year prior to expiry of the Concession Period.



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ARTICLE 7

7. REPRESENTATIONS AND WARRANTIES

7.1. Representations and warranties of the Concessionaire


The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the term thereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid by the Selected Bidder and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (j) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {selected bidder/ Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement and until 7th anniversary of the COD for Phase I of the Project; and that no Consortium Member whose technical and financial capacity was evaluated



for the purposes of pre-qualification and short-listing in response to the Request for Qualification cum Proposal shall together {with its/their Associates}, for a period of 7 (seven) years from the COD for Phase I of the Project, hold less than 26% (twenty-six per cent) of such Equity; and that no O&M Member, as the case may be, whose O&M experience was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification cum Proposal shall commit to operate the Project for a period of not less than 7 years from the date of commercial operations of the Project, failing which the Concession Agreement is liable to be terminated. For avoidance of doubt, it is clarified that if the O&M Member, as the case may be, is unable to meet the performance standards set forth in the Concession Agreement then the Concessionaire can replace the operator of the Project with prior written approval from the Authority. The substitute operator shall continue to meet the O&M Experience defined in the RfQ-cum-RfP;

- (k) {the Selected Bidder/Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (l) {the Selected bidder/each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) no Associates shall hold more than 26% (twenty-six percent) of the total Equity ownership of the Concessionaire; and cannot appoint any director in the board of directors of the Concessionaire.
- (n) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification cum Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (r) all undertakings and obligations of the Concessionaire arising from the Request for Qualification cum Proposal or otherwise shall be binding on the Concessionaire as if they form part of this Agreement; and
- (s) 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 {or those of any member of the Consortium} or any Applicable Laws or any covenant,



contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.

7.2. Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it 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 Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects; and
- (g) it has good and valid right to the Site, and
- (h) it has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3. Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of 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 nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.




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ARTICLE 8

8. DISCLAIMER

8.1. Disclaimer

- 8.1.1. The Concessionaire acknowledges on its behalf and on behalf of the Selected Bidder/Consortium members and their Associates that prior to the execution of this Agreement, the Selected Bidder/Consortium members and their Associates and the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification cum Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it herein or under the Applicable Laws and the Concessionaire confirms on its behalf and on behalf of the Selected Bidder that they shall have no claim whatsoever against the Authority in this regard.
- 8.1.2. The Concessionaire acknowledges and hereby accepts on its behalf and on behalf of the Selected Bidder/Consortium members and their Associates, the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the Selected Bidder/Consortium members and their Associates or any person claiming through or under any of them.
- 8.1.3. The Parties including Selected Bidder/Consortium members and their Associates agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4. In the event that either Party including Selected Bidder/Consortium members and their Associates becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.



Part III
Development and Operations

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V. Chand



ARTICLE 9

9. PERFORMANCE SECURITY

9.1. Performance Security

- 9.1.1. The Concessionaire shall be required to provide performance security to the Authority no later than 180 (one hundred and eighty days) from the date of issue of the LOA in the form set forth in **Schedule E** (the “**Performance Security**”), the Performance Security shall not be less than {2% (Two percent)} of the Estimated Project Cost subject to any increase or decrease in the Estimated Project Cost that may occur during performance of this Agreement.
- 9.1.2. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of the LOA, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2. Appropriation of Performance Security


Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of 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 Authority shall be entitled to terminate this Agreement in accordance with Article 30. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 30.

9.3. Release of Performance Security

The Performance Security shall remain in force and effect until the end of 2 (two) years from COD of the Project; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

9.4. Deemed Performance Security

The Parties expressly agree that upon release of the Performance Security in accordance



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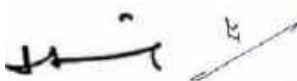
with the provision of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire Concession Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 24.3, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and on all amounts due and payable by the Concessionaire to the Authority, and the Authority shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Concessionaire in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of a Concessionaire Default shall be liable to appropriation hereunder.

9.5. Appropriation of Deemed Performance Security

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6. References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.



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ARTICLE 10

10. RIGHT OF WAY

10.1. The Site

The site of the Film City/ Project shall comprise the construction and development of assets described in **Schedule A** and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licence under and in accordance with this Agreement (the “**Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the construction and development of assets required for the Project as set forth in Schedule A.

10.2. Licence, Access and Right of Way

10.2.1. The Authority hereby grants to the Concessionaire, subject to security restrictions and other terms of this Agreement, access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2. In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule A hereto as the Site, on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Site, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3. The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the Film City/ Project is open to users at all times during the Concession Period, save and except during the hours for which closure thereof shall have been permitted by the Authority.

10.2.4. It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5. The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of



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the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6. It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3. Procurement of the Site

10.3.1. Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2. Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Site required and necessary for the Project, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the period for the achievement of the Financial Close shall be extended by the Authority in accordance with the provisions of Clause 4.1.2. The Parties also acknowledge and agree that the conditions specified in this Clause 10.3.2 shall not be modified or waived by either Party.

10.3.3. On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over such portion of the Site as has been handed over to the Concessionaire and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4. The Authority shall make best efforts to procure and grant, no later than 180 (one hundred and eighty) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, and any such delay adversely affects the Construction Works, then, the Authority shall consider granting the reasonable extension in the Concession Period at the written request of the Concessionaire. Provided that, in any such case, the extension to the Concession Period shall not be longer than the delayed period. Provided that, the occurrence of any such delay in the grant of Right of Way, will not have any impact whatsoever on the rights, interests, entitlements, benefits, etc. of the Authority that it



may have under and in accordance with this Agreement.

10.3.5. Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon in a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 180 (one hundred and eighty) days of the Appointed Date shall be completed on or before the Scheduled Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.3.2.

10.3.6. The Authority shall procure any additional land that may be required construction of works specified in Change of Scope Order issued under Article 16, in accordance with the provision of this Agreement, and upon procurement thereof, such land shall form part of the Site; provided that the land to be acquired by the Authority hereunder shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with accordingly, save and except that Damages for delay in procurement thereof shall commence after a period of 270 (two hundred and seventy) days from Appointed Date, instead of 90 (ninety) days as specified in Clause 10.3.4. For the avoidance of doubt, the Parties agree that any land required, in addition to the land included in Schedule A, shall be acquired at the sole discretion of the Authority and the Concessionaire shall have no right or claim in the event the Authority declines any such acquisition in whole or in part.

10.4. **Site to be free from Encumbrances**

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5. **Protection of Site from Encumbrances**

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6. **Special/temporary right of way**

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

10.7. **Access to the Authority and Independent Engineer**



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The license, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under the Agreement.

10.8. Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.



ARTICLE 11

11. UTILITIES, ASSOCIATED ROADS AND TREES

11.1. Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake the proceedings for acquisition of any right of way necessary for such diversion.

11.2. Shifting of obstructing utilities

11.2.1. The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a Material Adverse Effect on the development, operation or maintenance of the Project. The cost of such shifting shall be borne by the Authority in accordance with the payment terms specified in Clause 11.2.2, or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.2.2. The Concessionaire shall, after commencement of work in accordance with Clause 11.2.1, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 90 (ninety) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

11.3. New utilities and transport systems

11.3.1. The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities; provided that the laying of such telephone lines, water pipes, electric cables or other public utilities do not in any way adversely impact the operations of the Project. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or Damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3 shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2. The Authority may, by notice require the Concessionaire to connect any adjoining transport system, including a mass rapid transit system, approach roads, overbridges/underbridges, over-passes or under-passes, to the Project. Upon receipt of a notice hereunder, the connecting portion thereof falling within the Site shall be constructed by the Concessionaire in accordance with Article 16, and the maintenance thereof shall be undertaken by the Concessionaire at the Authority's cost in accordance



with the provisions of Clause 17.1.3. For the avoidance of doubt, the provisions of this Clause 11.3.2 shall not apply to a rail link which may be constructed on such terms as the Parties may mutually determine. Provided further that the provisions of this clause shall not apply to any utilities and transport systems that have been specified in the scope of the Project, or is necessary in meeting the obligations of the Concessionaire.

11.4. **Felling of trees**

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Film City/ Project. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority.



ARTICLE 12

12. CONSTRUCTION OF THE FILM CITY

12.1. Obligations prior to commencement of construction

12.1.1. Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in **Schedule F**;
- (b) appoint its representative duly authorised to deal with the Authority and the Independent Engineer in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits;
- (d) make its own arrangements for quarrying and procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

12.2. Drawings

12.2.1. In respect of the Concessionaire's obligations relating to the Drawings of the Film City as set forth in Schedule G, the following shall apply:

- a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion, 3 (three) three hard copies and 1 (one) soft copy of Drawings to the Independent Engineer for review;
- b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.
- d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.
- e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall



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the Independent Engineer or the Authority be liable for the same in any manner.

- f) Within 90 (ninety) days of COD for each Phase, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium and manner as may be acceptable to the Authority, reflecting the Film City/ Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Film City and setback lines, if any, of the buildings and structures forming part of Project Facilities

12.3. Construction of the Film City

- 12.3.1. On or after the Appointed Date, the Concessionaire shall undertake construction of the Film City/ Project as specified in Schedule B, and in conformity with the Specifications and Standards set forth in Schedule C. Phase I of the Project shall be completed by the Concessionaire within 1095 days (one thousand ninety five days) from appointed date Phase II and Phase III of the Project shall be completed by the Concessionaire within 2555 days (two thousand five hundred fifty five days) from the signing of this Agreement. Notwithstanding anything contained herein, the Project shall be completed within 10 (Ten) years from the Appointed Date in accordance with the time schedule mentioned in Schedule F (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that construction of the Project (as per each Phase) shall be completed on or before the Scheduled Completion Date.
- 12.3.2. The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule F. In the event that the Concessionaire fails to achieve any Project Milestone defined for each phase within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule F, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule F shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule F has been amended as above; provided further that in the event COD for Phase I is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 12.3.3. In the event that the Project is not completed and COD for Phase I does not occur within days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.



ARTICLE 13

13. MONITORING OF CONSTRUCTION

13.1. Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress (both physical and financial) of the Construction Works executed and next month's construction plan along with other relevant information as may be required by the Independent Engineer or the Authority.

13.2. Inspection

During the Construction Period, the Independent Engineer shall inspect the Project works, at least once a month and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Project Completion Schedule, Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3. Tests

13.3.1. For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice, Applicable Laws, Applicable Permits and terms of this Agreement for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice, Applicable Laws, Applicable Permits and terms of this Agreement. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. Provided, however, that the Independent Engineer may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Engineer for discharging its functions hereunder. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2. In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications



and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4. **Delays during construction**

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project is not likely to be completed by the Scheduled Completion Date, notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Authority and the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD for Phase I.

13.5. **Suspension of unsafe Construction Works**

13.5.1. Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the users or any other person on or about the Project. Provided, however, that in case of an emergency, the Authority may suo moto issue the notice referred to hereinabove.

13.5.2. The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3. Subject to the provisions of Clause 27.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”) shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.


13.6. **Video recording**

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three) hour digital video disc or any substitute thereof, covering the status and progress of



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Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) day of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.



ARTICLE 14

14. COMPLETION CERTIFICATE

14.1. Tests

14.1.1. No later than 90 (ninety) days prior to the likely completion of the respective phase of the Project, the Concessionaire shall notify the Authority and the Independent Engineer of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof.

14.1.2. All Tests shall be conducted in accordance with Schedule H at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, Applicable Laws, Applicable Permits and terms of this Agreement, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards, Applicable Laws, Applicable Permits and terms of this agreement. The Independent Engineer shall submit a report to the Authority indicating the success/ failure of the Tests.

14.2. Completion and Functionality Certificate

Upon completion of the Construction Works, and the Independent Engineer shall determine the Tests to be successful or not and shall issue a report to the Authority regarding the same. The Authority or such concerned authority (as the case may be) shall forthwith issue to the Concessionaire the completion and functionality certificate ("Completion and Functionality Certificate").

14.3. Provisional Certificate

14.3.1. The Authority or the concerned authority (as the case may be) may, at the request of the Concessionaire, issue a provisional certificate of completion if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed by the Independent Engineer, concerned authority and the Concessionaire (the "**Punch List**"); provided that the Authority or the Concerned Authority shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority or the



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concerned authority (as the case may be).

14.3.2. The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project, if it can be safely and reliably placed in commercial operation in accordance with the provisions of Clause 14.3.1. Upon issue of such Provisional Certificate, the provisions of this Agreement shall apply to such completed part of the Project, and the rights and obligations of the Concessionaire for and in respect of such completed part of the Project shall be construed accordingly.

14.4. Completion of Punch List items

14.4.1. All items in the Punch List shall be completed by the Concessionaire within 120 (one hundred and twenty) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2. Upon completion of all Punch List items, the Independent Engineer shall conduct Tests, if required and issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5. Withholding of Provisional or Completion Certificate

14.5.1. If the Independent Engineer determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2. Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer, issue by itself or direct the concerned authority (as the case may be) to issue a Provisional Certificate under Clause 14.3 or Completion Certificate under Clause 14.2.

14.6. Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the report to the Authority, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be



entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

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ARTICLE 15

15. ENTRY INTO COMMERCIAL SERVICE

15.1. Commercial Operation Date (COD)

15.1.1. Each Phase of the Project shall be deemed to be complete in accordance with Schedule F when the Completion and Functionality Certificate or the Provisional certificate for such Phase, as the case may be, is issued under the provision of Article 14, and accordingly the Commercial Operation Date of the respective Phase of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued and the Concessionaire shall have obtained the Applicable Permits, to operate the respective Phase of the Project (“COD”). The Project shall enter into commercial service on COD for Phase I whereupon the Concessionaire shall be entitled to operate the Project in accordance with the provisions of this Agreement.

15.1.2. In the event that the Authority prevents, or causes to be prevented, or in any manner delays the entry of the Project into commercial service after issuance of Completion Certificate or the Provisional Certificate, as the case may be, or where such delay occurs in the issuance of such certificate by the concerned authority for any reason attributable to the concerned authority or the Authority, as the case may be, the Concessionaire may declare COD for respective Phase and notify the Authority forthwith. In the event of any Dispute relating to the declaration of COD for respective Phase hereunder, the Dispute Resolution Procedure shall apply.

15.2. Damages for delay

Subject to the provisions of Clause 12.3, if COD for respective Phase does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD for respective Phase is achieved.



ARTICLE 16

16. CHANGE OF SCOPE

16.1. Change of Scope

16.1.1. The Authority may, notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 16.1.4, require the provision of additional works and services shall be considered as change of scope (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2. If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

16.1.3. Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.1.4. The Concessionaire acknowledges and agrees that any expansion of the Project, which is necessary for compliance of the provisions of this Agreement, shall not form part of Change of Scope and shall be undertaken at the cost and expense of the Concessionaire.

16.2. Procedure for Change of Scope

16.2.1. In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).

16.2.2. Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority within a period of 45 (forty-five) days, such information as is necessary, together with preliminary Documentation in support of:

- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule or Phase Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

16.2.3. In the event the Concessionaire proposes that a Change of Scope is required, it shall submit to the Authority a proposal with preliminary Drawings and other Documentation including information like implementation time and cost for consideration.

16.2.4. Upon receipt of information set forth in Clause 16.2.2 and 16.2.3 above, if the



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Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.5. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire as a Change of Scope under this Article 16.

16.3. **Payment for Change of Scope**

Within 30 (Thirty) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.


16.4. **Restrictions on certain works**

16.4.1. Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Project by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Project and issuing the Provisional Certificate.

16.4.2. Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty-five per cent) of the Total Project Cost at any time during the Concession Period.

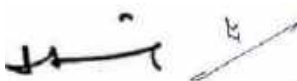
16.5. **Power of the Authority to undertake works**

16.5.1. Notwithstanding anything to the contrary contained in Clauses 16.1.1 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2.5% (two point five per cent) of the bid amount to the Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has



participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 16.5.1 if such works or services cause a Material Adverse Effect on the Concessionaire.

16.5.2. The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes disruption in operation and management of the Project. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 16.5.



ARTICLE 17

17. OPERATION AND MAINTENANCE

17.1. O&M obligations of the Concessionaire

17.1.1. During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement, Applicable Laws and Applicable Permits either by itself, or through O&M Contractors and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted movement of users on the Project, including prevention of loss or damage thereto, during normal operating conditions;
- (b) collecting requisite fee from users;
- (c) carrying out periodic preventive maintenance of the Project;
- (d) undertaking routine maintenance including prompt repairs of cracks, joints, drainage systems, embankments, structures, buildings, pavement markings, signaling systems, communication systems, lighting, road signs and other equipment;
- (e) undertaking major maintenance such as repairs to structures, repairs and refurbishment of equipment, signaling and communication system;
- (f) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorized use of the Project;
- (g) protection and conservation of the environment and provision of equipment and materials therefor;
- (h) maintaining a public relations unit to interface with and attend to suggestions from the users, Government Instrumentalities, media and other agencies in accordance with the Applicable Laws, for providing the requisite information;
- (i) complying with Safety Requirements in accordance with Article 18;
- (j) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (k) maintaining a high standard of cleanliness and hygiene on the Project;
- (l) taking all measures relating to fire precautions in accordance with Applicable Laws, Applicable Permits and Good Industry Practice; and
- (m) providing all the requisite information, data, operating statistics, etc., as may be required by the Authority, any of the Government Instrumentality, GoUP or GOI, from time to time.

17.1.2. The Concessionaire shall promptly remove from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

17.1.3. The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-bridges/ under-bridges, over-passes, under-passes or other structures situated on the Site but not forming part of the Project.

17.2. Maintenance Manual

17.2.1. No later than 90 (ninety) days prior to the Scheduled Completion Date, the



Concessionaire shall, in consultation with the Independent Engineer, evolve a repair, operation and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.2 shall apply, mutatis mutandis, to such revision.

17.2.2. Without prejudice to the provision of Clause 17.2.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.3. **Maintenance Programme**

17.3.1. On or before COD for each Phase and no later than 45 (forty-five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Project;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for major maintenance works and the scope thereof.


17.3.2. Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.3.3. The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.3.1 and 17.3.2 shall apply mutatis mutandis to such modifications.

17.4. **Damages for breach of maintenance obligations**

17.4.1. In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) [0.1]% ([zero point one] per cent) of Gross Revenue or 0.1% (zero point one per cent) of Annual Premium **whichever is higher** and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.4.2. The Damages set forth in Clause 17.4.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a



smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.5. Authority's right to take remedial measures

17.5.1. In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.5.1 shall be without prejudice to its rights and remedies provided under Clause 17.4.

17.5.2. The Authority has the right, to recover the costs and Damages specified in Clause 17.5.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.5.2 and debit the same to O&M Expenses.

17.6. Overriding powers of the Authority

17.6.1. If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.6.2. In the event that the Concessionaire, upon notice under Clause 17.6.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.6.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.5 along with the Damages specified therein.

17.7. Excuse from performance of obligations

17.7.1. The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to users on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or



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- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project.
Provided that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Engineer without any delay;

Provided further that the Concessionaire shall keep all unaffected parts of the Project open to users, provided they can be operated safely.


17.8. Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers or obstructions are erected or placed by any Government Instrumentality on the Project except for reasons of Emergency, national security, or law and order. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions, or closing down of approach roads to the Project that may cause a Material Adverse Effect on the movement to and from the Project.

17.9. Electricity and water supply

17.9.1. The Concessionaire shall procure water and electricity, as may be necessary for operation of the Project, from the respective local utilities upon payment of charges in accordance with Applicable Laws. It is agreed that the Concessionaire shall install its own plant for standby supply of electricity as may be necessary for operation of the Project.

17.9.2. The Concessionaire shall comply with the provisions of the Applicable Laws and the rules and regulations made thereunder for the purposes of the availing, generation or distribution of the electricity, for the purposes of the Project.



ARTICLE 18

18. SAFETY REQUIREMENTS

18.1. Safety Requirements

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the users and other persons on or about the Project. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements prescribed from time to time and the requirements set forth in **Schedule I** (the “**Safety Requirements**”).

18.2. Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.



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ARTICLE 19

19. MONITORING OF OPERATION AND MAINTENANCE

19.1. Quarterly and Monthly status reports

19.1.1. At all times during the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each calendar quarter, furnish to the Authority and the Independent Engineer a quarterly report, in a form acceptable to the Authority, stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.1.2. At all times during Operation Period, the Concessionaire shall, no later than 10 (ten) days after the close of each quarter, furnish to the Authority and the Independent Engineer a quarterly management report which shall be a summary of:

- (a) performance indicators achieved in the quarter, along with an analysis of reasons for failures, if any, and proposals to remedy the same; and
- (b) key operational hurdles and deliverables expected in the succeeding quarter along with strategies for addressing the same and for otherwise improving the Project's operational performance.


19.2. Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, notify the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the users and Project. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.2, accidents and unusual occurrences on the Project shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any damage to or obstruction at the Project;
- (d) outages or failure of electricity supply or water supply at the Project;
- (e) communication failure affecting the operation of the Project;
- (f) any incident of theft or robbery at the Project;
- (g) any incident of breach of security at the Project;
- (h) smoke or fire;
- (i) flooding of the Project; and
- (j) such other relevant information as may be reasonably required by the Authority or the Independent Engineer.

19.3. Inspection

The Independent Engineer shall inspect the Project at least once a month. It shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance




Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.4. Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the adherence of the Project to Maintenance Requirement shall be borne solely by the Concessionaire.

19.5. Remedial measures

- 19.5.1. The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.5 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 19.5.2. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.4.



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ARTICLE 20

20. INDEPENDENT ENGINEER

20.1. Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in **Schedule J**, to be the independent consultant under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 180 (one hundred and eighty days) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of 3 (three) years in accordance with the provisions of Schedule J, and such procedure shall be repeated after expiry of each appointment.

20.2. Duties and functions

20.2.1. The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in **Schedule K**.

20.2.2. The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule K, in a form satisfactory to the Authority.

20.2.3. A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

20.2.4. A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

20.3. Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in **Schedule J**, one-half of all of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

20.4. Termination of appointment

20.4.1. The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 20.1.

20.4.2. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 20.1.



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20.5. **Authorised signatories**


The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

20.6. **Dispute resolution**

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

20.7. **Interim arrangement**

In the event that the Authority has not appointed an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 20.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.



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ARTICLE 21

21. FILM CITY DEVELOPMENT

21.1. Development of Film City

21.1.1. The Concessionaire shall undertake the development of the Film City as specified in Schedule A, subject to the conditions stipulated in Schedule C, and to exploit such development for commercial purposes with the right to sub-license any or all parts thereof by means of Project Agreements.

21.1.2. The Concessionaire shall undertake or cause to be undertaken at its cost and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, the development and maintenance of infrastructure such as roads, electric supply, water supply, sewerage and drainage systems forming part of Film City.

21.2. Operation and maintenance of the Film City

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Good Industry Practice in the operation, maintenance and management of the Film City and shall make commercial use thereof subject to the provisions of this Agreement and Applicable Laws

21.3. Cost, taxes and revenue

21.3.1. All costs, expenses, taxes, cess, fees and charges relating to development of the Film City, other than taxes on property, shall be borne by the Concessionaire. For avoidance of doubt, any taxes on property payable by the Authority to the extent arising out of the development undertaken by the Concessionaire, shall be paid by the Authority in accordance with Applicable Laws and reimbursed by the Concessionaire to the Authority within a period of 60 (sixty) days of receiving a notice from the Authority along with necessary particulars thereof.

21.3.2. All revenues accruing from use of the Film City shall be appropriated by the Concessionaire in accordance with the provisions of the Agreement and Applicable Laws.

21.4. Restrictions on development Film City and Land Use

21.4.1. The Concessionaire shall procure that development of the Film City and its land use shall at all times be in conformity with Applicable Laws and may include construction and operation of hotels, restaurants, residence and hostels for users, retail shops for, travel related offices and amenities or analogous uses and any other activities as provided in Schedule A.

21.4.2. The Concessionaire acknowledges and agrees that it shall not, assign or in any manner create an Encumbrance on any part of Film City except in accordance with the provisions of Clause 5.2 and Clause 21.5.

21.5. Sub-licensing of Film City

21.5.1. Subject to the provisions of Clause 5.2 and this Article 21, the Concessionaire may sub-license the Project Assets in the Film City such that the period and validity of such sub-license shall not extend beyond the period specified in Clause 21.6.

21.5.2. Notwithstanding anything to the contrary contained in Clause 21.5.1, the Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of Film City at any time prior to the Appointed Date.



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Provided, however, that the restraint hereunder shall not apply to advertising or to any other Encumbrance created for a period not exceeding 6 (six) months. For the avoidance of doubt, the restriction imposed herein shall not apply to assignment under the Substitution Agreement.

21.5.3. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 21.5.2, the Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of Film City without prior written approval of the Authority, which approval the Authority may, in its discretion, deny only if such sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement; provided that the provisions of this Clause 21.5.3 shall not apply where the Concessionaire grants a sub-license for a cumulative period, including any renewals thereof, not exceeding 11 (eleven) months. For the avoidance of doubt, it is agreed that if the Authority does not deny the approval required under this Clause 21.5.3 within a period of 60 (sixty) days from the date of receiving a notice along with full particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-license, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.

21.5.4. The Concessionaire agrees and undertakes that in respect of any sub-license, assignment or other Encumbrance on any Project Asset forming part of Film City, it is entitled to receive a monthly fee, charge, rent or revenue share, security deposit, premium, loan and advances as the case may be, in accordance with the prevailing market practice. For the avoidance of doubt, the Concessionaire agrees to procure that the consideration payable to it for any sub-license, assignment or other Encumbrance shall accrue evenly over the Concession Period and shall be payable no less frequently than once every quarter; provided that nothing in this Article 21 shall prohibit the Concessionaire from adjusting the whole or any part of the consideration in proportion to the fluctuations in the grantee's revenues or profits over the Concession Period or specifying annual increase not exceeding 12% (twelve percent) per annum in such consideration.

21.5.5. In the event of any difference or disagreement between the Parties in matters arising out of the provisions of this Clause 21.5, the Dispute Resolution Procedure shall apply.

21.5.6. The land – use defined as per the master plan shall prevail in all cases.

21.5.7. For the avoidance of doubt it is clarified the no further Sub – licensing by a Sub – licensee is not allowed

21.6. Rights of sub-licensees after Termination

The Parties expressly acknowledge and agree that the Concessionaire may, in its discretion, grant sub-licences for Project Assets in the Project/ Film City upto the maximum period permissible under Clause 3.1.1, which shall include the extended period specified in the first proviso of that Clause. The Parties further agree that in the event of Termination prior to expiry of such maximum permissible period, the tenure of the sub-licences and the rights of the sub-licensees shall continue to subsist as if the sub-licences were granted by the Authority, and the Authority shall, for the remaining period of each sub- licence, be deemed to be the grantor of the sub-license by stepping into such sub-licence in pursuance of the Covenant referred to in Clause 5.2.4. For the avoidance of doubt and by way of illustration, if the Concession Period including the extended period is 90 (ninety) years and the Concession Agreement is terminated prior to the 20th (twentieth) anniversary of the Appointed Date, the tenure of a sub-licence shall extend upto the earlier of the term specified in such sub-licence and the 90th (ninetieth) anniversary of the Appointed Date



21.7. Compliance with Applicable Laws

The Concessionaire agrees and undertakes that it shall, at all times conform to Applicable Laws and the rules, regulations or by-laws made thereunder relating to buildings, structures, road works, open spaces, electric supply, water supply, sewerage and other like matters.

21.8. Commercial advertisement or display

The Concessionaire may undertake or cause to be undertaken commercial advertising or display on Film City in conformity with Applicable Laws and the provisions of this Agreement.



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Part IV

Financial Covenants

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ARTICLE 22

22. FINANCIAL CLOSE

22.1. Financial Close

22.1.1. The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (one hundred and twenty) days, subject to the submission of a written request describing the reasons for seeking such extension at least 15 (fifteen) days in advance and payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five 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 180 ((one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

22.1.2. The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

22.2. Termination due to failure to achieve Financial Close

22.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 27.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 22.1.1 or the extended period provided thereunder or unless otherwise agreed between the Parties, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the Parties have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 22.2.1 shall not apply.

22.2.2. Upon Termination under Clause 22.2.1, the Authority shall be entitled to encash the Bid Security or the Performance Security, as available, and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure or as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, release the Bid Security or Performance Security, as the case may be, forthwith and Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the Performance Security, the Authority shall be entitled to encash therefrom an amount equal to the Bid Security.



ARTICLE 23

23. CONCESSION FEE

23.1. Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority the on and from the (fifth) year from the Appointed Date, the higher of the following:

23.1.1. Annual Premium; (subject to a reserve price / minimum quoted amount of INR 1,16,00,00,000 (INR One Hundred and Sixteen Crores) or,

23.1.2. Revenue Share (2% (two percent) of the Gross Revenue earned by the Concessionaire)

(hereinafter referred to as the “Concession Fee”)

23.2. Payment of Concession Fee

On and from the fifth Appointed Date Anniversary, the Concession shall pay the Concession Fee in the following manner:

- a) the Annual Premium shall be paid by the Concessionaire for each subsequent year within 30 (thirty) days from the Appointed Date Anniversary;
- b) the Deficit Amount (as provided hereunder) shall be paid by the Concessionaire within [30 (thirty)] days from the reconciliation of accounts by the Concessionaire to the Authority.

23.3. Deficit Amount

At the end of 1 (one) year from the Appointed Date Anniversary, a reconciliation shall be done by the Concessionaire and the Authority to ascertain the difference between: (i) the Annual Premium paid by the Concession in accordance with Clause 23.2.(a); and the Revenue Share earned by the Concessionaire for the preceding 1 (one) year (“Deficit Amount”). The Deficit Amount, if any, shall be payable by the Concessionaire to the Authority within 15 (fifteen) days from the Appointed Date Anniversary. If, however, the Concessionaire fails to pay the Deficit Amount within the aforesaid period of 15 (fifteen) days of the Appointed Date Anniversary to the Authority, the Concessionaire shall be liable to pay interest for the period of delay calculated at a rate equal to 3% (three percent) above the Bank Rate for each day of delay.

23.4. Escalation of Annual Premium

The Annual Premium shall be subject to an escalation of 5% (five percent) per annum each year from the fifth Appointed Date Anniversary.

23.5. Manner of Payment

The Concessionaire shall pay the Concession Fee into such account as may be designated by the authority from time to time. All payments to the Authority shall be made through the Escrow Account. If the Authority does not receive the payments of the amounts receivable by it by the due date specified herein, the amount owed shall bear interest for the period delay calculated at a rate equal to 3% (three percent) above the Bank Rate for each day of delay.

In the event of failure of the Concessionaire to pay the Concession Fee within 90 (ninety) days of the same becoming due, the outstanding Concession Fee shall be recovered from the Concessionaire along with penal charges duly appropriated from the Performance Security.

For the avoidance of doubt, goods & services tax (GST) or any other tax applicable shall be borne by



the Concessionaire over and above the accepted Concession Fee.

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V. Chand
CBRE SOUTH
Gurgaon
INDIA

ARTICLE 24

24. ESCROW ACCOUNT

24.1. Escrow Account

24.1.1. The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

24.1.2. The nature and scope of the Escrow Account are fully described in the agreement (“**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule L.

24.2. Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all monies received in relation to the Project from Banks, other lenders, shareholders and insurance companies;
- (b) all Gross Revenue and any other revenues from or in respect of the Project, including the proceeds of any refunds, donations, grants, gifts including tax refunds of any nature, rentals, deposits, capital receipts or insurance claims;
- (c) all Gross Revenue collected by the Authority in exercise of its rights under the Concession Agreement; and
- (d) all payments by the Authority, after deduction of any outstanding Concession Fee; and
- (e) Termination Payment

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor. Concessionaire in accordance with the express provisions contained in this behalf in the Financing Agreements.

Provided further, that revenues earned by sub-licensees or assignees shall not be deposited into the Escrow Account.

24.3. Withdrawals during Concession Period

24.3.1. The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account subject to the Applicable Laws shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, if any, set forth in the Financing Agreements, in accordance with the Applicable Laws, Applicable Permits and Good Industry Practice;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;



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- (e) Concession Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (h) monthly proportionate provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

24.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Clause 24.3.1, except with the prior written approval of the Authority.

24.4. Withdrawals upon Termination

24.4.1. Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 32;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 24.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 31.

The provisions of this Article 24 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 24.4.1 have been discharged.

ARTICLE 25

25. INSURANCE

25.1. Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the Parties agree that the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

25.2. Insurance Cover

Without prejudice to the provisions contained in Clause 25.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Site;
- (c) the Concessionaire's general liability arising out of the Concession;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

25.3. Notice to the Authority

No later than 30 (thirty) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 25. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

25.4. Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 25 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any Insurance Cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance



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shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

25.5. Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

25.6. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 25 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

25.7. Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

25.8. Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 24.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement or improvement of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

25.9. Compliance with conditions of insurance policies

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with the conditions imposed under the insurance policies effected in accordance with the provisions of this Agreement.



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ARTICLE 26

26. ACCOUNTS AND AUDIT

26.1. Audited accounts

26.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including all Gross Revenue and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right either through itself or through any of its authorised representatives, to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

26.1.2. The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, giving summarised information of the Gross Revenue, and any other information, in the manner and form prescribed by the Authority or Securities and Exchange Board of India for publication of quarterly result by the Companies listed on a stock exchange.

26.1.3. On or before the 31st (thirty-first) day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) Gross Revenue and other revenues derived from the Project, any other assets associated with the Project and earned directly by the Concessionaire (b) such other information as the Authority may reasonably require.

26.2. Appointment of auditors

26.2.1. The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants ("**Panel of Chartered Accountants**"), such list to be prepared substantially in accordance with the criteria set forth in **Schedule M**. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

26.2.2. The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

26.2.3. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.



26.2.4. The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.

26.3. Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of annual installment of Concession Fee as per Clause 21.3.

26.4. Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 38.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

26.5. Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.



Part V
Force Majeure and Termination

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ARTICLE 27

27. FORCE MAJEURE

27.1. Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 27.2, 27.3 and 27.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

27.2. Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 27.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Laws or Applicable Permits, or (ii) on account of breach of any Applicable Laws or Applicable Permits or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

27.3. Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of



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foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents collection of fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) failure of the Authority to permit the Concessionaire to continue with the Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds;
- (f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

27.4. **Political Event**

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 34;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

27.5. **Duty to report Force Majeure Event**

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



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- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 27 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

27.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 27.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

27.6. Effect of Force Majeure Event on the Concession

27.6.1. Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 22.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

27.6.2. At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before the COD of Phase I, the Construction Period of Phase I and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD of Phase I, whereupon the Concessionaire is unable to collect Gross Revenue despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the collection thereof during the subsistence of such Force Majeure Event, the Authority shall consider the impact of any such Force Majeure Event and provide appropriate remedies in accordance with provisions of Applicable Laws.

27.7. Allocation of costs arising out of Force Majeure

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

27.7.2. Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure Costs**") shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and



- to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Gross Revenue or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

27.7.3. Save and except as expressly provided in this Article 27, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

27.8. Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty-five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 27, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

27.9. Termination Payment for Force Majeure Event

27.9.1. If Termination is on account of a Non-Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 30.5.

27.9.2. If Termination is on account of an Indirect Political Event, the Termination Payment shall include:

- (a) any sums due and payable under Clause 30.5 ; and
- (b) the reasonable cost, as determined by the Independent Engineer, of the plant and materials procured by the Concessionaire and transferred to the Authority for use in Construction, only if such plant and materials are in conformity with the Specifications and Standards;.

27.9.3. If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 30.4.2 as if it were an Authority Default.

27.10. Dispute resolution

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

27.11. Excuse from performance of obligations

27.11.1. If the Affected Party is rendered wholly or partially unable to perform its obligations



under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

27.12. Relief for Unforeseen Events

27.12.1. Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Clause 27.12.

27.12.2. Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

27.12.3. The conciliation tribunal referred to in Clause 27.12.2 shall conduct its proceedings in accordance with the provisions of Article 37 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 27.12.


27.12.4. The conciliation tribunal referred to in this Clause 27.12 shall conduct preliminary proceedings to satisfy itself that –

- (a) an Unforeseen Event has occurred;
- (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission on its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 27.12.

27.12.5. Upon completion of the conciliation proceedings referred to in this Clause 27.12, the conciliation tribunal may by a reasoned order make recommendations and setting out the terms of reference which shall be:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
- (d) quantified and restricted in terms of relief or remedy.



27.12.6. Within 15 (fifteen) days of receiving the order and terms of reference referred to in Clause 27.12.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “**MoU**”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Agreement.



ARTICLE 28

28. COMPENSATION FOR BREACH OF AGREEMENT

28.1. Compensation for default by the Concessionaire

Subject to the provisions of Clause 28.5, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 28.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

28.2. Compensation for default by the Authority

Subject to the provisions of Clause 28.5, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of revenues or debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

28.3. Extension of Concession Period


Subject to the provisions of Clause 28.5, in the event that a material breach or default of this Agreement set forth in Clause 28.2 causes delay in achieving COD of Phase I or leads to suspension of or reduction in the realization of fee from users, as the case may be, the Authority shall, in addition to payment of compensation under Clause 28.2, extend the Concession Period, such extension in the Concession Period shall be considered and determined by the Authority at such time. The decision of the Authority in this matter shall be final.

28.4. Compensation to be in addition

Compensation payable under this Article 28 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

28.5. Mitigation of costs and damage

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



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ARTICLE 29

29. SUSPENSION OF CONCESSIONAIRE'S RIGHTS

29.1. Suspension upon Concessionaire's Default

29.1.1. Upon occurrence of a Concessionaire's Default, the Authority shall be entitled without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

29.2. Authority to act on behalf of Concessionaire

29.2.1. During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for meeting the O&M Expenses and for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 24.3.

29.2.2. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorised by it under Clause 29.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

29.3. Revocation of Suspension

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

29.3.2. Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the



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Suspension forthwith and restore all rights of the Concessionaire under this Agreement.


29.4. **Substitution of Concessionaire**

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 29.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

29.5. **Termination**

29.5.1. At any time during the period of Suspension under this Article 29, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 29.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 30 as if it is a Concessionaire Default under Clause 30.1.

29.5.2. Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 29.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.



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ARTICLE 30

30. TERMINATION

30.1. Termination for Concessionaire Default

30.1.1. Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60(sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire’s Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Concessionaire fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 30 (thirty) days, the Concessionaire’s Default for which the whole or part of the Performance Security was appropriated
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule F, subject to Clause 28.3 and continues to be in default for 45 (forty-five) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) COD of each Phase does not occur within the period specified in Clause 12.3.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;



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- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is or its holding company or, in case of a consortium, the Lead Member is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound- up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding-up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - iii. each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (w) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement; or
- (x) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

30.1.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 30.1.3.

30.1.3. The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 30.1.2 to inform the Lenders'



Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

30.1.4. After Termination of this Agreement for Concessionaire's Default, the Authority may complete the work and/or procure its completion through any other entity. The Authority and such entity may, for this purpose, use any materials, plant and equipment, Concessionaire's documents made by or on behalf of the Concessionaire.

30.2. Termination for Authority Default

30.2.1. In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) the Authority fails to provide the Right of Way required for construction of the Project on at least 90% (ninety per cent) of the total area of the Site required and necessary for the Project; or
- (d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

30.2.2. Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority



of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

30.3. Termination for Authority's convenience

Notwithstanding anything hereinabove, the Authority may terminate this Agreement for its own convenience. The termination shall take effect 30 (thirty) days from the date of notice hereunder and shall be deemed to be termination on account of Authority Default.

30.4. Termination Payment

30.4.1. Upon Termination on account of a Concessionaire Default, the Authority shall:

- (a) encash and appropriate the Performance Security, and in the event the Concessionaire has failed to replenish or extend the Performance Security, claim the amount stipulated in Clause 9.1.1, as agreed pre-determined Damages, if any; and
- (b) pay to the Concessionaire, by way of Termination Payment, an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement,
- (c) and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and (ii) all taxes due to be deducted at source.

30.4.2. Upon Termination on account of an Authority Default in terms of Clause 30.2 above or for Authority's convenience in accordance with Clause 30.3 above, the Authority shall:

- (a) return the Performance Security;
- (b) pay to the Concessionaire, by way of Termination Payment, an amount equal to:
 - (i) Valuation of Unpaid Works;
 - (ii) the reasonable cost, as determined by the Authority's Engineer, of the plant and materials procured by the Concessionaire and transferred to the Authority for its use, only if such plant and materials are in conformity with the Specifications and Standards;
 - (iii) the reasonable cost of temporary works, as determined by the Independent Engineer;
 - (iv) 10% (ten per cent) of the cost of the Works that are not commenced or not completed,and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement and (ii) all taxes due to be deducted at source.

30.4.3. Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, after the Valuation of Unpaid Works has been communicated by the Independent Engineer, and in the event of any delay, the Authority shall pay interest at the bank rate plus 3% (three percent), calculated at quarterly rests, on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

30.4.4. The Concessionaire expressly agrees that Termination Payment under this Article 30



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shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

30.4.5. Upon Termination on expiry of the Concession Period by efflux of time and in the event any Project Assets, essential for the efficient, economic and safe operation of the Project or otherwise as per the requirements of this Agreement, shall have been acquired and installed after the 50th (fiftieth) anniversary of the Appointed Date, with prior written consent of the Authority, which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty percent) of the Adjusted Depreciated Value of such Project Assets shall be made by the Authority to the Concessionaire

30.5. Valuation of Unpaid Works

30.5.1. Within a period of 45 (forty-five) days after Termination under Clause 30.1, 30.2 or 30.3, as the case may be, has taken effect, the Independent Engineer shall proceed to determine as follows the valuation of unpaid Works (the “**Valuation of Unpaid Works**”):

- (a) value of the completed stage of the Works, less payments already made; and
- (b) reasonable value (after accounting for applicable depreciation) of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards,

and shall adjust from the sum thereof (i) any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement; and (ii) all taxes due to be deducted at source.

30.5.2. The Valuation of Unpaid Works shall be communicated to the Authority, with a copy to the Concessionaire, within a period of 45 (forty-five) days from the date of Termination.

30.6. Extension of Concession Period

In the event of an extension as set out in Clause 3.1.1, the Termination Payment specified in Clause 30.4.5 shall not be due and payable to the Concessionaire. Upon expiry of the extended Concession Period hereunder, the Project shall vest in the Authority under and in accordance with the provisions of this Agreement, and no Termination Payment shall be due and payable to the Concessionaire for and in respect of the transfer of the Project to the Authority hereunder. Provided, however, that in the event an extension is not granted in accordance with Clause 3.1.1, the Authority shall pay to the Concessionaire the Termination Payment computed in accordance with the provisions of Clause 30.4.5. Provided further that in event of an extension hereunder, the provisions of this Agreement, save and except the provisions of extension under Clause 3.1.1 and this Clause 30.6 shall apply mutatis mutandis to the extended Concession Period.

30.7. Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 31.1; and



- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

30.8. **Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 30.4.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money Damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations



ARTICLE 31

31. DIVESTMENT OF RIGHTS AND INTEREST

31.1. Divestment Requirements

31.1.1. Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets of all defects and deficiencies so that the Project is compliant with the provisions of this Agreement; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

31.1.2. Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

31.2. Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer or any of its nominee shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance



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Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 32 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 31.

31.3. **Cooperation and assistance on transfer of Project**

31.3.1. The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the users, other members of the public or the lawful occupiers of any part of the Site.

31.3.2. The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation, management and development of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

31.3.3. The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 31.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.


31.4. **Vesting Certificate**

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule N (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

31.5. **Divestment costs etc.**

31.5.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

31.5.2. In the event of any Dispute relating to matters covered by and under this Article 31, the Dispute Resolution Procedure shall apply.



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2011

ARTICLE 32


32. DEFECTS LIABILITY AFTER TERMINATION

32.1. Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 32.2 or from the Performance Guarantee provided thereunder.

32.2. Retention in Escrow Account

- 32.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.2.3, a sum equal to 5% (five per cent) of the total Gross Revenue for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 32.1
- 32.2.2. Without prejudice to the provisions of Clause 32.2.1, the Independent Engineer shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 32.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 32.2.3. The Concessionaire may, for the performance of its obligations under this Article 32, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 32.2.1 or 32.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule E (the "**Performance Guarantee**"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 32. Upon furnishing of a Performance Guarantee under this Clause 32.2.3, the retention of funds in the Escrow Account in terms of Clause 32.2.1 or 32.2.2, as the case may be, shall be dispensed with.



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Part VI
Other Provisions

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ARTICLE 33

33. ASSIGNMENT AND CHARGES

33.1. Restrictions on assignment and charges

33.1.1. Subject to Clauses 33.2 and 33.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

33.1.2. Subject to the provisions of Clause 33.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

33.2. Permitted assignment and charges

The restraints set forth in Clause 33.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or Encumbrances required by any Applicable Laws

33.3. Substitution Agreement

33.3.1. The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in **Schedule O**.

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

33.4. Assignment by the Authority



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



ARTICLE 34

34. CHANGE IN LAW

34.1. Change in Law

In the event of a Change in Law results in a Material Adverse Effect, the Authority or the Concessionaire may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Concessionaire and the Authority shall thereafter consult in good faith to agree to such modifications and in the event Agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure. It is hereby clarified that the Parties shall continue to fulfill their obligations under this Agreement during pending resolution of any Dispute under this Clause 34.1.

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.



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ARTICLE 35

35. LIABILITY AND INDEMNITY

35.1. General indemnity

35.1.1. The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities, and Authority owned and/or controlled entities/enterprises, (the “**Government Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority or any user or from any negligence of the Concessionaire under contract or tort, or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Government Indemnified Persons.

35.1.2. The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, assigns, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

35.2. Indemnity by the Concessionaire

35.2.1. Without limiting the generality of Clause 35.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Government Indemnified Persons from and against any and all loss and/or Damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire, its subsidiaries, assigns or affiliates in respect of the income or other taxes of the Concessionaire's Contractors, suppliers and representatives;
- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its Contractors;

35.2.2. Without limiting the generality of the provisions of this Article 35, the Concessionaire shall fully indemnify, hold harmless and defend the Government Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and Damages which the Government Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If



in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order.

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

35.3. Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 35 (“**Indemnified Party**”) it shall notify the other Party (“**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

35.4. Defence of claims

35.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 35, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

35.4.2. If the Indemnifying Party has exercised its rights under Clause 35.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

35.4.3. If the Indemnifying Party exercises its rights under Clause 35.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the



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expense of the Indemnified Party, when and as incurred, unless:

- a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
- b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
- c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - i. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - ii. that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:
Provided that if Sub-clauses (b), (c) or (d) of this Clause 35.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

35.5. No consequential claims

Notwithstanding anything to the contrary contained in this Article 35, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

35.6. Survival on Termination

The provisions of this Article 35 shall survive Termination.



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ARTICLE 36

36. RIGHTS AND TITLE OVER THE SITE

36.1. Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as solelicensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

36.2. Access rights of the Authority and others

36.2.1. The Concessionaire shall allow free access to the Site at all times for the authorised representatives of the Authority, Senior Lenders, and the Independent Engineer, and for the persons duly authorised by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such person(s) reasonable assistance necessary to carry out their respective duties and functions.

36.2.2. The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

36.3. Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any taxes on property payable by the Authority to the extent arising out of any development undertaken by the Concessionaire, shall be paid by the Authority in accordance with Applicable Laws and reimbursed by the Concessionaire to the Authority within a period of 60 (sixty) days of receiving a notice from the Authority along with necessary particulars thereof. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of license comprising this Agreement shall be paid by the Authority. Provided, however, that the Authority may require the Concessionaire to pay such stamp duties, which shall be reimbursed by the Authority to the Concessionaire within 15 (fifteen) days of receiving the demand therefor.

36.4. Restriction on sub-letting

The Concessionaire shall not sub-license or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for [construction] and operation and maintenance of all or any part of the Project.



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ARTICLE 37

37. DISPUTE RESOLUTION

37.1. Dispute resolution

37.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 37.2.

37.1.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

37.2. Conciliation

37.2.1. In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the [insert designation] of the Authority or any other person designated by the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 37.1.1 or such longer period as may be mutually agreed by the Parties, either Party shall refer the Dispute to arbitration in accordance with the provisions of Clause 37.3.


37.3. Arbitration

37.3.1. Any other Dispute which is not resolved amicably by conciliation, as provided in Clause 37.2, shall be finally decided by reference to arbitration by an arbitral tribunal in accordance with Clause 37.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Center for Alternative Dispute Resolution, New Delhi (the Rules), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 or any subsequent amendment or re-enactment thereof (“**Act**”). The place of such arbitration shall be Noida and the language of arbitration proceedings shall be English.

37.3.2. There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Act.

37.3.3. The arbitral tribunal shall make a reasoned award (“**Award**”). Any Award made in any arbitration held pursuant to this Article 37 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

37.3.4. The Concessionaire and the Authority agree that an Award may be enforced against the



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Concessionaire and/or the Authority, as the case may be, and their respective assets whereversituated.

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

37.4. Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 37.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.



ARTICLE 38

38. DISCLOSURE

38.1. Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office and at the Site. The Concessionaire shall prominently display at the Project Facilities, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

38.2. Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Site, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

38.3. Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 38.1 and 38.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 38.1 and 38.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.



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ARTICLE 39

39. REDRESSAL OF PUBLIC GRIEVANCES

39.1. Complaints Register

- 39.1.1. The Concessionaire shall maintain a public relations office at the Site where it shall keep a register (“**Complaint Register**”) open to public access at all times for recording of complaints by any person (“**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Project Facilities so as to bring it to the attention of all users.
- 39.1.2. The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 39.1.3. Without prejudice to the provisions of Clauses 39.1.1 and 39.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

39.2. Redressal of complaints

- 39.2.1. The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 39.2.2. Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Applicable Law, and advise the Complainant to pursue the complaint at his own risk and cost.



ARTICLE 40

40. MISCELLANEOUS

40.1. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

40.2. Waiver of immunity

Each Party unconditionally and irrevocably:

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

40.3. Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

40.4. Delayed payments

40.4.1. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (three per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

40.4.2. Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.



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40.5. **Waiver**

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

40.5.2. 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 the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

40.6. **Liability for review of Documents and Drawings**

40.6.1. Except to the extent expressly provided in this Agreement:

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

40.7. **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 either Party not contained in a binding legal agreement executed by both Parties.

40.8. **Survival**

40.8.1. Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

40.8.2. All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

40.9. **Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or



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amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification cum Proposal shall be deemed to form part of this Agreement and treated as such.

40.10. Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties 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 the Dispute Resolution Procedure set forth under this Agreement or otherwise.

40.11. No partnership

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

40.12. Third parties

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

40.13. Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

40.14. Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in Sub-clause (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority.

{Attention:

Designation:

Address: Fax No: Email:}



- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in the same city as the Authority, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

{Name:

Designation: Address:

Fax No:

Email:}; and


- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

40.15. Language

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

40.16. Counterparts

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



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ARTICLE 41

41. DEFINITIONS

41.1. Definitions

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

“**Act**” shall have the meaning assigned to it under Clause 37.3;

“**Accounting Year**” means the financial year commencing from the first day of April of any calendaryear and ending on the thirty-first day of March of the next calendar year;

"**Additional Auditors**" shall have the meaning as set forth in Clause 38.2.3;

“**Adjusted Depreciated Value**” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three per cent) based on the written down value method) to reflect the variation occurring in Price Index between the date of procurement thereof and the Transfer Date;

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “**Reference Date**”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Price Index, and for any Reference Date occurring:


on or before COD of Phase I, the Adjusted Equity shall be a sum equal to the Equity funded in IndianRupees and expended on the Project, revised to the extent of one half of the variation in Price Index occurring between the first day of the month of Appointed Date and the Reference Date;

- (a) from COD of Phase I and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD of Phase I shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD of Phase I to the extent of variation in Price Index occurring between COD of Phase I and the Reference Date; and
- (b) after the 4th (fourth) anniversary of COD of Phase I, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.17% (zero point one seven per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD of Phase I and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between COD of Phase I and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of Price Index shall continue to be made

“**Affected Party**” shall have the meaning as set forth in Clause 27.1;

“**Agreement**” or “**Concession Agreement**” means this Agreement, its Recitals, the



Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**Annual Premium**” shall mean a sum of INR [●] in accordance with Clause 21;

“**Appendix**” shall have the meaning as set forth in Clause 10.3.1;

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Film City during the subsistence of this Agreement;

“**Appointed Date**” means the date on which Financial Close is achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;

“**Appointed Date Anniversary**” shall mean the anniversary of the Appointed Date;

“**Approved Valuer**” means a firm of valuers recognised as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rupees one hundred crore) each in value;

“**Associate**” or “**Affiliate**” means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation,

- a) the ownership, directly or indirectly, of more than 50% (fifty per percent) of the voting shares of such person; or
- b) holding more than 50% (fifty percent) of the voting rights of such person by virtue of an agreement; or
- c) the power to govern the policy decisions of such person under statute or an agreement; or
- d) to appoint or remove the majority of the members of the board of directors; or
- e) to cast the majority of votes at a meeting of the board of directors; and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract or otherwise.

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

“**Authority Default**” shall have the meaning as set forth in Clause 30.2.1;

“**Authority Representative**” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;



"Award" shall have the meaning as set forth in Clause 37.3.3;

"Bank" means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

"Bank Rate" means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

"Bid" means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Qualification cum Proposal in accordance with the provisions thereof and **"Bids"** shall mean the bids submitted by any and all bidders;

"Bid Date" means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Qualification cum Proposal;

"Bid Security" means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Qualification cum Proposals, and which is to remain in force until substituted by the Performance Security;


"COD" or **"Commercial Operation Date"** shall have the meaning as set forth in Clause 15.1;

"CPI (IW)" means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter;

"Change in Law" means the occurrence of any of the following after the Bid Date:

- a) the enactment of any new Indian law;
- b) the repeal, modification or re-enactment of any existing Indian law;
- c) the commencement of any Indian law which has not entered into effect until the Bid Date;
- d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- e) any change in the rates of any of the Taxes that have a direct effect on the Project;

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes (i) the aggregate holding of the {selected bidder/Consortium Members,} together with {its/their} Associates in the total Equity to decline below 51% (fifty one per cent) thereof until the 7th (seventh) anniversary of COD of Phase I, and (ii) the equity holding of each Consortium Member {along with its/their Associates} whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the RfQ-cum-RfP, to decline below 26 % (twenty six per cent) until the 7th (seventh) anniversary of COD of Phase I; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/any Consortium Member} to the total Equity, if it occurs prior to COD of Phase I, shall



constitute a Change in Ownership;

“**Change of Scope**” shall have the meaning as set forth in Clause 16.1;

“**Change of Scope Order**” shall have the meaning as set forth in Clause 16.2.3;

“**Change of Scope Notice**” shall have the meaning as set forth in Clause 16.2.1;

“**Company**” means the company acting as the Concessionaire under this Agreement;

“**Complainant**” shall have the meaning as set forth in Clause 39.1;

“**Complaint Register**” shall have the meaning as set forth in Clause 39.1;

“**Completion and Functionality Certificate**” shall have the meaning as set forth in Clause 14.2;

“**Concession**” shall have the meaning as set forth in Clause 3.1.1;

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

“**Concession Fee**” shall have the meaning as set forth in Clause 21.1;

“**Concession Period**” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“**Concessionaire’s Default**” shall have the meaning as set forth in Clause 30.1.1;

“**Concurrent Auditors**” shall have the meaning as set forth in Clause 38.2.4;

“**Conditions Precedent**” shall have the meaning as set forth in Clause 4.1.1;

“**Consortium**” shall have the meaning as set forth in Recital (E);

“**Consortium Member**” means a company specified in Recital (E) as a member of the Consortium;


“**Construction Period**” Construction Period means the period beginning from the Appointed Date and ending on COD for Phase I and in respect of the subsequent Phases, such period shall commence from the date so notified by the Authority and end on the respective COD for that Phase subject to the provisions of Schedule F. Provided that the total Construction Period for all the Phases shall not exceed 10 (ten) years;

“**Construction Works**” means all works and things necessary to complete the Project in accordance with this Agreement Project Facilities and any other construction works undertaken at the Film City at any time during the Concession Period;

“**Contractor**” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contracts or any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- b) not relieve any Party from liability to pay Damages or compensation under the



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provisions of this Agreement; and

- c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

“DBFOT” or **“Design, Build, Finance, Operate and Transfer”** shall have the meaning as set forth in Recital (A);

“Damages” shall have the meaning as set forth in Sub-clause (x) of Clause 1.2.1;

“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 Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;
- b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding
- (i) any interest, fees or charges that had fallen due 1 (one) year prior to the Transfer Date,
 - (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and
 - (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, 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; provided further that the Debt Due, on or after COD of Phase I, shall in no case exceed 70% (seventy per cent) of the Total Project Cost;

“Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements as per the terms thereof;

“Deemed Performance Security” shall have the meaning as set forth in Clause 9.4;

“Development Period” means the period from the date of this Agreement until the Appointed Date;

“Director” means a director of the Concessionaire who has been appointed in accordance with the Companies Act, 2013;

“Dispute” shall have the meaning as set forth in Clause 37.1.1;



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“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 37;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 31.1;

“Document” or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Drawings” means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule G, and shall include ‘as built’ drawings of the Project;

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, *inter alia*, engineering and construction of the Project in accordance with the provisions of this Agreement;

“EPC Contractor” means the person with whom the Concessionaire has entered into an EPC Contract;

“Emergency” means a condition or situation that is likely to endanger the security of the individualson or about the Project or which poses an immediate threat of material damage to any of the ProjectAssets, and includes a threat to public order or national security;

“Encumbrances” means, in relation to the Project, 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 Project, where applicable herein but excluding utilities referred to in Clause 11.1;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

“Escrow Account” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning as set forth in Clause 24.1.2;


“Escrow Bank” shall have the meaning as set forth in Clause 24.1.1;

“Escrow Default” shall have the meaning as set forth in Schedule L;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning as set forth in Schedule O;

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making



calculations and projections therein;

“Financial Package” means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt;

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the respective Phases of the Project, including any hedging arrangements in case of off shore borrowings and includes amendments or modifications made in accordance with Clause 5.2.2;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 27.1;

“Force Majeure Costs” shall have the meaning as set forth in Clause 27.7.2;

“GOI” means the Government of India;

“Golden Share” shall have the meaning as set forth in Clause 5.4.1;


“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this international standards Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government” means the Government of the State;

“Government Instrumentality” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Gross Revenue” means all pre-tax gross revenues earned by the Concessionaire under or pursuant to this Agreement, at any time from the date of the execution of this Agreement upto the Transfer Date, and shall include any monies received from sub-licensees and other persons, by the Concessionaire as deposits (refundable or otherwise) but shall exclude only the following:

- a) any insurance proceeds received by the Concessionaire relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against; and (ii) any form of physical damage of assets, and the Concessionaire has incurred or will incur an expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently of such assets;
- b) any monies received by the Concessionaire, for or on behalf of any Government



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Instrumentality (as defined in the Concession Agreement), as an authorized agent of such Government Instrumentality.; and

- c) any deposit amounts refunded to the relevant sub-licensee or any other person authorized by the Authority in a particular Concession Year provided these pertain to past deposits on which Annual Premium has been paid to the Authority.
- d) any revenue recognized for construction or upgrade services under the provisions of Appendix A (Service Concession Arrangements) of the Indian Accounting Standards (Ind-AS) 11, Construction Contracts and references therein, including subsequent amendments thereof in relation to the recognition of revenues/consideration for construction or upgrade services under Ind-AS, as per Applicable Laws

It is expressly clarified that:

- i. insurance proceeds referred to in exclusion (a) above, shall not include any exclusion of insurance proceeds received for loss of revenues and/or business interruption; monies referred to in exclusion (b) above, shall be excluded only if the same has been credited or will be credited by the Concessionaire to the relevant Government Instrumentality promptly and diligently and any fine, penalty or other amounts of similar nature that may accrue as a result of non-payment or delayed payment of such monies under the Applicable Laws, will not be excluded;
- ii. Gross Revenue will be computed on an annual basis for Accounting Year, in accordance with the Indian Accounting Standards, as applicable on the date of the issuance of the RFP; and
- iii. Gross Revenue will be computed on an annual basis for an Accounting Year, in accordance with the Indian Accounting Standards (Ind-AS) as specified under the Companies (Indian Accounting Standards) Rules, 2015 including amendments thereof from time to time as per Applicable Laws, except the specific provisions in respect of inclusion and exclusion of deposits (refundable or otherwise) referred to in the definition of Gross Revenue above.
- iv. in case of any dispute, discrepancy, ambiguity, doubt or otherwise, relating to the computation and/or meaning of Gross Revenue, the decision of the Authority, at its sole discretion, shall be final.

"Indemnified Party" means the Party entitled to the benefit of an indemnity pursuant to Article 35;

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 35;

"Independent Engineer" shall have the meaning as set forth in Clause 20.1;

"Indirect Political Event" shall have the meaning as set forth in Clause 27.3;

"Inspection Report" shall have the meaning as set forth in Clause 13.2;

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 25, and includes all insurances required to be taken out by the Concessionaire under Clause 25.2 but not actually



taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Key Managerial Personnel”, in relation to the Concessionaire, means:

- a) Chief executive officer or the Managing Director;
- b) Whole Time Director;
- c) Chief financial officer, Chief commercial officer, Chief operation officer, company secretary or their one level below core management officers who subject to the superintendence, control and direction of the Board, has the management of the substantial affairs of the Concessionaire; and
- d) the persons who have the authority and responsibility for planning, directing and controlling various activities and functions of the Concessionaire;

“LOA” or **“Letter of Award”** means the letter of award referred to in Recital (E);

“Lead Member” shall have the meaning as set forth in Recital (E);

“Lenders’ Representative” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Maintenance Requirements” shall have the meaning as set forth in Clause 17.2;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Nominated Company” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“Non-Political Event” shall have the meaning as set forth in Clause 27.2;

“O&M” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of fee from users in accordance with the provisions of this Agreement;

“O&M Contracts” means the operation and maintenance contracts that may be entered into between the Concessionaire and the O&M Contractors for performance of all or any of the O&M obligations;

“O&M Contractor” means the persons, if any, with whom the Concessionaire has entered into O&M Contracts for discharging O&M obligations for and on behalf of the Concessionaire;



“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contracts, fee collection contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning as set forth in Clause 19.3;

“Operation Period” means the period commencing from COD of a particular Phase (as specified in Schedule F) and ending on the Transfer Date;

“Panel of Chartered Accountants” shall have the meaning as set forth in Clause 38.2.1;

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

“Performance Guarantee” shall have the meaning as set forth in Clause 32.2.3;

“Performance Security” shall have the meaning as set forth in Clause 9.1;

“Phase” means the work forming part of the Film City in accordance with the terms of this Agreement;

“Phase Completion Schedule” means the schedule indicating the time period for completion of a particular phase of the Project as defined in Schedule F.

“Phase I” means all the works forming part of the Film City as provide in Schedule F;

“Political Event” shall have the meaning as set forth in Clause 27.4;

“Preservation Costs” shall have the meaning as set forth in Clause 13.5.3;

“Price Index” shall comprise:

- a) 70% (seventy per cent) of WPI; and
 - b) 30% (thirty per cent) of CPI (IW),
- which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

“Project” means the design, finance, construction, operation and maintenance of the Film City in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Affected Families” means:

- (a) a family whose land or other immovable property has been acquired;
- (b) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;
- (c) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;



- (d) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;
- (e) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;
- (f) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contracts, fee collection contract, all agreements and sub-licenses relating to Film City and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of upto Rs. 25 crores (Rupees twenty-five crore);

“Project Assets” means all physical and other assets relating to and forming part of the Site including:

- a) rights over the Site in the form of licence, Right of Way or otherwise;
- b) tangible assets such as civil works and equipment including foundations, drainage works, electrical systems, communication systems and administrative offices;
- c) Project Facilities situated on the Site;
- d) buildings and immovable fixtures or structures forming part of Project;
- e) all rights of the Concessionaire under the Project Agreements;
- f) financial assets, such as receivables, security deposits etc.;
- g) insurance proceeds; and
- h) Applicable Permits and authorisations relating to or in respect of the Project;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule F completion of the Project on or before the Scheduled Completion Date;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule B;

“Project Milestones” means the construction and development of area (as provided in Schedule F) indicated by an occupation certificate/ completion certificate issued by the concerned authority;

“Provisional Certificate” shall have the meaning as set forth in Clause 14.3;

“Punch List” shall have the meaning ascribed to it in Clause 14.3;

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

“Reference Exchange Rate” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement,



the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“**Request for Qualification cum Proposals**” or “**RFQ cum RFP**” shall have the meaning as set forth in Recital (D);

“**Revenue Share**” shall mean 2% (two percent) of the Gross Revenue earned by the Concessionaire;

“**Right of Way**” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;

“**Safety Requirements**” shall have the meaning as set forth in Clause 18.1;

“**Scheduled Completion Date**” shall have the meaning as set forth in Clause 12.3.1 for all phases;

“**Scope of the Project**” shall have the meaning as set forth in Clause 2.1;

“**Senior Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

“**Shareholders’ Agreement**” shall have the meaning as set forth in Clause 5.4.1;

“**Site**” shall have the meaning as set forth in Clause 10.1;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule C, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

“**Specified Documents**” shall have the meaning as set forth in Clause 38.1;

“**State**” means the State in which the headquarters of the Authority are situated and “**State Government**” means the government of that State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 38.2.1;

“**Studio(s)**” shall be an enclosed sound stage where films, entertainment, OTT content, digital media, serials, music productions can be shot/produced.

“**Subordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the project cost and subordinated to the financial assistance provided by the Senior Lenders; and
- b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to



the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date; provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"Substitution Agreement" shall have the meaning as set forth in Clause 33.3;

"Suspension" shall have the meaning as set forth in Clause 29.1;

"Taxes" means any Indian taxes including GST, excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever;

"Termination" means the expiry or termination of this Agreement and the Concession hereunder;


"Termination Notice" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"Termination Payment" means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

"Tests" means the tests as set forth in Schedule H to determine the completion of Project in accordance with the provisions of this Agreement, and shall, *mutatis mutandis*, include similar Tests to determine completion of the expansion of the Project in accordance with the provisions of Clause 14.1.2;

"Total Project Cost" means the capital cost incurred on construction and financing of the Project, and shall be limited to the lowest of:

- a) the capital cost of the Project, as set forth in the Financial Package; and
- b) An Amount equal to INR [●] crore;
provided that in the event Price Index increases, on an average, by more than 3% (three per cent) per annum for the period between the date hereof and COD of Phase I, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in Price Index, in excess of such 3% (three per cent), is reflected in the Total Project Cost;
provided further that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement;
provided also that the Total Project Cost shall not exceed the actual capital cost of



the Construction Works upon completion of the Project.

“**Transfer Date**” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"**Unforeseen Event**" shall have the meaning as set forth in Clause 27.12.1;

“**Valuation of unpaid Work**” shall have the meaning as set forth in Clause 30.5;


Vesting Certificate” shall have the meaning as set forth in Clause 31.4; and

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of fee in accordance with the provisions of Clause 32.3, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

“**Works**” means all works including survey and investigation, design, engineering, procurement, construction, plant, materials, temporary works and other things necessary to complete the Project in accordance with this Agreement

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

Signed for and on behalf of:	Signed for and on behalf of:
The Authority	[<i>Concessionaire</i> has been affixed pursuant



By:	to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of _____	
[Name]		
[Designation]		
[Fax]		
[email address]	hereunto affixed in the presence of...., Director, who has signed these presents in token thereof and , Company Secretary / Authorised Officer who has countersigned the same in token thereof:	
		[Name]
		[Designation]
		[Fax]
	[email address]	
Signature of the Witness:	Signature of the Witness:	
[Name]	[Name]	
[Designation]	[Designation]	





Schedules

mi

V. Chand



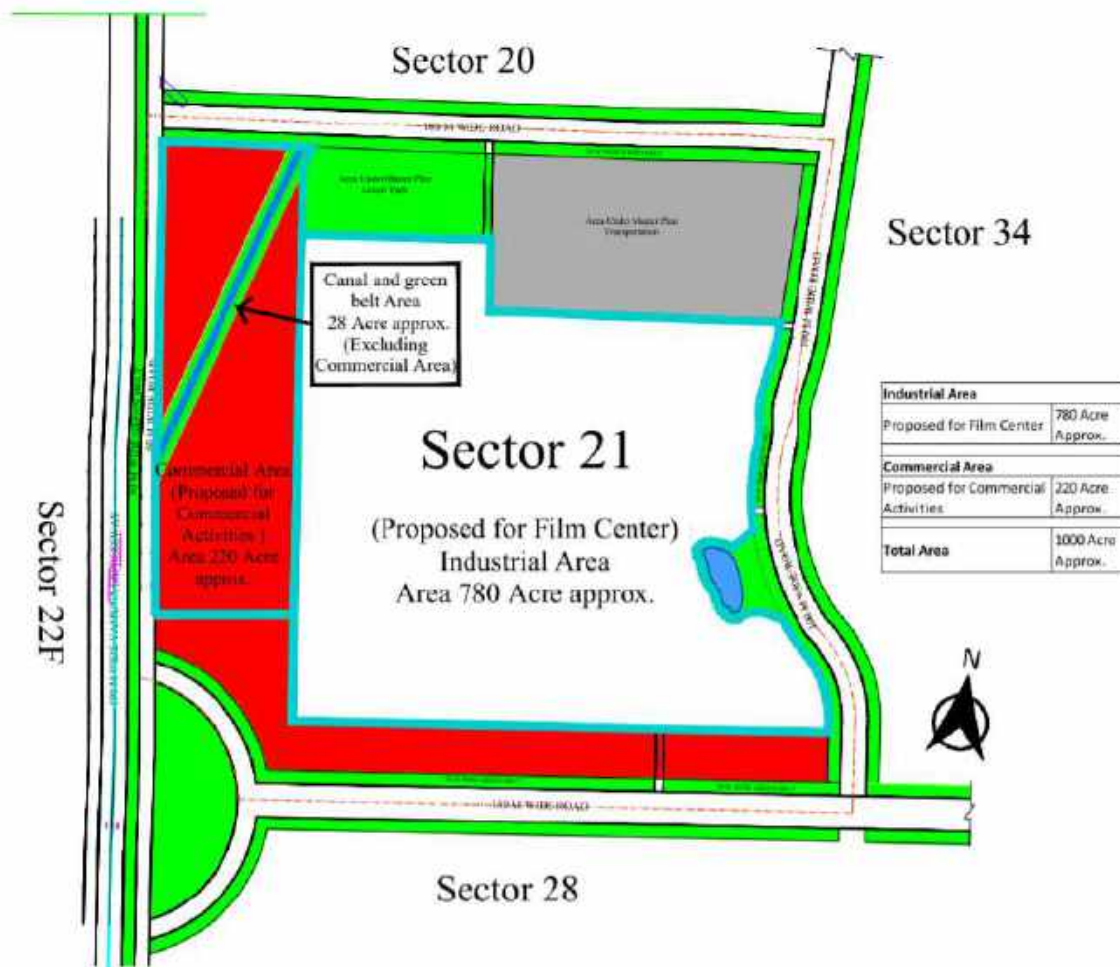
Schedule A
(See Clause 10.1)
Site of the Film City

Project Details

The Government of Uttar Pradesh (“GoUP”) has envisaged development of a film city having the constituents set out below (“**Film City**”) in Sector 21, Yamuna Expressway Industrial Development Area (Phase 1), in the State of Uttar Pradesh (“**State**”). Following the development of Noida International Airport (near Jewar), the region is inclined to witness various growth opportunities and advancements in the coming years.

In this regard, in consultation with the State Government, the development of a Film City is proposed in Sector 21 in YEIDA region. A land parcel of approx. 1,000 acres has been identified for the same. The identified site has a combination of commercial and industrial use. The Authority intends to assess the viability of the project with an integrated and disintegrated approach and recommend most viable option and suggest modifications (if any) for effective development of the Film City.

Site Map



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Handwritten signature and official stamp of the Government of Uttar Pradesh, Ganganagar.

Schedule B

(See Clause 2.1)

The Project shall comprise of the following :

S No	Asset Class	Land Use
1.	Industrial Components (filming facilities, film institute)	Industrial
2.	Commercial Components	Commercial



Handwritten signature and circular stamp of the Government of Karnataka, Department of Urban Planning, Bangalore.

Schedule C

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1. Film City

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-I of this Schedule C for construction of the Project Assets related to filming activity and film institute.

After the construction of the filming activity and film institute, the Concessionaire shall operate and maintain the Project in accordance with the prevailing standards and specifications for operation and maintenance of the similar developments.

2. Commercial Assets

The Concessionaire shall undertake construction of Project Assets (other than assets related to filming activity and film institute) in accordance with Applicable Laws, Good Industry Practice and the provisions of building construction codes widely followed in India. In case, Indian codes are not available then applicable UK or USA codes shall be used.

The Concessionaire shall at all times procure and ensure that the services provided at the Film City conform to the key performance indicators (“**Service Quality Requirements**”), specified in this Annex I of Schedule C



The circular stamp contains the text "CBRE SOUTH" at the top, "Gurgaon" in the center, and "2011" at the bottom.

Annexure - I

Components	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total of Components
Filming and Film Institute Component – Industrial Land											
Filming facility	INR 920 - 1010 Crores			INR 1020-1120 Crores			INR 920 - 1020 Crores			INR 2860-3150 Crores	
Studios	(INR 660 - 710 Crores)			(INR 610 - 680 Crores)			(INR 550 - 620 Crores)			INR 1840 - 2020 Crores	
Backlot Open Area	(INR 80 - 90 Crores)			(INR 50 - 60 Crores)			(INR 40 - 60 Crores)			INR 170 - 200 Crores	
Backlot Set	(INR 90 - 110 Crores)			(INR 210 - 230 Crores)			(INR 250 - 300 Crores)			INR 600 - 660 Crores	
Backlot Workshop	(INR 90 - 100 Crores)			(INR 80 - 90 Crores)			(INR 80 - 100 Crores)			INR 250 - 270 Crores	
Film Institute	INR 560 - 620 Crores			INR 530 - 580 Crores							INR 1090 - 1200 Crores
Commercial Component											
Serviced Villas	INR 320 - 360 Crores										INR 320 - 360 Crores
Hospitality – Shared Accommodation	INR 30 - 31 Crores										INR 30 - 31 Crores
Hospitality –Upscale	INR 190 - 210 Crores										INR 190 - 210 Crores
Hospitality – Upper Upscale				INR 240 - 260 Crores							INR 240 - 260 Crores
Hospitality – Resort								INR 190 - 210 Crores			INR 190 - 210 Crores
F&B Focused retail development	INR 10 - 11 Crores										INR 10 - 11 Crores
Commercial Office								INR 323 - 360 Crores			INR 323 - 360 Crores
Amusement Park				INR 160 - 170 Crores	INR 370 - 410 Crores						INR 530 - 580 Crores
Retail Development – 1						INR 450 - 500 Crores					INR 450 - 500 Crores
Retail Development – 2								INR 630 - 700 Crores			INR 630 - 700 Crores
Total Cost	INR 2430 - 2670 Crores			INR 2370 - 2610 Crores			INR 2063 - 2290 Crores			INR 6863 - 7570 Crores	

Note: Minimum 50% of the budgeted cost of Filming Facility & Film Institute shall be incurred in Phase – 1 in accordance with the aforementioned schedule. Only after incurring the 50% of said cost on Filming Facility & Film Institute the Concessionaire shall apply/procure the occupancy, completion and functional certificates of commercial components as per the applicable building bye laws of the competent authority for the (as indicated above).

Annexure II

INDUSTRIAL BUILDINGS-- Ground Coverage, Floor Area ratio and Height --				
S.No	Plot Area (square metre)	Maximum Ground Coverage	Maximum FAR	Maximum height in metres
1.	Upto 1000	60%	1.50	18
2.	Above 1000 but not exceeding 12000	60%	1.30	24
3.	Above 12000	55%	1.00	No Limit

COMMERCIAL BUILDINGS-- Ground Coverage, Floor Area ratio and Height --				
S.No	Use	Maximum Ground Coverage	Maximum FAR	Maximum height in metres
1.	Convenient Shopping Centre	40%	2.00	24.0
2.	Sector Shopping	40%	2.00	24.0
3.	Sub District Centre, Shopping/commercial uses along MP roads and other Master Plan level Shopping/commercial centres	30%	4.00	No Limit
4.	Hotels	30%	3.00	No Limit
5.	Cinema/Multiplex/Cineplex	30%	As per govt. policy	No Limit

Table: PERMITTED USE / ACTIVITIES		
S. No.	Use/Activities	Commercial Zone
1.	Cinema/Multiplex	Permissible
2.	Commercial Office	Permissible
3.	Hotel	Permissible
4.	Restaurant	Permissible
5.	Retail Shop	Permissible
6.	Shopping Mall	Permissible
7.	Recreational Club	Permissible

[Handwritten signature]



Annexure III STATE GOVERNMENT SUPPORT AGREEMENT
(See Clause 6.1.3)

THIS STATE GOVERNMENT SUPPORT AGREEMENT is made at [_____] on the [_____] day of [____], 20[____]

BY AND AMONGST:

THE GOVERNOR OF UTTAR PRADESH, represented by [____], having its principal office at [____] (hereinafter referred to as the “**GoUP**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns);

AND

Yamuna Expressway Industrial Development Authority having its principal office at office no GM Planning Department, First Floor, Commercial Complex, P-2, Sector- Omega I, Greater Noida, Gautam Budh Nagar, Uttar Pradesh, 201308 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns;

AND

[●], a company incorporated under the provisions of the [Companies Act, 1956/ 2013], having corporate identity number [____] and its registered office at [____] (hereinafter referred to as the “**Concessionaire**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes).

As the context may require, GoUP, the Authority and the Concessionaire are hereinafter collectively referred to as “**Parties**” and individually as “**Party**”.

WHEREAS:

- A. GoUP has procured clearances/ approvals from the concerned authorities for development of a film city having constituents such as the filming facility, film institute, amusement park/ family recreation centre, hospitality, retail, serviced residencies and commercial offices and other filming and supporting assets in the State of Uttar Pradesh in accordance with local building bye laws (herein referred to as the “**Project**” or “**Film City**”) on design, build, finance, operate and transfer (the “**DBFOT**”) basis in accordance with the terms and conditions to be set forth in this Agreement.
- B. GoUP, vide its Government Resolution No. [Yet to conveyed post pre – bid meeting] dated [Yet to conveyed post pre – bid meeting] (“**GoUP Approval**”), approved the implementation of the Project and assigned as Yamuna Expressway Industrial Development Authority as the concerned authority.
- C. Based upon the approvals granted for the Project, the Bids were invited for the selection of the preferred bidder, and pursuant to the completion of such process, the preferred bidder was selected.



- D. Upon the incorporation of the Concessionaire or selection of the Concessionaire, as the case may be, the Authority and the Concessionaire entered into a Concession Agreement dated [] (“**Concession Agreement**”), *inter-alia*, agreeing and providing for the terms and conditions, upon which the Concessionaire would develop, operate and maintain the Film City on DBFOT basis.
- E. GoUP acknowledges that implementation of the Project requires continued support and grant of certain rights by the GoUP to the Authority and the Concessionaire, as hereinafter set forth, and is an essential pre-requisite for mobilisation of resources for the Project.
- F. In consideration of the Concessionaire having entered into the Concession Agreement and to enhance the smooth functioning and viability of the Concessionaire, in addition to the obligations of the Authority under the Concession Agreement, the GoUP is agreeable to provide certain support to the Concessionaire as stated herein.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, except to the extent that the context requires otherwise and unless otherwise defined as below or otherwise elsewhere specifically in this Agreement, other capitalised terms used herein (and not defined herein) but defined under the Concession Agreement, has the meaning ascribed to the term under the Concession Agreement:

“**Agreement**” shall mean this State Government Support Agreement;

“**Clearances**” means the written consent, license, approval, permit, ruling, exemption, no objection certificate or other authorization or permission of whatsoever nature which is required to be obtained from and/or granted by the GoUP, from time to time, in connection with the Project;

“**Entity**” means any person, body corporate, trust, partnership firm or other association of persons/ individuals whether registered or not;

“**GOI**” means the Government of India and any agency, authority (including any regulatory authority), department, inspectorate, ministry or statutory person (whether autonomous or not) under the control and direction of GOI;

“**GoUP**” means the Government of Uttar Pradesh and any agency, authority (including any regulatory authority), department, inspectorate, ministry or statutory person (whether autonomous or not) under the control and direction of GoUP;

“**GoUP Approval**” has the meaning ascribed to it in Recital B;

“**Project**” means the design, finance, construction, operation and maintenance of the Film City in accordance with the provisions of Concession Agreement and includes all Works, services and equipment relating to or in respect of the Scope of the Project;

“**Term**” has the meaning ascribed to it in Clause 3.1 hereunder;

“**Third Party**” shall mean any Entity not a Party to this Agreement;



“Utilities” collectively refers to water, electricity and infrastructure for sewage disposal and solid waste management at the Film City, and “Utility” refers to any one of them.

1.2. Rules of Interpretation

- 1.2.1.** The words and expressions beginning with capital letters and defined in this Agreement 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.
- 1.2.2.** References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3.** The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. GoUP SUPPORT

2.1. Utilities

The Parties acknowledge that going forward, as the Film City development, operation, management and maintenance of Film City takes place in the manner contemplated in the Concession Agreement, there may be a need to expand the capacity of Utilities. In the light of the foregoing, the GoUP hereby confirms that it shall make best endeavours to provide sufficient quantities of the Utilities at the Site boundary (to the extent that these service are generally provided by the GoUP or its departments/ agencies/ entities substantially owned or controlled by the GoUP) for the Film City on payment basis, to enable development and operation of the Film City. GoUP further confirms that it shall make best endeavours to maintain and develop existing facilities in relation to Utilities (to the extent that these service are generally maintained by the GoUP or its departments/ agencies/ entities substantially owned or controlled by the GoUP).

2.2. Clearances

- 2.2.1.** Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby expressly acknowledge and agree that GoUP shall not be responsible nor be liable for any and all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever of any third parties or the Concessionaire, arising out of, or in relation to, maintaining cleanliness in and around the area surrounding the Film City. The Parties hereby expressly acknowledge and agree that it shall be the sole responsibility and obligation of the Concessionaire to obtain and, at all times, continue to maintain all Clearances which are required by Applicable Law for undertaking and implementing the Project as set forth in detail in the Concession Agreement. Towards this end, the GoUP shall, upon application by the Concessionaire in full compliance and sustenance with Applicable Law (provided that under Applicable Law, the Concessionaire is entitled to receive such Clearance and the Concessionaire has made its application in due process and time), endeavour to grant such Clearances as are required for or in connection with the Project, within the relevant statutory period (if any), and where no statutory period is prescribed, the GoUP shall endeavour to grant such Clearances as are required for or in connection with the Project within a reasonable time after the relevant application is duly



completed, and in full compliance with Applicable Laws, has been submitted.

- 2.2.2. The GoUP further undertakes to provide its full assistance in procuring the approval of the Master Plan by the competent local authority.
- 2.2.3. In order to facilitate the grant of Clearances, the GoUP shall nominate a senior officer of the rank of [] or above designation, who shall provide assistance to the Concessionaire in liaising with the relevant agencies, authorities, departments, inspectorates, ministries under the control and direction of the GoUP.
- 2.2.4. The Concessionaire hereby undertakes that in order to expedite the grant of Clearances, it will, in a diligent and timely manner: (a) prepare and file applications, which are in full compliance with the Applicable Law, with the concerned authorities; and (b) follow-up the said applications with the concerned authorities.

2.3. Benefits under the relevant Uttar Pradesh Film Policy in force:

Benefits as per the extant Uttar Pradesh Film Policy, shall also be available.

3. TERM AND TERMINATION

3.1. Term

- 3.1.1. Except Clause 2 and Clause 5, this Agreement shall be effective from the date first written hereof.
- 3.1.2. Clause 2 and Clause 5 of this Agreement shall be valid and effective with effect from the Appointed Date.
- 3.1.3. This Agreement shall terminate automatically with the determination and/or early termination, for whatsoever reason, of the Concession Agreement (“Term”).

3.2. Termination

- 3.2.1. This Agreement shall terminate with immediate effect and shall not become effective if the Appointed Date is not achieved by the Concessionaire, as per the terms of the Concession Agreement.
- 3.2.2. This Agreement shall be co-terminus with the Concession Agreement.
- 3.2.3. The rights and benefits granted to the Concessionaire pursuant to this Agreement shall stand transferred to, and shall ensure to the benefit of, any successor and permitted assignee of the Concessionaire or any other Person (including the Authority or any successor of the Authority), that may operate the Film City at any time, in accordance with the terms of the Concession Agreement.

4. REPRESENTATIONS AND WARRANTIES

4.1. By the Concessionaire

The Concessionaire hereby represents and warrants to the GoUP that, each of the representations and warranties made by it under the Concession Agreement shall *mutatis mutandis* hold true and correct



for the purposes of this Agreement in the form and manner contained therein, including but not limited to its power and authority and requisite corporate actions for the execution and delivery of this Agreement.

4.2. By the GoUP

The GoUP hereby represents and warrants to the Company that it has the right, power and authority, and has taken all actions necessary to execute this Agreement, exercise its rights and perform its functions, under this Agreement on best endeavour basis.

5. CO-ORDINATION MECHANISM

Any issues arising out of this Agreement shall be resolved through the mechanism of a coordination committee to be formed by the GoUP and to be chaired by the Chief Secretary, GoUP, with representatives from the GOI and other concerned parties.

This Agreement shall not confer any right against GoUP for enforcement of any obligations by the state of Uttar Pradesh and consequently for damages/losses etc. incurred by the Concessionaire or any party.

6. GOVERNING LAW AND DISPUTE RESOLUTION

6.1. This Agreement (including this Clause 6) and all questions of its interpretation shall be construed in accordance with the laws of the Republic of India.

6.2. The Parties agree that they shall attempt to resolve through good faith consultation, disputes arising in connection with this Agreement, and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation. Provided that if such good faith consultations have not resulted in a resolution of the dispute within 60 (sixty) days of such consultations having commenced, the provisions of Clause 6.3 shall apply.

6.3. Arbitration

6.3.1. Any dispute, which could not be settled by the Parties through amicable settlement (as provided for under Clause 6.2 hereinabove) shall be finally settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996.

6.3.2. The disputes shall be referred to a tribunal comprising 3 (three) arbitrators. Each Party to the arbitration shall appoint one arbitrator, and the two arbitrators thus appointed shall choose the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the “**Arbitral Tribunal**”). The arbitration proceedings shall be conducted in accordance with the Rules.

6.3.3. Such arbitration shall, unless otherwise agreeable to the Parties, be held at Lucknow, India. All proceedings of such arbitration shall be in the English language.

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



6.3.5. Subject to this Clause 6, the Courts at [] shall have jurisdiction over this Agreement.

7. MISCELLANEOUS

7.1. Notice

7.1.1. Any notice required or permitted under the terms of this Agreement or required by law shall (unless otherwise agreed) be in writing and shall be delivered in person, sent by registered mail or air mail as appropriate, properly posted and fully prepaid in an envelope properly addressed or sent by facsimile to the respective parties as follows:

GoUP

Address: []
Attention: []
E-mail: []
Fax No.: Authority: []

Address: []
Attention: []
E-mail: []
Fax No.: []

Concessionaire:

Address: []
Attention: []
E-mail: []
Fax No.: []

or to such other address or facsimile number as may from time to time be designated by notice hereunder.

7.1.2. Any such notice shall be in the English language and shall be considered to have been given at the time when actually delivered if delivered by hand, or upon the next working day following sending by facsimile or in any other event within 7 days after it was mailed in the manner hereinbefore provided.

7.2. Severability

In the event that any or any part of the terms, conditions or provisions contained in this Agreement shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such terms, conditions or provisions shall to that extent be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

7.3. Entire Agreement



This Agreement represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the Parties may have / had.

7.4. Amendment

No addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

7.5. Assignment

Notwithstanding any change in the Applicable Law, after the date hereof which might otherwise permit the assignment of this Agreement, no Party may assign this Agreement or any right or obligation arising under or pursuant to it or any benefit or interest herein or create or permit to subsist any security over this Agreement or any right or obligation arising under or pursuant to it or any benefit or interest in it.

7.6. No Waiver

No failure on the part of GoUP or the Authority to exercise, and no delay on their part in exercising, any right, power, privilege or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. Unless specified otherwise, the rights, powers, privileges and remedies provided in this Agreement are cumulative and not exclusive of any other rights, powers, privileges or remedies (whether provided by law or otherwise).

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized officers and representatives as of the day and year first above written.

Signed by

For and on behalf of GoUP Signed by _____	Witnessed by:
For and on behalf of the Authority Signed by _____	Witnessed by:



For and on behalf of the Concessionaire Signed by _____	Witnessed by:
---	---------------

[Handwritten signature]

[Handwritten signature] 

Annexure – IV

(Schedule C)

Specifications and Standards for the Project

The table set out below contains the list of Indian standards that the Concessionaire shall adhere to in relation to construction of various structures within the Film City such as Studio, workshops, stores, temporary structures, villages, administrative office, teleport, hotels, club house, convention center, stadium, amusement park, shops, multi-level car parking, compound wall, entrance gate, gates, security cabin, road, pavements, infrastructure facilities, etc.

LIST OF INDIAN STANDARDS:

Following are the various pertinent Indian Standards, relevant to buildings work:

(All Latest Versions of I.S. codes shall be referred)

I. S. CODE NO.	SUBJECT
A. CIVIL WORKS	
1. CARRIAGE OF MATERIALS	
4082-1996	Recommendations on stacking & storage of construction materials and components at site.
1141	Seasoning of Timber – Code of Practice
2. EARTH WORK	
632	Gamma – BHC (Lindane) emulsifiable concentrates
1200 (Pt 1)	Method of measurement of earth work
1200 (Pt-27)	Method of measurement of earth work (by Mechanical Appliances)
4081	Safety code for Blasting and related drilling operation
4988 (Part IV)	Excavators
6313 (pt-II)	Anti-Termite measures in buildings (pre -constructional)
6313 (pt-III)	Anti-Termite Measures in Buildings for existing buildings
6940	Methods of test for pesticides and their formulations
8944	Chlorpyrifos emulsifiable concentrates
8963	Chlorpyrifos – Technical specifications
12138	Earth moving Equipments
3. MORTAR	
196-1966	Atmospheric conditions for testing (Reaffirmed - 1990)



269-1989	Specification for 33 Grade Ordinary, rapid hardening and low heat Portland cement
383-1970	Specification for Coarse and fine aggregate from natural sources for concrete (Reaffirm - 1990)
455-1989	Specification for Portland blast furnace slag cement
650-1991	Specification for Standard sand for testing of cement
1269	Specification for 53 grade ordinary Portland cement
1344	Specification for calcined clay Pozzolana
I. S. CODE NO.	SUBJECT
712-1984	Specification for building limes. (Reaffirmed - 1995)
1489-1991	Specification for Portland pozzolana cement Fly ash based
1514-1990	Methods of sampling & Test for Quick Lime & Hydrated Lime. (Reaffirmed – 1996)
1542-1992	Specification for Sand for Plastering.
1727-1967	Methods of tests for pozzolanic materials
2116	Specification for sand for masonry mortar.
2250-1981	Code of practice for preparation and use of masonry mortar. (Reaffirm- 1990)
2386-1963	Methods of Test for Aggregates for Concrete
2386 Pt.I -1963	Method of test for aggregate for concrete (Particle size and shape) Particle size and shape
2386 Pt. II -1963	-Do- Estimation of deleterious materials and organic impurities
2386 Pt.III -1963	-Do- Specific gravity, density, voids, absorption and bulking
2686-1977	Cinder as fine aggregate for use of Lime Concrete. (Reaffirmed – 1992)
3025-1964	Methods of sampling & test (Physical & Chemical) water used in industry. (Reaffirmed-2003)
3068-1986	Broken brick (burnt clay) coarse aggregate for use in lime concrete (II-R.)
3182-1986	Broken brick (Burnt clay) fine aggregate for use in lime mortar
3406	Specification for masonry cement.
3812-1981	Specification for Fly Ash using as pozzolana and admixtures (Reaffirmed - 1999)
3812 (Part I)	Specification for flyash for use as pozzolana in cement mortar and concrete
3812 (Part II)	Specification for flyash for use as admixture in cement martar and concrete
4031-1996	Methods of physical tests for hydraulic cement (Reaffirmed – 1996)
4031 (Part I) to (Part XIII)	Method of Physical test for hydraulic cement
4032-1985.	Method of chemical analysis of hydraulic cement (Reaffirmed - 1990)

6932 (Pt.I)-1973	Determination of insoluble residue, loss of ignition, silicon-dioxide, ferric & Alum. Oxide, calcium oxide & magnesium oxide insoluble matter.
6932 (Pt.II)-1973	Determination of carbon dioxide content
6932 (Pt.III)-1 973	Determination of residue on slaking of quick lime.
6932 (Pt.IV)-1973	Determination of fineness of hydrated lime
6932 (Pt.V)-1973	Determination of unhydrated oxide
6932 (Pt.VI)-1973	Determination of volume yield of quick lime
6932 (Pt.VII)-1 973	Determination of compressive and transverse strength.
I. S. CODE NO.	SUBJECT
6932(Pt.VIII)-1 973	Determination of workability
6932 (Pt.IX)-1973	Determination of soundness
6932 (Pt.X)-1973	Determination of popping and pitting of hydrated Lime.
8041	Rapid hardening Portland cement.
8042	Specification for white cement
8043	Hydrophobic Portland cement
8112	Specification for 43 grade ordinary Portland cement
11652	Woven HDPE sacks for packing cement
11653	Woven polypropylene sacks for packing cement
12174	Jute synthetic union bags for packing cement
4. CONCRETE WORK	
383-1970	Specification for Coarse and fine aggregate from natural sources for concrete (Reaffirm - 1990)
456-2000	Code of practice for plain and reinforced concrete
516-1959	Method of test for strength of concrete (Reaffirmed in 2004)
1199-1959	Methods of sampling and analysis of concrete. (Reaffirmed - 1999)
1200 (Pt.II)-1987	Methods of measurements of cement concrete work. (Reaffirm - 1992)
1322-1993	Bitumen felts for waterproofing and damp-proofing. (Reaffirmed -1988)
1661-1 987(Pt.I II)	Code of practice for application of cement lime plaster finishes.(Reaffirm- 1999)
1791	General requirements for batch type concrete mixers
2386-1977 (Pt.1 to 8)	Methods of test for aggregate for concrete
2386 (Pt.I) -1963	Test for particle size and shape

2386 (Pt.II) -1963	Test for estimation of deleterious materials and organic impurities
2386 (Pt.III) -1963	Test for specific gravity, density, voids, absorption and bulking
2386 (Pt.IV) -1963	Mechanical properties
2386 (Pt.V) -1963	Soundness
2505	General requirements for concrete vibrators - immersion type.
2506	General requirements for concrete vibrators - screed board concrete vibrators
2645-1975	Specification for integral waterproofing compounds
2686-1977	Specification for cinder aggregate for use in lime concrete. (Reaffirm - 1992)
I. S. CODE NO.	SUBJECT
3068	Specification for broken brick (burnt clay) coarse aggregate for use in concrete.
3812-1981	Specification for Fly Ash using as pozzolana and admixtures for concrete. (Reaffirmed – 1999)
4656	Specification for form vibrators for concrete.
7861-1975 (Pt.I)	Hot weather concreting (Reaffirmed -1990)
7861-1981 (Pt.II)	Cold weather concreting (Reaffirmed -1992)
9103-1999	Specification for concrete Admixture
5. REINFORCED CEMENT CONCRETE WORK	
226	Structural Steel
432-1982	Mild steel & medium tensile steel bars and hard drawn steel wire for concrete reinforcement.
432 (Pt.I)-1982	Mild steel and medium tensile steel bars
432 (Pt.II)-1982	Specification for mild steel and medium tensile steel bars and hard drawn steel wire for concrete reinforcement – Part-II hard drawn steel wire.
456-2000	Code of practice for plain and reinforced concrete
457-1957	COP for general const. of plain & reinforced concrete for dams & other massive structure.
516-1959	Method of test for strength of concrete (Reaffirmed in 2004)
716	Specification for pentachlorophenol
1161-1963	Specifications for steel tubes for structural purposes
1199-1959	Methods of sampling and analysis of concrete. (Reaffirmed - 1999)
1200 (Pt.II) -1974	Method of measurement of cement concrete work
1200(Pt.V) -1982	Method of measurement of form work. (Reaffirmed - 1989)
1343-1980	Code of practice for pre-stressed concrete.

1566-1982	Hard drawn steel wire fabric for concrete reinforcements (II Rev.) (Reff.1998)
1599	Method for bend test
1608	Method for tensile testing of steel products
1780-1961	Specifications for cold twisted steel bars for concrete reinforcement
1785-1983 (Part-I& II)	Specifications for plain hard drawn steel wire for pre-stressed concrete
1786-1985	H.Y.S.D./ Cold twisted steel bars for concrete reinforcement Reaffirmed - 1990)
1791	Specification for batch type concrete mixes
2090-1983	Specifications for high tensile steel bars used in prestressed concrete.
I. S. CODE NO.	SUBJECT
2204-1962	Code of practice for construction of reinforced concrete shell roof. (Reaffirmed - 1990)
2210-1988	Criteria for the design of shell structure and folded plates (Reaffirmed - 1998)
2502-1963	COP for bending and fixing of bars for concrete reinforcement. (Reaffirmed - 1999)
2750-1964	Specifications for steel scaffoldings
2751-1979 (Reaf-1992)	COP for welding of mild steel bars used for reinforced concrete construction.
3201-1988	Criteria for design and construction of precast concrete trusses. (Reaffirmed - 1995)
3370 (Part I to IV)-1965	Code of practice for concrete structures for storage of liquids. (Reaffirmed - 1999)
3385-1965	Code of practice for measurement of Civil Engineering works - Pile Foundation)
3414-1968	Code of practice for design and installation of joints in buildings. (Reaffirmed - 1990)
3558-1983(Reaf- 91)	Code of practice for use of immersion vibrators for consolidating concrete
3696 (Pt.I & II)	I-1987: Safety code of scaffolds; II-1991: Safety code of ladders
3935-1966	Code of practice for composite construction. (Reaffirmed – 1998)
4014-1967 (Pt. & II)	COP for steel tubular scaffolding (I: Definition/Material; II: Safety Resolutions) (Raffir 1999)
4925	Batch plants specification for concrete batching and mixing plant
4926-2003	Code of practice for Ready Mix Concrete
4990-1993	Specifications for plywood for concrete shuttering work. (Reaffirmed - 1998)
6523	Specification for precast reinforced concrete door, window frames
10262-1982	Code of practice for design mix. (Reaffirmed - 1999)
13311 (Part I)	Indian standard for non-destructive testing of concrete. Method of test for ultrasonic pulse velocity
13311 (Part II)	Indian standard for non-destructive testing of concrete. Method of testing by rebound hammer.





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6. BRICK WORK	
712-1984	Specification for building limes. (Reaffirmed - 1995)
1077	Common burnt clay building bricks.
1200 (Part 3)	Method of measurements of brick works
2212	Code of practice for brick work. (1st Revision)
2222	Specification for burnt clay perforated building bricks.
2849	Specification for non load bearing gypsum partition blocks, (Solid and hollow types)
3495	Method of test for burnt clay building bricks.
I. S. CODE NO.	SUBJECT
3812	Specification for fly ash for use as pozzolana and admixture.
4139	Specification of calcium silicate bricks
4885	Specification for sewer brick
5454	Methods of sampling of clay building bricks.
12894	Pulverized fuel ash lime bricks specification,
13757	Specification of burnt clay fly ash bricks.
7. STONE WORK:	
737	Specifications for wrought aluminium and aluminium alloy, steel and strip for general engineering purpose.
1121 (Pt.I)-1974	Methods for determination of compressive, transverse & shear strengths of natural building stones
1122-1974	Methods for determination of specific gravity and porosity of natural building stones
1123-1975	Methods for identification examination of natural building stones
1124-1974	Methods of test for water absorption of natural building stones
1125-1974	Methods of test for weathering of natural building stones
1126-1974	Methods of test for durability of natural building stones
1129-1972	Dressing of natural building stones
1200 (Pt.IV)-1976	Method of measurement of stone masonry. (Reaffirmed - 1992)
1597-1992	Code of practice for construction of stone masonry
1597. (Pt.I)-1992	Code of practice for construction of Rubble stone masonry. (Reaffirmed -1996)
1597 (Pt.II)-1992	Code of practice for construction of ashlar masonry (Reaffirmed - 1996)
1805-1973	Glossary of Terms relating to stone Quarrying and dressing. Reaffirmed - 1993)




4101 (Pt.III)	Code of practice for external facing and veneers: (Part II-Cement Concrete facing).
4104 (Pt.I)	Code of practice for external facings and veneers (Part I-Stone facing).
8. MARBLE WORK:	
1122-1974	Methods for determination of specific gravity and porosity of natural building stones
1124-1974	Methods of test for water absorption of natural building stones
1130-1969	Marble (blocks, slabs and tiles)
3316	Specifications for structural granite
4101 (Part 1)	Code of practice for external facing and veneers: Stone facing.
I. S. CODE NO.	SUBJECT
14223 (Part 1)	Polished Building Stones (Part-1) Granite
9. WOOD WORK:	
204-1991/92	Tower bolts (Part I-1991: ferrous metals; Part II - 1992: Non ferrous metals).
205-1992	Non-ferrous metal butt hinges
420-1953	Putty used on metal frame (withdrawn).
1734 - 1983	Methods of tests for plywood (IIR) (Ref 1993)
206-1992	Tee and strap hinges
207-1964	Gate and shutter hooks and eyes. (Reaffirmed - 1996)
208-1987	Door handles
281-1991	Mild steel sliding door bolts for use with padlocks
287-1973(Reaf-98)	Recommendation for maximum permissible moisture contents of timber used for Different purposes.
303-1989	Plywood for general purpose
362-1991	Parliament hinges
363-1993	Hasps and staples
364-1993	Fanlight catch
401-1982	Code of practice for preservation of timber
419 - 1967	Putty for use on window frame (I Rv.) (and out 3)
451-1999	Technical supply condition for wood screws
452-1973	Door springs, rat-tail type(II Rev.) (Reaffirmed 1990)
453-1993	Double acting spring hinges. (Reaffirmed – 1999)




707	Glossary of terms applicable to timber technology and utilization
710	Specifications for Marine Plywood
723-1972	Steel counter sunk head wire nails. (Reaffirmed - 1996)
729-1979	Drawer locks, cup board locks, and box locks (III Rev.) (Reaffirmed 1992)
848-1974	Synthetic resin adhesive for plywood (phenolic and aminoplastic) (I RV) (
851-1978	Synthetic resin adhesive for construction work (Non-structural) in wood (I-Rev.) (amt) (Reaffirmed 1990)
852-1994	Specifications for animal glue for general wood working purposes. (II Rev)
1003-1994	Timber panelled and glazed shutters
1003(Pt.I)-2003	Door shutters (III Rev.) (a1)
I. S. CODE NO.	SUBJECT
1003 (Pt.II)-1994	Window and ventilator shutters (III Rev.)
1019-1974	Rim latches. (Reaffirmed - 1991)
1141-1993	Code of practice for seasoning of timber (II Rev.)
1200	Method of measurement of Building and Civil Engineering works
1200 (Pt.XIV)-1984	Glazing. (Reaffirmed - 1990)
1200 (Pt.XII)-1973	Wood work and joinery. (Reaffirmed - 1992)
1322-1993	Bitumen felts for waterproofing and damp-proofing. (Reaffirmed -1988)
1328-1996	Veneered decorative plywood
1341-1992	Steel Butt hinges (VI Rev.)
1378-1987	Oxidized copper finishes. (Reaffirmed - 1998)
1566	Specification for hard drawn steel wire fabric
1568-1970	Wire cloth for general purposes. (Reaffirmed - 1998)
1629-1960	Rules for grading of out size of timber. Superseded in I.S. 1331
1658-1977	Fiber hard board. (Reaffirmed - 1990)
1659-2004	Block boards
1708 (Part 1 to 18)	Testing of small clear specimen for timber
1708-1986	Method of testing of clear specimen of timber (II Rev) (Q.1) (Reaffirmed 1990)
1734	Determination of density and moisture content.
1823-1980	Floor door stoppers. (Reaffirmed - 1992)
1868-1996	Anodic coating on Aluminium & its alloy (II Rev.) (Reaffirmed 1991)
875-PET 1987	Dead loads – Unit not of bldg. & stored materials



2191-1983	Wooden flush door shutter (cellular and hollow core type). (Reaffirmed - 1991)
1837 - 1966	For light pirot (I Rev.) (Reaffirmed 1990)
2046	-do- Decorative thermosetting synthetic resin bonded laminated sheet
2095-1982	Gypsum plaster bow (I Rev) (an.1) (Ref. 1991)
2096-1992	A.C. flat sheet (I Rev.)
3828 - 1968	Ventilator chains (Reaf. 1990)
4835 - 1979	Polyvinyl acetate dispersion base adhesive for wood (1990)
2191 (Pt.I)-1983	Plywood face panels. (Reaffirmed - 1991)
2191 (Pt.II)-1983	Particle board face panels and hard board face panels. (Reaffirmed-1991)
I. S. CODE NO.	SUBJECT
2202-1999	Wooden flush door shutters (solid core type)
2202 (Pt.I)-1999	Plywood face panels for wooden flush door shutters
2202 (Pt.II)-1983	Particle board face panels for wooden flush door shutters. (Reaffirmed - 1991)
2209(Pt.I)-1976	Mortise locks (vertical type) (Reaffirmed 1992)
2380-1981	Method of test for wood particle board and boards from lignocellulosic materials (Reaf.1993)
2547	Specification for gypsum plaster
2753	Method for estimation of preservatives in treated timber and in treating solutions.
2681-1993	Non ferrous metal sliding door bolts(aldrop) for use with pad locks
2835-1987	Flat transparent sheet glass (3rd Revision). (Reaffirmed - 1992)
3087-1985	Wood particle boards (medium density) for general purpose (1990)
3097-1980	Veneered particle boards (1st Revision).
3400 (Part I)-1987	Method of test for vulcanized rubbers (1991)
3400-(Pt.II)-2003	Hardness (1981)
3400-(Pt.IV)-1987	Accelerated aging (1993)
3400 (Pt.IX)-2003	Relative density and density. (Reaffirmed - 1990)
3564-1996	Door closers (Hydraulically regulated)
3618-1966	Phosphate treatment of iron and steel for protection against corrosion. (Reaffirmed - 1991)
3813-1967	'C' hooks for use with swivels (1992)
3818-1992	Continuous (Piano) hinges
3847-1992	Mortise night latches



4020-1998 (1 to 16)	Methods of tests for wooden flush Doors (Type tests)
4021-1995	Timber door, window and ventilator frames
4827-1983	Specification for electroplated coating of nickel and chromium on copper and copper alloys
4948-2002	Welded steel wire fabric for general use. (Reaffirmed - 1992)
4992-1975	Door Handles for mortise locks (vertical type). (Reaffirmed - 1990)
5187-1972	Flush bolts (1990)
5509	Specification for Fire Retardant Plywood
5523-1983	Method of testing anodic coating on aluminium & its alloys. (Reaffirmed -1991)
5930-1970	Mortise latch (vertical types) (1991)
6318-1971	Plastic window stays & fasteners
I. S. CODE NO.	SUBJECT
6607-1972	Rebated mortise locks (vertical type)
6760-1972	Slotted countersunk head wood screws. (Reaffirmed - 1988)
7196-1974	Hold fasts (1992)
7197-1974	Double action floor springs (without oil check) for heavy doors
7534-1985	Sliding locking bolt for use with padlocks. (Reaffirmed – 1991)
7638	Wood/lignocellulosic based panel products – Method for sampling
8756 - 1978	Mortice bell catches for use in wooden almirah (1992)
9308 (Part II)	Specification for mechanically extracted coir fibres. (Mattress coir fibres)
9308 (Part III)	-do- Decorated coir fibre
11215	Moisture content of timber and timber products method of determination
12049	Dimensions and tolerance relating to wood based panel materials
12406	Specification for medium density fibre board
12817	Specification for stainless steel Butt Hinges
12823	Specification for wood products –Prelaminated particle Boards
14616	Specifications for laminated veneer lumber
14842	Specification for coir veneer board for general purposes
14856-2000	Glass fibre reinforced plastic (GRP) panel type door shutters for internal use – Specifications
14900	Specifications for transparent float glass
10. STEEL WORK	




63-1978	Whiting for paints. (Reaffirmed - 1994)
198-1978	Varnish, gold size. (Reaffirmed - 1991)
228	Structural steel (Standard quality)
12406 - 1988	Medium density fibre board for general purpose - (1992)
277-2003	Specification for galvanised steel sheets (plain and corrugated)
278-1978	Galvanised steel barbed wire for fencing. (Reaffirmed - 1991)
800-1984	Code of practice for use of structural steel in general building construction
806-1968	Code of practice for use of steel tube in general building construction
812	Glossary of terms relating to welding and cutting metals
813-1986	Scheme of symbols for welding. (Reaffirmed – 2003).
I. S. CODE NO.	SUBJECT
814-1991	Covered electrodes for metal arc welding of structural steel (Reaffirmed 2003)
814 (Pt-I)-1974	For welding products other than sheets.
814 (Pt-II)-1974	For welding sheets.
816	Code of practice for use of metal arc welding for general construction in mild steel
817-1966	Code of practice for training and testing of metal arc welders. (Reaffirmed – 2003)
818-1968 (Reaf-03)	COP for safety & healthy requirements in electric & gas welding & cutting operation.
822	Code of procedure for inspection of welds
823	Manual for metal arc welding in mild steel
1038-1983	Steel doors, windows and ventilators
1081-1960(Reaf-91)	COP for fixing & glazing of metal (steel & aluminium) doors, windows & ventilators
1148-1982(Reaf-92)	Hot rolled steel rivet bars (upto 40 mm diameters)for structural purposes (Reaffirmed 2001)
1161-1998	Steel tubes for structural purposes
1182-1 983(Reaf-00)	Recommended practice for radiographic examination of fusion welded butt joints in steel plates.
1200 (Pt-VIII)-1993	Method of measurements of steel work and iron works
1363-1992 (Pt. 1-3)	Hexagon bolts, nuts & lock nuts (dia. 6 to 39 mm) & black hexagon screws (dia. 6 to 24 mm).(Reaf-98)
1367	Technical supply conditions for threaded steel fasteners
1599-1 985(Reaf-91)	Method for bend test for steel products other than sheet, strip, wire & tube (reaffirmed 1996).
1608-1995	Method for tensile testing of steel products (Reaffirmed 2001)
1821-1987	Dimensions for clearance holes for metric bolts. (Reaffirmed - 2003)

1852-1985	Rolling and cutting tolerance for hot rolled steel products. (Reaffirmed - 1991)
1894	Method for tensile testing of steel tubes
1977-1969	Structural steel (ordinary quality) (Reaffirmed 2001)
2062-1999	Structural steel (fusion welding quality). Supersedes IS 226-1 975
2074	Ready mixed paint, air drying red oxide zinc chrome priming
4351-2003	Steel door frames. (Reaffirmed – 1991)
4454 (Part I)	Steel wires for mechanical springs. Cold drawn unalloyed steel wire.
4711	Methods for sampling of steel pipes, tube and fittings.
4736-1986	Specification for Hot-dip Zinc Coatings on mild steel tubes (Reaffirmed – 2001)
4923	Hollow Steel Sections for Structural Use - Specification
I. S. CODE NO.	SUBJECT
6248-1979	Metal rolling shutters and rolling grills
7452-1990	Hot rolled steel sections for doors, windows & ventilators.
11. FLOORING:	
210-1993	Grey iron casting (Reaffirmed 1999)
269	Specification for 33 grade ordinary portland Cement
401	Code of practice for preservation of timber
451	Technical supply conditions for wood screws
455	Specification for portland slag cement
653-1992	Sheet linoleum
661	Code of practice for thermal insulation of cold storages
702-1988	Specification for industrial bitumen
777-1988	Glazed earthen-ware tiles
809-1992	Rubber flooring materials for general purpose
1122-1974	Methods for determination of specific gravity (*and porosity of natural building stones)
1124-1974	Method of test for water absorption of natural building stones
1130-1969	Marble (blocks, slabs and tiles). (Reaffirmed – 1993)
1141	Code of practice for Seasoning of timber
1197-1970	Code of practice for laying of rubber floors. (Reaffirmed – 1990)
1198-1982	Code of practice for laying and maintenance of linoleum floors



1200 (Pt.XI)-1977	Method of measurements of pavings and floor finishes.
1237-1980	Cement concrete flooring tiles. (Reaffirmed – 1990)
1322-1993	Bitumen felts for waterproofing and damp-proofing. (Reaffirmed -1988)
1443-1972	Code of practice for laying and finishing of cement concrete flooring tiles
1489 (Part-I)	Specification for portland pozzolana cement (Part-I) flyash based
1489 (Part-II)	Specification for Portland pozzolana cement (Part II) calcined clay based
1580	Specification for bituminous compounds for water proofing and caulking purpose
1661-1972	Code of practice for application of cement and cement lime plaster finishes
2114-1984	Code of practice for laying in situ terrazzo floor finish
2571-1970	Code of practice for laying in situ cement concrete flooring
I. S. CODE NO.	SUBJECT
3400-1 987 (Part 1 to 22)	Method of Test of vulcanized rubbers. (Reaffirmed – 2003)
3400 (Pt.II)-2003	Hardness
3400 (Pt.X)-1977	Compression set at constant strain. (Reaffirmed – 2003)
3462-1986	Flexible P.V.C. Flooring. (Reaffirmed – 1991)
3622	Specification for sand stone (Slab & Tiles)
3670	Code of practice for construction of timber floors
4457	Acid and/or alkali Resistant tiles.
4631-1986	Code of practice for laying of resin floor toppings (Reaffirmed – 2001)
5318-1969	Code of practice for laying of flexible P.V.C. sheet & tiles flooring
5389-1969	Code of practice for laying of hardwood parquet and wood block floors. (Reaffirmed – 1998)
5766	Code of practice for laying of burnt clay brick floor
8041	Specification for rapid hardening portland cement
8042	Specification for white portland cement
8043	Specification for hydrophobic portland cement
8112	Specification for 43 grade ordinary portland cement
9197-1979	Specifications for epoxy resin, hardeners and epoxy resin compositions for floor topping (Reaffirmed – 2001)
12330	Specification for sulphate resisting portland cement.
13630 (Pt.1 to 15)	Methods of tests for ceramic tiles (Part 1 to 15: 1992-1993)
13712	Specification for ceramic tiles; definition, classification characteristic and marking




15622	Specification for pressed ceramic tile
12. ROOFING:	
73-1992	Paving Bitumen (Reaffirmed 1998)
277-2003	Galvanised steel sheets (plain and corrugated)
458-2003	Pre-cast Concrete pipes (with and without reinforcement)
459-1992	Unreinforced corrugated and semicorrugated asbestos cement sheets
651-1992	Specification for Salt glazed stone ware pipes and fittings
702-1988	Specification for industrial bitumen
1199-1959	Methods of sampling and analysis of concrete. (Reaffirmed - 1999)
1200 (Pt.IX)-1973	Method of measurements of roof covering (including cladding)
I. S. CODE NO.	SUBJECT
1200 (Pt.X)-1973	Method of measurements of ceiling and lining
1230	Cast iron rain water pipes and fitting
13607 - 1992	Ready Mixed Paint, Finishing, General Purposes, Synthetic (Reaffirmed 2002)
1322-1993	Bitumen felts for waterproofing and damp-proofing. (Reaffirmed -1988)
1346-1991	Code of practice for waterproofing of roof with bitumen felts
1367 (PT -13)	Technical supply conditions for threaded steel fasteners pt.13 hot dip galvanized coating on threaded fasteners
1609-1991	Code of practice for laying damp proof treatment using bitumen felts
1626-1994 (Part I-III)	Asbestos cement building pipes, gutters and fittings (Spigot and socket types)
1834-1984	Specification for hot applied sealing compounds for joints in concrete. (Reaffirmed - 1990)
1838 (Pt.I & II)-1983	Specification for preformed filler for expansion joints in concrete- non-extruding and resilient type Bitumen impregnated fiber). (Reaffirmed - 1990)
2095 (PT-1)	Gypsum plaster boards (Pt.1) plain Gypsum plaster boards
2115-1980	Code of practice for flat roof finish:mud phuska. (Reaffirmed - 1998)
2633-1986	Method of testing uniformity of coating on zinc coated articles. (Reaffirmed – 2001)
2645-1975	Specification for integral waterproofing compounds for cement mortar and concrete
3007 (PT.1)	Code of practice for laying of asbestos cement sheets: part- 1 corrugated sheets
3007 (PT.2)	Code of practice for laying of asbestos cement sheets part- 2 semi corrugated sheets
3087	Particle boards of wood and other lignocellulologic materials (medium density) for general purposes – specifications
3144	Methods of test for mineral wool thermal insulation materials




3346	Method of the determination of thermal conductivity of thermal insulation materials
3348-1965	Specification for Fiber insulation boards. (Reaffirmed - 1990)
3384	Specification for bitumen primer for water proofing and damp proofing
3607-1979	Magnesite for chemical Industry. (Reaffirmed – 2003)
4671	Expanded polystyrene for thermal insulation purposes
5382	Specification for rubber sealing rings for gas mains, water mains and sewers
5688	Methods of test of performed block type and pipe covering type thermal insulations
6598	Cellular concrete for thermal insulation
7193-1994	Specifications for glass fiber base coal tar Pitch & Bitumen felts.
8183-1993	Bonded mineral wool. (Reaffirmed 2004)
10192	Specifications for synthetic resin bonded glass fibre (SRBGF) for electrical purposes.
I. S. CODE NO.	SUBJECT
13592	Unplasticised polyvinyl chloride (UPVC) pipes for soil and Waste discharge system for inside and outside building.
14753	Specifications for polymethyl Methacrylate (PMMA) (Arylic) sheets
14862	Fibre cement flat sheets – specifications
14871	Specifications for products in fibre reinforced cement – Long corrugated or Asymmetrical section sheets and fittings for roofing and cladding
13. FINISHING	
16 (Pt-I)	Shellac: Part: I — Hand Made Shellac
16 (Pt-II)	Shellac: Part: II — Machine Made Shellac
75-1973	Linseed oil, raw and refined. (Reaffirmed – 2003)
77-1976	Linseed oil, boiled, for paints. (Reaffirmed - 1999)
102-1962	Ready mixed paint, brushing, red, lead, non setting, priming.(Reaffirmed - 1996)
104-1979	Specification for ready mixed paint, brushing, zinc chrome, priming. (Reaffirmed - 1999)
109	Ready Mixed Paint, brushing, priming Plaster to Indian Standard Colour No.361, 631 White and off White
117	Ready Mixed Paint, Brushing, Finishing Exterior, Semi-gloss for General Purposes to Indian Standards Colours
133-1993	Enamel, interior (a) under coating (b) finishing colour as required
137-1965	Ready mixed paint, brushing, matt or egg-shell flat, finishing, interior, to Indian Standard Colour, as required. (Reaffirmed – 1999)
158-1981	Ready mixed paint, brushing, bituminous, black lead free acid alkali, water and heat resisting for general purposes. (Reaffirmed – 1999)

168-1993	Ready mixed paint, air drying for general purpose.(Reaffirmed 2002)
217-1988	Cut back bitumen (reaffirmed 1999)
218-1983	Creosote and anthracene oil for use as wood preservatives (Reaffirmed 1998)
290-1961	Coal tar black paint. (Reaffirmed – 1996)
337-1975	Varnish, finishing interior. (Reaffirmed – 2001)
341-1973	Black Japan, types A, B, and C (Reaffirmed 2002)
347-1975	Varnish, shellac for general purpose. (Reaffirmed – 2001)
348-1968	French polish. (Reaffirmed – 2001)
419-1967	Putty for use of window frames. (Reaffirmed – 2001)
427-1965	Distemper, dry, colour as required. (Reaffirmed – 1999)
428-2000	Washable distemper
524-1983	Varnish, finishing, exterior, synthetic. (Reaffirmed – 2000)
I. S. CODE NO.	SUBJECT
525-1968	Varnish, finishing, exterior and general purposes. (Reaffirmed –2001)
533-1998	Gum spirit of turpentine (oil of turpentine) (Reaffirmed 2003)
712-1984	Specification for building limes. (Reaffirmed - 1995)
1200 (Pt. XII)-1976	Method of measurements of plastering and pointing
1200 (Pt.XIII)-1994	Method of measurements of white washing, colour washing, distempering and other finishes
1200 (Pt.XV)-1987	Methods of measurements of painting, polishing & varnishing.
2095-1996 (Pt.I - III)	Gypsum plaster boards
2096-1992	Asbestos cement flat sheets.
2339-1963	Aluminium paint for general purposes, in dual container. (Reaffirmed – 1999)
2547-1976 (Pt I & II)	Gypsum building plaster (Reaff. 1992)
2932-2003	Enamel synthetic, exterior (a) Under coating (b) Finishing.
2933-1975	Enamel, Exterior (a) Under coating (b) Finishing
5410-1992	Cement paint (Reaffirmed 1999)
5411 (Pt.I)-1 974	Plastic emulsion paint for interior use. (Reaffirmed – 1993)
6278-1971	Code of practice for white washing & colour washing. (Reaffirmed -1991)
14. REPAIRS TO BUILDINGS	
419	Specifications for Putty for use in Window Frames

14900	Specifications for Transparent Float Glass
15. DEMOLITION AND DISMANTLING:	
1200 (Pt.XVIII)-1974	Method of measurements of demolition and dismantling
4130-1991	Demolition of Buildings–Code of Safety
16. ROAD WORK	
73-1992	Paving Bitumen (Reaffirmed 1998)
164	Ready mixed paint for road marking
217-1988	Cut back bitumen (reaffirmed 1999)
8112	Specification for 43 grade ordinary Portland cement
278-1978	Galvanised steel barbed wire for fencing. (Reaffirmed - 1991)
334	Glossary of terms relating to bitumen and tar
I. S. CODE NO.	SUBJECT
383-1970	Specification for Coarse and fine aggregate from natural sources for concrete (Reaffirm - 1990)
460-1985	Specification for test sieves. (Reaffirmed - 1998)
516-1959	Method of test for strength of concrete (Reaffirmed in 2004)
702-1988	Specification for industrial bitumen
712-1984	Specification for building limes. (Reaffirmed - 1995)
1195	Specification for bitumen mastic for flooring
1199-1959	Methods of sampling and analysis of concrete. (Reaffirmed - 1999)
1203	Method of testing tar and bituminous material, determination of penetration
1205	Method of testing tar and bituminous material determination of softening point
1208	Method of testing tar and bituminous material determination of ductility
1212	Method of testing tar and bituminous material determination of loss of heating
1216	Method of testing tar and bituminous material determination of solubility in carbon-di-sulphide, trichloroethylene
1834-1984	Specification for hot applied sealing compounds for joints in concrete. (Reaffirmed - 1990)
1838 (Pt.I & II) - 1983	Specification for preformed filler for expansion joints in concrete- non-extruding and resilient type Bitumen impregnated fiber). (Reaffirmed - 1990)
2386 (Pt.I) -1963	Test for particle size and shape
2386 (Pt.II) -1963	Test for estimation of deleterious materials and organic impurities
2386 (Pt.III) -1963	Test for specific gravity, density, voids, absorption and bulking



2386 (Pt.IV) - 1963	Mechanical properties
2720 (Pt.V)	Method of test for soil: Determination of liquid and plastic limit.
2720 (Pt.VII)	Methods of test for soils: part VII determination of water content dry density relation using light compaction
2720 (Pt. XXVIII)	Method of test for soil: determination of dry density of soils in place, by sand replacement method
3812-1981	Specification for Fly Ash using as pozzolana and admixtures (Reaffirmed - 1999)
5317	Specification for bitumen mastic for bridges decking and roads
5640	Method of test for determining aggregate impact value of soft coarse aggregates
6241	Method of test for determination of stripping value of road aggregates
IRC 10	Recommended practice for borrow pits for road embankments constructed by manual operation
IRC 29	Specification for bituminous concrete for road pavements
IRC 36	Recommended practice for construction of earth embankments for road works
I. S. CODE NO.	SUBJECT
IRC 60	Tentative guidelines for the use of lime fly ash concrete as pavement base of sub base
IRC 88	Recommended practice for lime fly ash stabilized soil base/ sub base in pavement construction
IRC 107	Tentative specification for bitumen mastic wearing courses
17. SANITARY INSTALLATIONS	
771 (Pt.1)	Specification for glazed fire clay sanitary appliances: Part 1: General requirements.
771 (Pt.-2)	Specification for glazed fire clay sanitary appliances: Part 2: Specific requirements of kitchen and laboratory sink.
772	Specific action for general requirements for enameled cast iron sanitary appliances.
774	Flushing cisterns for water closets and urinals (Other than plastic cistern)- Specifications
1300	Phenolic moulding materials - Specifications
1703	Water fittings- copper alloy float valves (horizontal plunger type) - Specification
1729	Cast iron /Ductile Iron Drainage Pipes and pipe fittings for Over ground non-pressure pipe line Socket and Spigot Series.
1795	Specification for pillar taps for water supply purposes
2267	Polystyrene moulding and extrusion materials - Specifications
2326	Specification for Automatic Flushing Cisterns for Urinals (Other than plastic cisterns)
2548 (Part-1)	Plastic seats and covers for water closets Part 1: Thermo set seats and covers - Specifications
2548 (Part-2)	Plastic seats and covers for water closets Part 2: Thermoplastic seats and covers.- Specifications

2556	Vitreous sanitary appliances (vitreous china) -Specifications
2556 (Part-1)	Part-1: General requirements
2556 (Part-2)	Part-2: Specific requirements of wash-down water closets
2556 (Part-3)	Part-3: Specific squatting pans.
2556 (Part-4)	Part-4: Specific requirements of wash basins
2556 (Part-5)	Part-5: Specific requirements of laboratory sinks.
2556 (Part-6)	Part-6: Specific requirements of Urinals & Partition plates
2556 (Part-7)	Part-7: Specific requirements of accessories for sanitary appliances
2556 (Part-14)	Part-14: Specific requirements of integrated squatting pans.
2556 (Part-15)	Part-15: Specific requirements of universal water closets.
2963	Specification for Copper alloy waste fittings for wash basins and sinks.
3076	Specification for low density polyethylene pipes for potable water supplies.
I. S. CODE NO.	SUBJECT
3389	Urea formaldehyde moulding materials. - Specifications
3989	Specification for centrifugally cast (spun) iron spigot and socket soil, waste and ventilating pipes fittings and accessories.
4827-1983	Specification for electroplated coating of nickel and chromium on copper and copper alloys
4984	Specification for high density polyethylene pipes for potable water supplies.
4985	Unplasticised P.V.C. pipes for potable water supply – Specifications
7231	Plastic flushing cisterns for water closets and urinals – Specifications
13983	Stainless steel sinks for domestic purposes –Specifications.
18. WATER SUPPLY	
554	Pipe threads where pressure tight joints are required on the threads- Dimensions, tolerances and designation
778	Specification for copper alloy gate, and check valves for water works purposes
779	Water meters (domestic type) -Specification
780	Specification for sluice valves for water works purposes (50 to 300 mm size)
781	Specification for cast copper alloy screw down bib taps and stop valves for water services
782	Specification for caulking lead
909	Underground fire hydrant, sluice valve type-Specification
1239 (Part 1)	Steel tubes tubular and other wrought steel fittings, Part 1- Steel tubes - Specification
1239 (Part 2)	Specification for mild steel tubes tubular and other wrought steel fittings, Part 2- Mild street tubular and other wrought steel pipe fittings

1536	Centrifugally cast (spun) iron pressure pipes for water gas and sewage - Specification
1537	Specification for vertically cast iron pressure pipes for water, gas and sewage
1538	Cast iron fittings for pressure pipes for water, gas and sewage - Specification
1703	Water fittings - copper alloy float valves (horizontal plunger type) - Specification
2692	Ferrules for water services- Specification
3950	Specification for surface boxes for sluice valves
4736-1986	Specification for Hot-dip Zinc Coatings on mild steel tubes (Reaffirmed – 2001)
5312 (Part 1)	Swing type reflex (non return) valves for water works purposes. Part 1- Single door pattern
5312 (Part 2)	Swing type reflex (non return) valves for water works purposes. Part 2- Multi door pattern
5382	Rubber sealing rings for gas mains, water mains and sewers
9762	Specification for polyethylene floats (spherical) for float valves
9763	Plastic Bib taps and stop valves (rising spindle) for cold water services specifications
I. S. CODE NO.	SUBJECT
15450	PE-AL-PE Pipes for hot and cold water supplies-Specifications
15778	Chlorinated Polyvinyl Chloride (CPVC) pipes for potable hot and cold water distribution supplies-specifications.
15801	Polypropylene- Random Copolymer Pipes for hot and cold water supplies-Specifications
19. DRAINAGE	
458-2003	Pre-cast Concrete pipes (with and without reinforcement)
651-1992	Specification for Salt glazed stone ware pipes and fittings
783	Code of Practice for Laying Concrete Pipes
1726	Specification for Cast Iron Manhole Covers and Frames
1729	Cast iron /Ductile Iron Drainage Pipes and pipe fittings for Over ground non-pressure pipe line Socket and Spigot Series.
4127	Code of Practice for Laying of Glazed Stone Ware Pipes
4885	Specification for sewer brick
12592	Pre-cast Concrete Manhole Covers and Frames – Specifications
20. PILE WORK	
1200 (Part 23)	Method of measurement of building and Civil Engineering Works – Piling
2911 (Part 1/Sec. 1)	Code of practice for Design and Construction of pile foundation. Driven cast-in-situ piles.
2911 (Part 1/Sec. 1)	Code of practice of Design and Construction of pile foundation. Bored Cast-in-situ


2)	piles
2911 (Part 1/Sec. 3)	Code of practice for Design and Construction of pile foundation. Driven pre-cast concrete piles.
2911 (Part 1/Sec. 4)	Code of practice for Design and Construction of pile foundation. Bored pre-cast concrete piles.
2911 (Part 3)	Code of practice for Design and Construction of pile foundation. Under reamed piles.
2911 (Part 4)	Code of practice for design and Construction of pile foundation. Load test on piles.
5112	Safety Code for piling and other deep foundations.
6426	Specification for pile driving hammer
6427	Glossary of terms relating to pile driving.
6428	Specification for pile frame
9716	Guide for lateral dynamic load test on piles.
14362	Pile boring equipments. General requirements.

I. S. CODE NO.	SUBJECT
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21. ALUMINIUM WORK

733	Wrought Aluminium and Aluminium Alloys, Bars, Rods and Sections (For General Engineering Purposes) -Specification
737	Specifications for wrought aluminium and aluminium alloy, steel and strip for general engineering purpose.
1285	Wrought Aluminium and Aluminium Alloy, Extruded Round Tube and Hollow sections (For General Engineering Purposes) - Specification
1868-1996	Anodic coating on Aluminium & its alloy (II Rev.) (Reaffirmed 1991)
1948	Specification for Aluminium Doors, Windows and Ventilators
3908	Specification for Aluminium equal leg angles
3909	Specification for Aluminium unequal leg angles
3965	Dimensions for wrought Aluminium and Aluminium Alloys bars, rods and sections.
5523-1983	Method of testing anodic coating on aluminium & its alloys. (Reaffirmed -1991)
6012	Measurement of coating thickness by Eddy Current Method
6315	Floor springs (Hydraulically regulated) for heavy doors-Specifications
6477	Dimensions of extruded hollow section and tolerances
12823	Wood products- Pre-laminated particle board –Specifications.
14900	Specifications for transparent float glass

22. WATERPROOFING TREATMENT




73-1992	Paving Bitumen (Reaffirmed 1998)
702-1988	Specification for industrial bitumen
1322-1993	Bitumen felts for waterproofing and damp-proofing. (Reaffirmed -1988)
2645-1975	Specification for integral waterproofing compounds
3370 (Part -1)	Code of Practice for Concrete Structures for the Storage of Liquid: Part -1 General Requirements.
3384	Specification for bitumen primer for water proofing and damp proofing
7193-1994	Specifications for glass fiber bitumen felts.
12200	Provision of Water Stops at Transfers Construction Joints in Masonry and Concrete Dams - Code of Practice
12432 (Part-3)	Application for Spray Applied Insulation - Code of Practice Part-3 Polyurethane/ Polyisocyanurate

23. SAFETY CODES

818-1968 (Reaf-03)	Safety and healthy requirements in Electric and gas welding and cutting operations.
I. S. CODE NO.	SUBJECT
3696 (Pt.I)-1 987	Safety code for scaffolds
3696 (Pt.II)-1991	Safety code for ladders
3764-1992	Safety code for Excavation works
4081-1986	Safety code for blasting and related drilling operation
4130-1991	Safety code for Demolition of Building
5916-1970	Safety code for construction involving use of hot bituminous materials
6922-1973	Structural subject to underground blasts code of practice for safety and design of structure subject to underground blasts.
7293-1974	Working with construction machinery- safety code for

24. EQUIPMENTS

460-1985 (Pt-I,II& III)	Specification for test sieves. (Reaffirmed - 1998)
1791-1985	Specification for batch type concrete mixer. (Reaffirmed – 1990)
2430-1986	Methods for sampling of Aggregates for concrete.
2505-1992	General requirement for concrete vibrators, immersion type
2506-1985	General requirements for screed board concrete vibrators
2514-1963	Specification for concrete vibrating tables. (Reaffirmed - 1991)



3366-1965	Specification for pan vibrators. (Reaffirmed – 1991)
4656-1968	Specification for form vibrators for concrete. (Reaffirmed-1991)
2722-1964(Reaf-95)	Specification for portable swing weigh batchers for concrete (single and double bucket type).
2750-1964	Specification for steel scaffolding. (Reaffirmed – 1991)

25. Acoustics Criteria is based on

1	Reverberation Times
2	Sound Insulation
3	Background Noise / Vibrations / Noise Intrusion Criteria

1 The primary parameter used to quantify the room acoustic is the mid-frequency reverberation time (RT), taken as the mean of the octave band RTs in the range of 250 Hz to 4kHz. The specified reverberation times for acoustically critical spaces are provided in table below. These values apply to rooms in their finished condition but prior to the installation of furniture and technical equipment.

Space description as per MAI	Maximum mid- frequency RT, seconds
TV Studio	0.70
Film Studios	1.00
TV Sound Control Room	0.20
TV Production Control Room / TV Lighting Control Room	0.30

2 Sound insulation requirements for technical spaces are provided in table below:

From	To	Minimum internal airborne sound insulation, (MAI) $D_{m, dB}$
TV Studio	Any adjacent room, except associated Production and Vision Control Rooms	70
TV Studio	Production Control Room, Vision Control Room	50
TV Sound Control Room	Any adjacent room other than TV Studio	60
TV Studio	TV Studio	75
Film Studio	Any adjacent room	60
Film Studio	Film Studio	75

Vibration in Reverberation Time with Frequency

Additional requirement applicable for TV Studios, TV Sound Control rooms, TV and Film Studios as devised are mentioned in the table below, Variation in the range of 500 Hz to 2 kHz

RTs in adjacent octave bands should be within +/- 10% of each other

RTs for each octave band should be within +/- 10% of the mean value of the ranve of 500 Hz to 2 kHz

Any increase in the 1/3 octave band RT relative to the octave band RT at 250 Hz should be limited as far as practicable, not to exceed the values given in the table below:

1/3 Octave Band Centre Frequency (Hz)	Maximum % increase in 1/3 octave band RT above average RT in range of octaves centered on 250Hz-4kHz (see Munro Table 2)
63	100
80	50
100	30
125	20
160	13
200	9

3 Background Noise

In order to meet the internal and the external noise limits, low noise building services equipment shall be selected and comprehensive noise and vibration control equipment shall be included.

Upper limits for TV Studios are as mentioned in table below:

Space description	Building services noise level upper limit, NR (MAI)
TV Studio, TV Sound Control Room	25
TV Production Control Room / TV Vision Control Room / TV Production Control Viewing Gallery	30
Dressing Room, Star Dressing Room, Feature Dressing Room Hair, Wardrobe, Makeup, Crew Room, Quick Change	40
Staff Cafeteria, VIP Dining, Audience Catering/Holding	40
Foyer/Reception/Waiting Area, Circulation, Corridor, Kitchen, Breakout Area, WC	45
Scene Dock	50
Plant and equipment rooms	60*

Upper limits for Film Studios are as mentioned in table below:

Space description	Building services noise level upper limit, NR(MAI)
Film Studios	25
Dressing Room	35
Corridor, Circulation, Stair, WC	45
Workshop (Carpenter / Woodmill / Fibreglass / Plaster etc.)	45
Plant and equipment rooms	60*

In case if any value mentioned above cannot be practically achieved, advice must be provided to ensure that adjacent spaces are acoustically protected and the required levels are met.

Where NR levels are not given for standard rooms and spaces, the CIBSE listed values shall apply.

NR Criteria shall be as defined by BS 8233

Intrusive noise criteria for Key technical spaces are provided in the table below:

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Space	Intrusive Noise Upper Limit, NR, (MAL)dB L ₁
TV Studio, TV Sound Control Room	25
TV Production Control Room / TV Vision Control Room	30
Film Studios	
Thunder and occasional external special effects activities General	40
external noise (i.e. other than the above)	25

In addition to the above, the Concessionaire shall follow the relevant standards and specifications established by the CPWD / PWD Manual / Codes / Ministry of Road Transport and Highways.

The Concessionaire shall follow the Sanctioned Development Plan & Sanctioned Development Control Regulations (local norms), MOEF notifications, CFO & Fire safety Norms, NBC.

The Concessionaire agrees and acknowledges that it shall consider all the regulations and / or rules and / or directives and / or resolutions and / or circular set by all the above mentioned statutory bodies as well as any modification and/ or amendment and/ or introduction of any regulation or rules, etc.

The Concessionaire shall obtain certification from GRIHA 4 Star / IGBC Gold for the entire master plan (campus planning) as well as individual structures.

If the Concessionaire uses any item/s other than as mentioned above, it shall do so with the prior written approval of the Independent Engineer/ Authority.

The Concessionaire shall, at all times during the construction, operation and maintenance of the Film City, adhere to Good Industry Practice including all good engineering practices

Service Quality Requirements

Key performance indicators/ Service Quality Requirements shall be as per the Good Industry Practice and as determined by the Concessionaire and approved by the Authority. The Concessionaire shall at all time ensure that no user shall be put to unnecessary hurdles and shall maintain timelines for each and every activity at Film City, vehicular movement including parking, entry/ exit to/ from the Film City or any Component thereof, etc.

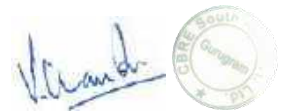
The Concessionaire shall provide all necessary key performance indicators /Service Quality Requirements based on its master plan, which shall be inserted under this Schedule with the prior approval of the Authority.

These key performance indicators /Service Quality Requirements shall be the basis of monitoring the performance of the Concessionaire by the Authority as determined under this Agreement.

Schedule D
(See Clause 4.1.3)

APPLICABLE PERMITS

1. (CTE) Consent to Establish & (CTO) Consent to Operate under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and applications for authorization under Hazardous Waste (MH & TM) Rules, 2008;
2. Environment clearances;
3. NOC from Forest Department;
4. NOC from Airport Authority of India;
5. Development License from Authority;
6. Road Access Clearance before master plan approval;
7. Approval of master plan for the proposed development over the Site;
8. Approval of fire-fighting scheme from Fire Department;
9. NOC for commencement of work from Authority;
10. Approval from power distributing /supply agency for sanction of electrical load and requirement for the electrical substation and provision of transformers. The temporary connection for power supply needs to be obtained from the concerned authority before start of construction. Electric substation NOC (for all substations/transformers in the project) from Electricity Distribution Authority;
11. DG installation approvals;
12. Certificate of clearances of all electrical installations;
13. Registration from Labor Welfare, Labor Cess Department;
14. Permission from the Central Ground Water Authority (CGWA) to abstract ground water, Permission to abstract ground water through any energized means i.e. for digging / installation of a bore well water connection in the site for drinking water as per guidelines under Environmental Protection Act (EPA) (1986);
15. Approval / NOC /assurance for water supply, drainage and sewerage connections; and
16. Occupation Certificate for each phase after completion of internal / external works.



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Schedule E
(See Clause 9.1)

PERFORMANCE SECURITY

To,

Yamuna Expressway Industrial Development Authority
GM Planning Department,
First Floor, Commercial Complex, P-2, Sector- Omega I,
Greater Noida, Gautam Budh Nagar, Uttar Pradesh

WHEREAS:

- (A) _____ (the “**Concessionaire**”) and the _____ (the “**Authority**”) have entered into a Concession Agreement dated _____ (“**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the construction, operation, maintenance and management of a film city at Sector 21, Yamuna Expressway Industrial Development Area (Phase – 1) in the State of Uttar Pradesh on design, build, finance, operate and transfer (the “**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs _____ cr. (Rupees _____ crore) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, _____ through _____ our _____ Branch at _____ (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in the due and faithful performance of all or any of the Concessionaire’s obligations during the Construction Period, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of _____, that the



Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the 1st (first) anniversary of the Appointed Date i.e. upto date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities



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hereunder.

The Performance Security shall cease to be in force and effect after the expiry of a period of 2 years from the COD for the [Phase III] of the Project when the Concessionaire shall have expended on Project construction an aggregate sum not less than 20% (twenty per cent) of the Total Project Cost which is deemed to be INR [●] (Indian Rupees [●]) for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith two years after the completion of Phase I.

8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving

such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this.....day of , 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)


(Name)

(Designation)

(Code Number)

(Address)NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.



Schedule F

(See Clause 12.1) -

PROJECT COMPLETION SCHEDULE

Components	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	Total of Components
Filming and Film Institute Component – Industrial Land											
Filming facility	265 Acres		220 Acres				275 Acres				740
Film Institute	20 Acres		20 Acres								40
Percentage of Phasing	Approx. 40% (27%)		Approx. 30% (21%)				Approx. 30% (22%)				780
Commercial Component											
Serviced Villas	40 Acres										40
Hospitality – Shared Accommodation	220 Keys / 1.65 Acres										1.65
Hospitality – Upscale	200 Keys / 2.50 Acres										2.5
Hospitality – Upper Upscale			172 Keys/ 3.60 Acres								3.6
Hospitality – Resort									100 Keys/ 14 Acres		14
F&B Focused retail development	3.60 Acres										3.6
Commercial Office									4 Acres		4
Amusement Park			36 Acres	84 Acres							120
Retail Development – 1						15 Acres					15
Retail Development – 2									15 Acres		15
Percentage of Phasing	Approx. 40% (29%)		Approx. 40% (46%)				Approx. 20% (15%)				220

Phase – 1	370 acres
Phase – 2	357 acres
Phase – 3	289 acres

Notes:

- 50% of the above-mentioned industrial components (*filming facility and film institute*) and area extents (*in Acres*) mentioned shall be completed in the respective phases by the Concessionaire in accordance with the aforesaid schedule. Only after completion of 50% of industrial component (*filming facility and film institute*) and after incurring 50% of estimated cost on filming facilities and film institutes the Concessionaire shall apply/procure the occupancy, completion and functional certificates of commercial components as per the applicable building bye laws of the competent authority for the (as indicated above). The proofs of the cost incurred shall be in the form of internal auditor certificate.
- Additionally, the areas (in acres) mentioned in the commercial component above are indicative in nature - except amusement park. The selected bidder shall plan the commercial assets as per the local building bye – laws. However, the phasing of the commercial shall spread across phase 1 – 40%, phase 2 – 40% and phase 3 – 20%. amusement park shall be permitted to be constructed anytime prior to the termination of phase – 2 i.e. Year 7 from the award of concession.
- The selected bidder shall plan the industrial land parcel in the phasing mentioned in the table i.e. Phase 1

– 40%, Phase 2 – 30%, Phase 3 – 30%.

4. The Construction Period shall not exceed 10 (ten) years. The selected bidder shall be given the option to exercise the preponement of construction phasing of the Filming and Film-related activities.
5. The concessionaire shall ensure the completion of the respective phases as per the given schedule and respective covenants (*as listed above from 1 to 4*). Only post completion of the respective phase the Concessionaire shall apply/procure the occupancy, completion and functional certificates of commercial components as per the applicable building bye laws of the competent authority for the (as indicated above). The proofs of the cost incurred shall be in the form of internal auditor certificate.



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Schedule G

(See Clause 12.2)


DRAWINGS

1. Drawings

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule G.

2. Additional Drawings

If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule G.



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Annex I
(Schedule G)

List of Drawings

The Concessionaire shall furnish following list of drawings

1. Master plan by Phasing's (Layout plan with phasing)
2. Development Plan
3. Architectural design for all buildings
4. Structural drawings for all buildings
5. MEP drawings for all the buildings



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Schedule H
(See Clause 14.1.2)
TESTS

1. Schedule for Tests

- 1.1. The Concessionaire shall, no later than 90 (ninety) days prior to the likely completion of the Film City, notify the Independent Engineer and the Authority of its intent to subject the Film City to Tests, and not later than 15 (fifteen) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and Equipment forming part of the Film City.
- 1.2. The Concessionaire shall notify the Independent Engineer of its readiness to subject the Film City to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14.

2. Tests

- 2.1. In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Engineer shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.
- 2.2. Visual and physical test: The Independent Engineer shall conduct a visual and physical check of the Film City to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3. Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Film City with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.4. Other mandatory tests: The Concessionaire shall procure and ensure that all statutory tests required to be undertaken in accordance with Applicable Laws are undertaken and completed no later than 15 (fifteen) days prior to COD.

3. Agency for conducting Tests

All Tests set forth in this Schedule H shall be conducted by the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

4. Tests for Safety Certification

Tests for determining the conformity of the Project with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws.

5. Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue a report to the Authority based on which the concerned authority shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.

6. Tests during Construction

Without prejudice to the provisions of this Schedule H, Tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.



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Schedule I

(Clause 18.1)

SAFETY GUIDELINES

1 Safe movement

In the design, construction and operation of the Film City, particular care shall be taken to ensure safety of users. This shall include facilities for safe and efficient evacuation in case of emergency.

2 System integrity

In the design of power supply, lighting, signalling, communication and security equipment, particular care shall be taken to minimise the likely incidence of failure.

3 Restoration of service

The Film City shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

4 Contingency and Safety management

4.1 The Concessionaire shall procure and ensure that appropriate contingency arrangements are in place at the Film City to deal with the following events in accordance with the provisions of the relevant Applicable Laws:

- (a) bomb threat to the Film City, or any acts of terrorism;
- (b) accidents in and around the vicinity of the Film City;
- (c) fires at the Film City;
- (d) natural calamities and disasters;
- (e) strikes at the Film City;
- (f) unlawful interference with operations; and
- (g) any other Emergency at the Film City.

4.2 The Concessionaire shall procure and ensure that the Emergency alarm bells are installed and operated to link the Film City to the Film City Manager and to all Emergency services located at the Film City, including fire services, medical services, and the Police.

4.3 A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets, and the compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. During the Construction Period, two copies of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.

5 Safety equipment

The following safety equipment shall be provided at the Film City:

- (a) Fire extinguishers and fire alarms at appropriate locations on the Film City;



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- (b) adequate number of stretchers and standard first aid boxes; and
- (c) such other equipment as may be required in conformity with Applicable Laws and Good Industry Practice.

6 Emergency

A set of Emergency procedures shall be formulated to deal with different Emergency situations and the operations staff shall be trained to respond appropriately during such Emergency through periodic simulated exercises, as laid down in a manual for management of disasters (“**Disaster Management Manual**”), to be prepared and published by the Concessionaire prior to COD of each Component. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority no later than 30 (thirty) days prior to COD of such Component.

7 Fire safety

- 7.1 The Concessionaire shall conform to the standards specified in the Applicable Laws for fire protection.
- 7.2 To prevent fire in the Film City, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials, which are to some extent, flammable or which emit smoke and harmful gases when burning.
- 7.3 Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to access and open from inside the Film City in case of emergency.
- 7.4 Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this clause 7.4, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardised.
- 7.5 Appropriate categories of rescue and fire-fighting services shall be made available and maintained in accordance with the provisions of the Applicable Laws and Good Industry Practice.

8 User safety and information system

- 8.1 The Concessionaire shall provide the PSMU with the facilities required for supervising user areas and the Film City, and shall provide visual information to users. The Concessionaire shall also provide one way communication to users at the Film City through a Public Announcement system. The user call points should be located at convenient locations to allow users to contact the PSMU in emergencies.
- 8.2 The user information system shall comprise dynamic visual displays and loudspeakers.

9 SRC Safety Guidelines

- 9.1 All applicable safety guidelines shall be adhered to by the Concessionaire / SRD with respect to the SRC



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Schedule J

(See Clause 20.1)

SELECTION OF INDEPENDENT ENGINEER

1. Selection of Independent Engineer

- 1.1 The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Engineer hereunder.
- 1.2 In the event of termination of an Independent Engineer appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule J.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule J.

2. Terms of Reference

The Terms of Reference for the Independent Engineer shall substantially conform with Schedule K.

3. Fee and expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed 1% (one per cent) of the Total Project Cost. Payments not exceeding such 1% (one per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne by the Authority.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period, shall be borne equally by the Authority and the Concessionaire.

4. Selection every three years

No later than 3 (three) years from the date of appointment of Independent Engineer pursuant to the provisions of Paragraph 1 of this Schedule J, and every 3 (three) years thereafter, the Authority shall engage another firm in accordance with the criteria set



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forth in this Schedule J.

5. Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the State Government shall not be eligible for appointment as Independent Engineer.



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Schedule K
(See Clause 20.2.1)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Scope


- 1.1. These terms of reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated (the “**Agreement**”), which has been entered into between the Authority and . (the “**Concessionaire**”) for the Film City on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2. This TOR shall apply to construction, operation and maintenance of the Film City.

2. Definitions and interpretation

- 2.1. The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement
- 2.2. References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatimutandis*, to this TOR.

3. Role and functions of the Independent Engineer

- 3.1. The role and functions of the Independent Engineer shall include the following:
 - (a) review of the Drawings and Documents as set forth in Paragraph 4;
 - (b) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (c) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
 - (d) review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (e) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
 - (f) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (g) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (h) assisting the Parties in resolution of Disputes as set forth in Paragraph 9; and
 - (i) Undertaking all other duties and functions in accordance with the Agreement.
- 3.2. The Independent Engineer shall discharge its duties in a fair, impartial and efficient



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manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Development Period

- 4.1. During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo- technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2. The Independent Engineer shall review any modified Drawings or supporting documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3. The Independent Engineer shall review the Drawings in accordance with Schedule I and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings.
- 4.4. The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5. Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5. Construction Period

- 5.1. In respect of the Drawings and Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 5.2. The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3. The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the



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lapses, defects or deficiencies observed by it in the construction of the Project. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 5.4. The Independent Engineer may inspect the Project more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5. For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the relevant Manuals specified by the Authority in relation to structures, buildings and equipment (the “**Quality Control Manuals**”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6. The sample size of the tests, to be specified by the Independent Engineer under paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7. The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.8. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD for Phase 1 shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.10. If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the users, it shall make a recommendation to the




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Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

- 5.11. In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.12. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.13. The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule H and issue a report to the Authority based on which the Authority shall issue a Completion Certificate or a Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule H.
- 5.14. Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.15. The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6. Operation Period

- 6.1. In respect of the Drawings and Documents received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 6.2. The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 6.3. The Independent Engineer shall review the quarterly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4. The Independent Engineer shall inspect the Project, once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Independent Engineer shall send a copy of its O&M Inspection Report to



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the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 6.5. The Independent Engineer may inspect the Project more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6. The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.7. The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.8. The Independent Engineer shall examine the request of the Concessionaire for closure of the Project for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such section of the Project, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 14.1.1 or as may be determined by the Authority.
- 6.9. The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.5.
- 6.10. In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

7. Termination

- 7.1. At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 31.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project is such that its repair and rectification would require a larger amount than the sum set forth in Clause 32.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 7.2. The Independent Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 32, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.



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8. Determination of costs and time

- 8.1. The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 8.2. The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9. Assistance in Dispute resolution

- 9.1. When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 9.2. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11. Miscellaneous

- 11.1. The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2. A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 11.3. The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send 1 (one) of the copies to the Authority along with its comments thereon.
- 11.4. The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.5. Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.

Wherever no period has been specified for delivery of services by the Independent



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Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.



Schedule L
(See Clause 24.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the _____ day of ____ 20 ____

AMONGST

- 1 _____ Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (insert name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 (insert name and particulars of the Escrow Bank) and having its registered office at _____ (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 _____ (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- A. The Authority has entered into a Concession Agreement dated_ with the Concessionaire (“**Concession Agreement**”) for the Film City at in the state of on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. Definitions and interpretation

1.1 Definitions

In this 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 Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

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

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 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.


1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. Escrow Account

2.1 Escrow Bank to act as trustee

The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as



are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

- 2.1.1 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.



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3. Deposits into escrow account

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all monies received in relation to the Project from Banks, insurance companies, other lenders and shareholders;
- (b) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by the Authority, after deduction of any outstanding Concession Fee; and

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

3.2.1 Any monies disbursed by the Authority to the Concessionaire;

3.2.2 all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and

3.2.3 Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. Withdrawals from escrow account

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such



amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):


- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) All payments relating to construction of the Project, subject to and in accordance with the conditions if any set forth in the Financing Agreements;
- (c) O&M expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Agreement, and certified by the Authority as due and payable to it;
- (e) Concession Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire.
- (h) monthly proportional provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 32 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and



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(j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement or improvement of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 29 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. Obligations of the escrow bank

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

5.3.1 In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank



from the Concessionaire or any other person hereunder or in connection herewith;and

- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

5.6 Escrow default

5.6.1 Following events shall constitute an event of default by the Concessionaire (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business day

5.6.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

5.7 Termination of escrow agreement

5.7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

5.8 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty-five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts



deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

5.9 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

5.10 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

6. Indemnity

6.1 General indemnity

- 6.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

- 6.1.2 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, 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 Clause 9.1 or in respect of which it is entitled to reimbursement



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(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, which approval shall not 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.

6.3 Dispute resolution

6.3.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with be the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.

6.3.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

7. Miscellaneous provisions

7.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State shall have jurisdiction over all matters arising out of or relating to this Agreement.

7.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

7.2.1 agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

- (a) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (b) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (c) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

7.3 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.



7.4 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.

7.5 Waiver

7.5.1 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.

7.5.2 Neither the failure by any 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 any 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.

7.6 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.

7.7 Survival

7.7.1 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

7.7.2 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.

7.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 6.3 of this Agreement or otherwise.

7.9 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.



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7.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

7.11 Language

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

7.12 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.

7.13 Original Document

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

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




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THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ___ day of 20 hereunto affixed in the presence of _____, Director, who has signed these presents in token thereof and _____, Company Secretary/Authorised Officer who has countersigned the same in token thereof.

Signature Name Designation Address Fax No
Email address

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders' Representative: Signature
Name Designation Address Fax No
Email address



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Schedule M
(See ~~Clause~~ 38.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 38.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the "Panel of Chartered Accountants"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule M.

2. Invitation for empanelment

2.1. The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2. Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees Twenty-five crores) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

3.1. The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

3.2. The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.




4. Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

- 5.1. The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2. After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule M.



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Schedule N

(See Clause 31.4)

VESTING CERTIFICATE

1. The Governor of _____ represented by _____ (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for the Film City at _____ in the state of Uttar Pradesh . on design, build, finance, operate and transfer (the “**DBFOT**”) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 31.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Film City shall be deemed to have vested unto the Authority, free from any Encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

AGREED, ACCEPTED AND For and on behalf of Concessionaire by:

Signature
Name
Designation
Address

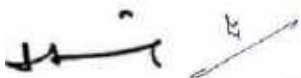
AGREED, ACCEPTED AND For and on behalf of Authority by:

Signature
Name
Designation
Address

In presence of

A)

B)



mi

V. Chand.



Schedule O

(See Clause 33.3.1)

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the _____ day of , 20....

AMONGST

1. _____ and having its principal offices at _____ (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. _____ Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at _____, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors, permitted assigns and substitutes);
3. _____ (insert name and particulars of Lenders’ Representative) and having its registered office at _____, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- A. The Authority has entered into a Concession Agreement dated _____ with _____ the Concessionaire (the “**Concession Agreement**”) for the Project in the state of Uttar Pradesh. on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company 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 Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and



agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definition

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;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

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

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the 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 Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession 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 Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE



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3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 29 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the



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Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Concessionaire may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.
- 3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy-five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the



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provisions of this Agreement and the Concession Agreement.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 30 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims



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for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

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

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative.

Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State shall have jurisdiction over all matters arising out of or relating to this Agreement.



9.2 Waiver of sovereign immunity

9.2.1 The Authority unconditionally and irrevocably:

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

9.3 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.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

9.5.2 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;

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


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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 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.

9.7.2 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.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision.

Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document



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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ___ day of 20 hereunto affixed in the presence of ____, Director, who has signed these presents in token thereof and ____, Company Secretary/Authorised Officer who has countersigned the same in token thereof

Signature Name Designation Address Fax No
Email address

SIGNED, SEALED AND DELIVERED For and on behalf of AUTHORITY Signature
Name Designation Address Fax No
Email address

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative

Signature Name Designation Address

Fax No
Email address



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Schedule P
(See Clause 5.4.1)

SHAREHOLDERS' AGREEMENT

THIS SHAREHOLDERS AGREEMENT (the "**Agreement**") is made on this the day of ,
20...,

AMONGST

1. Yamuna Expressway Industrial Development Authority and having its principal office at GM Planning Department, First Floor, Commercial Complex, P-2, Sector- Omega I, Greater Noida, Gautam Budh Nagar, Uttar Pradesh (hereinafter referred to as the "**Authority**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part;

and

2. The Parties listed in Annex I hereto (hereinafter individually referred to as "**Private Participant**" and collectively referred to as "**Private Participants**" (which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include their respective legal representatives and successors) of the Second Part;


and

3. [insert name of the company] a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as "**Concessionaire**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Third Part.

The Private Participants, the Authority and the Concessionaire are hereinafter collectively referred to as the "**Parties**" and individually as "**Party**". The Private Participants and the Authority are collectively referred to as the "**Shareholders**".

WHEREAS:

- a) The Government of Uttar Pradesh had procured requisite approval from Government of India for establishment of a film city in the State of Uttar Pradesh (hereinafter referred to as "**Project**"), and had resolved to establish the Film City on design, build, finance, operate and transfer (the "**DBFOT**") basis. The Government of Uttar Pradesh ("GoUP") vide its Government Resolution No dated ("**GoUP Approval**"), approved the implementation of the Project and assigned Yamuna Expressway Industrial Development Authority as Authority.
- b) The Authority invited proposals by its Request for Proposal cum Qualification No. .*dated...(the "**Request for Proposal cum Qualification**" or "**RFP cum RFQ**") for selection of the successful bidder who would have the right to incorporate a company to act as a special purpose vehicle to undertake the Project.



- c) The Private Participants include the Members of the Selected Bidder, which had Bid, and was/were thereafter short listed and eventually selected by Authority, pursuant to which the Authority issued the Letter of Award No..... dated to... incorporate the special purpose vehicle which would execute the Concession Agreement for undertaking the Project (the “**Concessionaire**”).
- d) The Selected Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the concessionaire under the Concession Agreement and the Authority has agreed to this request.
- e) As part of the Request for Proposals it was contemplated that the Authority would hold one non-transferable Golden Share (as defined hereinafter), on terms and conditions as set out in this Shareholders’ Agreement.
- f) The Authority and the Private Participants are therefore desirous of setting forth in this Agreement, the terms and conditions to govern the relationships in their mutual capacity as the Shareholders of the Concessionaire and to record their respective rights and obligations in relation to the management and functioning of the Concessionaire and other matters incidental thereto.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions


In this Agreement, (including any recitals, annexure, schedules or exhibit attached thereto), except where the context otherwise requires, the following words and expressions shall have the following meaning:

“**Affected Party**” shall have the meaning ascribed to the term in Clause 11.3 hereunder;

“**Alternate Director**” shall have the meaning ascribed to the term in Clause 5.7.1 hereunder;

“**Board of Director(s)**” or “**Board**” means the board of director(s) of the Concessionaire;

“**Chairman**” means chairman of the Board of the Company;



“Charter Documents” means the memorandum of association and articles of association of the Concessionaire, incorporating as appropriate, and consistent with, to the extent permitted by law, the terms and conditions of this Agreement.

“Companies Act” means the Companies Act, 2013 for the repealed provisions of Companies Act, 1956 and otherwise Companies Act, 1956 including any re-enactment or amendment thereof;

“Concession Agreement” shall mean the Concession Agreement entered into between the Authority and the Concessionaire with respect to the Project;

“Consequential Loss” shall have the meaning ascribed to the term in Clause 11.14 hereunder;

“Defaulting Party” shall have the meaning ascribed to the term in Clause 8.2.1 hereunder;

“Director” means a director on the Board of Directors of the Concessionaire;

“Equity Shares” means the fully paid up equity share of a par value of Rs. .[] each of the Concessionaire;

“Golden Share” means the fully paid up equity share of a par value of Rs. .of the Concessionaire issued/ to be issued to the Authority;

“Managing Director” means the whole time managing director of the Concessionaire;

“Private Participants” shall have the meaning ascribed to it in the preamble of this Agreement;

“Private Participants Agreement” shall have the meaning ascribed to the term in Clause 4.2.3 hereunder;

“Project” shall have the meaning ascribed to it in Recital (A).


“Proprietary Information” shall have the meaning ascribed to the term under Clause 9.1 hereunder;

“Reserved Matters” means the matters listed under Annex II hereto;

“Shareholder” or **“Shareholders”** shall have the meaning ascribed to the term in the preamble of this Agreement;

“Shareholders’ Agreement” or **“Agreement”** means this shareholders’ agreement; **“Third Party”** means any entity not a Party to this Agreement;

“Transfer” shall include (i) any transfer or other disposition of such securities or voting interests or any interest therein, including, without limitation, by operation of Applicable Laws, by court order, by judicial process, or by foreclosure, levy or attachment; (ii) any sale, assignment gift, donation, redemption, conversion or other disposition of such securities or any interest therein, pursuant to an agreement, arrangement, instrument or understanding by which legal title to or beneficial ownership of such securities or any interest therein passes from one entity to another entity or to the same entity in a different legal capacity, whether or not for



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value; (iii) the granting of any encumbrance (whether by way of mortgage, pledge, lien hypothecation or otherwise) or charge in or extending or attaching to such securities or any interest therein or any privilege or priority of any kind having the effect of security.

1.2 Interpretations

- 1.2.1 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 or the Companies Act, as the case may be, shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement or the Companies Act.
- 1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. EFFECTIVE DATE

Except for the provisions of Clauses 2, 3, 7, 9 and 10 which shall become effective immediately upon the execution hereof, the provisions of this Agreement shall become effective upon the completion, to the satisfaction of the Authority, of the following actions (such date being the effective date “**Effective Date**”):

- (i) The Concessionaire shall have resolved by way of special resolution, in an extraordinary General Meeting of the Shareholders of the Concessionaire, alteration of the Charter Documents of the Concessionaire, as necessary, to reflect the terms of this Agreement;
- (ii) The Concessionaire shall have filed with the concerned Registrar of Companies, amended Charter Documents as above, as necessary, and provided the Authority with the receipt issued by the said Registrar of Companies evidencing filing of the Chartered Documents amended as above; and
- (iii) The Concessionaire shall have delivered and the Private Participants shall have caused the Concessionaire to deliver to the Authority a certified true copy of all such resolutions and/or any other document(s) evidencing performance of the actions contemplated in this Clause.

3. CAPITAL STRUCTURE AND ISSUANCE OF THE GOLDEN SHARE

3.1 Issuance of the Golden Share to the Authority

- 3.1.1 The Concessionaire hereby undertakes to issue and allot, and the Private Participants hereby agree to cause the Concessionaire to issue and allot to the Authority, simultaneously with the execution of this Agreement, the Golden Share, for a consideration equal to the par value of such Golden Share, and deliver the share certificate representing the Golden Share to the Authority.
- 3.1.2 The Concessionaire shall make all filings as may be required under the provisions of the Companies Act and comply with all other requirements of Applicable Laws, in connection with the issuance of the Golden Share.



- 3.1.3 The Parties agree that the nominee Directors of the Authority shall have rights of affirmative vote in the meetings of the Board of Directors of the Company, and the Authority shall have a right of affirmative vote in the General Meeting of Shareholders, in respect of the Reserved Matters. For the avoidance of doubt, the rights of the Authority under this Agreement shall be in addition to any other rights that the Authority may have under the Concession Agreement or any other Project Agreement.
- 3.1.4 The Parties expressly agree that the Golden Share shall, unless otherwise provided for under this Agreement, have identical rights and privileges of Equity Shares, with respect to dividend and all other matters.

3.2 Transfer restrictions

- 3.2.1 Any Shareholder (other than the Authority) may, subject to the provisions of this Agreement, and in compliance with Applicable Laws, Transfer, whether directly or indirectly, all or any of its/their Equity Shares or their rights under this Agreement, to a Third Party provided that (i) such Transfer shall not cause the Concessionaire to be in breach of the Concession Agreement; and (ii) such Third Party purchaser shall agree and undertake to be bound by the terms and conditions of this Agreement and executes a deed of adherence in the form and manner attached in Annex III ("**Deed of Adherence**").

It is hereby expressly clarified that where Private Participant is a special purpose vehicle established primarily for the purposes of holding Equity Shares in the Concessionaire (such Private Participant being an "**SPV PP**"), a Transfer of any shareholding in such SPV PP shall constitute an indirect Transfer of Equity Shares by the SPV PP for the purposes of this Agreement and be subject to the restrictions on Transfer of shares as set forth in this Agreement, including (i) the requirement of the execution of a Deed of Adherence by a third party transferee.

- 3.2.2 The Parties expressly agree that the Authority shall not be entitled to Transfer the Golden Share at any time, save and except when a successor entity of the Authority assumes the rights and obligations of the Authority under the Concession Agreement.

4. SCOPE AND OBJECTIVE OF THE CONCESSIONAIRE

4.1 Purpose of the Concessionaire and scope of this Agreement

The purpose of the Concessionaire is to undertake and perform the obligations and exercise the rights of the Concessionaire in accordance with and subject to the provisions contained in the Concession Agreement.

4.2 Shareholder Commitments

- 4.2.1 Each Shareholder hereby agrees to cooperate with each other Shareholder and with the Concessionaire and to use its reasonable efforts to the extent that it has the authority and ability to do so to promote the success of the Concessionaire. Provided, however, the Parties hereby expressly acknowledge and agree that the responsibilities and obligations of the Authority shall be restricted and limited to the matters expressly set forth in the Concession Agreement: Provided further that, nothing contained in this Article 4.2.1



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shall be construed as creating any obligation on the Authority other than as expressly set forth in the Concession Agreement, nor will it imply any joint and several liability of the Authority.

4.2.2 Each Shareholder hereby undertakes towards the other Shareholders and for the benefit of the Concessionaire:

- (a) To perform and observe all of the provisions of this Agreement and the Charter Documents; and
- (b) Subject to Authority's right of affirmative vote (which may be exercised through a nominee of the Authority) in relation to the Reserved Matters, and without prejudice to the foregoing, to procure that (i) every person for the time being representing it in its capacity as Shareholder, and (ii) every person appointed as a Director in terms of this Agreement will exercise any power of vote or cause the power to vote to be exercised, at any meeting of the Shareholders or the Board of the Concessionaire, as the case may be, so as to ensure the approval of any and every resolution necessary or desirable to procure that the affairs of the Concessionaire are conducted in accordance with the Concession Agreement and otherwise to give full effect to this Agreement, and likewise so as to ensure that no resolution is passed which is not in accordance with the Concession Agreement and/or the provisions of this Agreement; provided, however, that except as expressly directed or as otherwise contemplated by any provisions in this Agreement, each Shareholder shall have full discretion on how to vote the Equity Shares which such Shareholder owns or on how to cause any person appointed by such Shareholder to act in operating the Concessionaire, subject only to Applicable Laws.

If any Director nominated by a Shareholder pursuant to Clause 5, for any reason refuses to exercise his discretion in accordance with the provisions of this Agreement, such Shareholder shall forthwith take all action within its power or control to substitute such Director

4.2.3 The Parties agree that the Charter Documents shall, to the extent permissible under Applicable Laws, incorporate the provisions of this Agreement including without limitation Authority's right of affirmative vote and to the extent that the Charter Documents are inconsistent with the Agreement, the Shareholders shall exercise their power as shareholders of the Concessionaire to ensure that the Charter Documents are amended to the extent permissible under Applicable Law to remove any such inconsistencies. Further, the Parties also agree that the Private Participants may enter into any agreement amongst themselves to regulate their inter-se relationship as Shareholders of the Concessionaire ("Private Participants Agreement"), provided that the provisions of such Private Participants Agreement shall not be contrary to or inconsistent with the provisions of this Agreement, or detrimental, in any way, to the interest of the Authority under this Agreement and/or the Concession Agreement and shall be permissible under Applicable Laws. For the avoidance of doubt, it is hereby expressly agreed between the Parties that in the event of a conflict or inconsistency between the Private Participants Agreement and this Agreement, the provisions of this Agreement shall take precedence.



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- 4.2.4 The Private Participants hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project, till such time as the Financial Close for the Project is achieved in accordance with the Concession Agreement.

5. MANAGEMENT AND THE BOARD OF DIRECTORS

5.1 Management

The Concessionaire shall be managed and governed under the overall superintendence, direction and control of the Board. The Board shall have overall authority with respect to development and management of the Concessionaire and the Project. The officers of the Concessionaire shall have the authority and responsibilities specified by the Board of Directors, consistent with the Charter Documents and this Agreement.

5.2 Composition of the Board

- 5.2.1 The Board composition shall be determined as under:

- (a) The Authority shall at all times be entitled to nominate 2 persons of its choice for appointment as Directors on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such persons as a non-retiring Directors in accordance with Applicable Laws.
- (b) Private Participants and Shareholders other than the Authority shall have the right to nominate the remaining Directors.

- 5.2.2 The Shareholders hereby acknowledge and agree to vote their respective shareholding in the Concessionaire in such manner so as to ensure appointment of the nominees of Authority and the Private Participants, as Directors from time to time.

5.3 Chairman

The Parties hereby undertake and agree that the Private Participants shall have the right to nominate the Chairman of the Concessionaire, who shall be appointed by the Board.

5.4 Managing Director

- 5.4.1 The Private Participants shall also nominate the Managing Director of the Concessionaire, who shall, following a Board resolution, be appointed by the Board.

- 5.4.2 The Managing Director shall be responsible for day-to-day management of the Concessionaire and for implementing the Project. The Managing Director will exercise his powers subject to the overall superintendence, direction and control of the Board.

5.5 Qualification

The Directors need not hold any qualification shares in the Concessionaire.

5.6 Resignation and removal

Except where a Director is required under Applicable Laws or the Charter Documents to vacate office, no Director shall be removed during the term for which he was elected without the consent of the Shareholder that recommended his appointment on the Board. Notwithstanding the foregoing, a Shareholder may ask for removal, substitution or recall



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for any reason, of any of the Directors nominated by such Shareholder and such Director shall be bound by the direction of removal, substitution or recall. Each Shareholder agrees to co-operate with the other Shareholders in convening a meeting of the Shareholders of the Concessionaire to effect such removal and to vote in favour thereof, if so required.

5.7 Alternate Director

5.7.1 A Director, other than the Managing Director, (the “**Original Director**”) shall be entitled at any time and from time to time, to appoint any person to act as the Original Director’s alternate (“**Alternate Director**”) (and the Shareholders shall procure that the Board appoints such person as his alternate) and to direct the termination of the appointment of such Alternate Director (and the Shareholders shall procure that the Board terminates the appointment of such Alternate Director).

5.7.2 The Alternate Director shall be entitled, while holding office as such, to receive notices of meetings of the Board or any committee thereof to which the Original Director has been appointed, and to attend and vote as a Director at any such meetings at which the Original Director is not present and generally to exercise all the powers, rights (other than the right to appoint an Alternate Director as provided in Clause 5.7.1), duties and authorities and to perform all the functions of the Original Director. Further, such Alternate Director shall be entitled to be counted for the purpose of constituting quorum, exercise the vote and sign a written resolution on behalf of the Original Director at any meeting of the Board or any committee thereof and to the extent permitted by Applicable Laws his signature, vote, presence and consent shall be deemed to be that of himself (as if he is a Director in his own right) and the Original Director for whom he is an Alternate Director.

5.8 Vacancy

If a vacancy in any such office should occur for whatever reason, or a Director is absent for a continuous period of 1 (one) month from the place where meetings of the Board are regularly held and no Alternate Director has been appointed in his place, then the Shareholder that nominated such Director shall be entitled to nominate a replacement Director, and the Shareholders agree to vote their Shares unanimously for the removal of such Director and election of such replacement Director.

5.9 Mode of conduct of Board meeting

Board meetings shall be held at least once every quarter at such places in India as the Board may determine and failing any such determination at the Concessionaire’s registered office located at [insert address]. If and when permitted under Applicable Laws, a Director may participate in a Board meeting or a committee/sub-committee meeting of the Board by means of telephone, audio and/or video conferencing or other communication facilities, and a Director participating in such a meeting by such means shall be deemed for the purposes of this Agreement, to be present at that meeting.

5.10 Notice and Agenda for meeting

5.10.1 Unless the requirement of notice is waived by all Directors, a minimum of 14 (fourteen)



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days written notice (or such shorter period as all the Directors may agree) of the Board meetings shall be given to all Directors and their Alternate Directors. Each notice of a meeting of the Board shall contain, inter alia, an agenda specifying in reasonable detail, the matters to be discussed at the relevant meeting and shall be accompanied by all necessary written information.

5.10.2 The Board shall only transact the business set out in the agenda accompanying the notice to the Directors. Provided however that with the unanimous consent of all the Directors with Director nominated by Authority in attendance and voting in favour, the Board may transact business that is not set out in the agenda.

5.11 Quorum for Board meetings

5.11.1 The quorum for the meetings of the Board or any adjournment thereof shall necessarily include the Director nominated by Authority if any Reserved Matter is to be considered in such meeting; and no Reserved Matter shall be taken into consideration at such meeting, if the Director nominated by the Authority is not present at such meeting.

5.11.2 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

5.12 Committees of the Board

If the Board finds it necessary to constitute a committee or sub-committee, the Board shall determine the powers (including scope, termination, amendment of and withdrawal thereof) of such committee or sub-committee. The committee or subcommittee shall be subject to and be under the supervision of the Board. Notwithstanding anything to the contrary contained herein, the Authority shall have the right to nominate its nominee to each and every committee and sub- committee constituted by the Board: Provided, however, that no Reserved Matters shall be delegated to such committee and/or sub-committee.

5.13 Decisions

5.13.1 Subject to the provisions of the Companies Act, a resolution of the Board of Directors shall be adopted by the affirmative vote of the simple majority of the Directors present at a meeting at which a quorum of the Board of Directors is present. Provided, however, that all resolutions on the Reserved Matters to be passed in the meeting of Board of Directors of Concessionaire shall be subject to the affirmative vote of the Director nominated by the Authority and no such resolution shall be passed if no such Director nominated by the Authority is present and voting in favour of such resolution.

5.13.2 The Concessionaire or any of its Directors, officers, agents or representatives shall not undertake any Reserved Matter without the prior approval by the Board in the manner provided in Clause 5.13.1 above and any act done by the Concessionaire or any of its Directors, officers, agents or representatives without such prior approval shall be null and void.

5.14 Resolution by circulation

Subject to Applicable Laws and for matters other than Reserved Matters, resolutions of



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the Board may be passed by circulation, if the resolution has been circulated in draft, together with necessary papers, if any, to all the Directors, then in India or outside India, and has been signed by a majority of the Directors. Such resolutions may be signed by the Directors as single document or in counterparts.

5.15 Authority

Unless otherwise authorised by the Board, none of the Directors shall be empowered to bind the Concessionaire individually.

5.16 Disqualification of Directors

Subject to Applicable Laws, a Director shall not be deemed disqualified to serve by reason of his being officer, director or shareholder of any other body corporate.

5.17 Inspection and information

5.17.1 It is hereby agreed between the Parties that the Authority shall have the right to examine the books, records and accounts to be kept by the Concessionaire and shall be entitled to receive all information, including monthly management accounts and operating statistics and other trading and financial information.

5.17.2 Without prejudice to the generality of Clause 5.17.1, the Concessionaire shall supply the Authority with copies of:

- (a) audited accounts of the Concessionaire (complying with all relevant legal requirements); and
- (b) monthly/quarterly management accounts of each principal division of the Concessionaire; these shall include a consolidated profit and loss account, balance sheet and cash flow statement broken down according to the principal divisions of the Concessionaire including a statement of progress against the relevant business plan, a statement of any variation from the quarterly revenue budget and up-to-date forecasts for the balance of the relevant Accounting Year and itemising all expenditure in relation to the Concessionaire's capital programme entered into by each principal division of the Concessionaire during that period.

6. SHAREHOLDERS' RIGHTS AND OBLIGATIONS

6.1 General meeting and matters requiring the approval of Shareholders

6.1.1 The Board may whenever it thinks fit convene a General Meeting of the Concessionaire. The Board shall also proceed to convene a General Meeting if so requisitioned by the Shareholders of the Concessionaire in accordance with the provisions of the Companies Act and the Charter Documents.

6.1.2 Notwithstanding anything to the contrary contained in this Agreement and the Charter Documents, no decision shall be made and no action shall be taken by or with respect to a Reserved Matter, which is subject to the affirmative vote rights of the Authority as provided in Clause 3.1.3 above, unless approved by an affirmative vote of authorized representative of the Authority. The Parties specifically agree that a resolution relating to the Reserved Matters shall be passed in a meeting of Shareholders only and not by way of



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circulation.

6.1.3 The quorum for any Shareholders' meetings or any adjournment thereof shall necessarily include a representative of the Authority if any Reserved Matter is to be considered in such meeting; and no Reserved Matter shall be taken into consideration at such meeting, if a representative of the Authority is not present at such meeting.

6.1.4 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

7. UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES

7.1 Each of the Private Participants hereby warrant and represent to and for the benefit of Authority, the Concessionaire and the other Private Participants that:

- (a) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- (b) the execution and delivery by the Private Participant of this Agreement has been duly authorised by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;
- (c) this Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of such Private Participant, enforceable against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (d) it is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (e) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate has or may have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (f) there are no actions, suits, claims, proceedings or investigations pending or, to the best of the Private Participant's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement.

7.2 Each of the Private Participants and the Concessionaire hereby irrevocably undertake, warrant and



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represent to and for the benefit of Authority that:

- (a) the rights vested in the Authority under this Agreement and the Concession Agreement shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by any of the Private Participants or the Concessionaire; and
- (b) any divestment of equity in the Concessionaire shall not in any manner affect the rights of the Authority herein and that the successors, assigns and substitutes of the Concessionaire shall be bound by such undertaking.

7.3 The Authority hereby warrants and represents to and for the benefit of the Concessionaire and the Private Participants that it has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof.

8. TERMINATION

8.1 Termination

The Parties agree that in the event any of the Shareholders cease to hold, directly or indirectly, any Equity Shares of the Concessionaire, this Agreement shall stand terminated automatically vis-à-vis such Shareholder. Provided however, the obligations of such Shareholder under this Agreement relating to confidentiality (Clause 9) and dispute resolution (Clause 10) and such other provisions of this Agreement that by their nature are intended to survive, shall survive any termination of this Agreement.

8.2 Right to terminate for cause

8.2.1 In the event of occurrence of a material breach of any of the terms and conditions of this Agreement or any covenant, representation, warranty or agreement set forth herein (“**Material Breach**”) on the part of a Shareholder (the “**Defaulting Party**”), any other Shareholders (“**Non- Defaulting Party**”) may give written notice of the alleged breach (“**Breach Notice**”) to the Defaulting Party.

8.2.2 A termination event (“**Termination Event**”) shall be deemed to have occurred if such Material Breach, if reasonably capable of being cured, is not cured by the Defaulting Party within 30 (thirty) days of receipt of the Breach Notice (“**Cure Period**”), or if such Material Breach is not reasonably capable of being cured, forthwith upon issue of the Breach Notice.

8.2.3 On the occurrence of a Termination Event on the part of any of the Private Participants, the Authority may, in its discretion, require such Private Participant to transfer all, but not less than all, of the Equity Shares held by it to the Authority at the lower of the market value of Equity Shares or 25% (twenty-five per cent) of the par value thereof; and the transfer of such shares shall take place at the registered office of the Concessionaire within 30 (thirty) days from the date of notice by the Authority in this behalf.

9. CONFIDENTIALITY



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- 9.1 The Parties hereby acknowledge and agree that each of them possess and will continue to possess information that has been created, discovered, developed, or otherwise known and owned by them, which information has commercial value in the business in which they, are or may become engaged (the aforementioned information is hereinafter called **“Proprietary Information”**). The Parties agree that during the terms of this Agreement and after the termination or expiration hereof, each of them will keep in confidence and trust all Proprietary Information received from the other Party, and they will not use or disclose any such Proprietary Information or anything directly relating to it without the written consent of the other Party(ies).
- 9.2 In the event of the expiration or termination of this Agreement for any reason, the Parties shall promptly, at the direction of the owner of such Proprietary Information, cease to use, destroy or return to the owner all documents and data of any nature pertaining to the Proprietary Information owned by such Party, and will not keep or deliver to anyone else any documents or data of any description or any reproduction of any description containing or pertaining to any Proprietary Information.
- 9.3 This Clause shall not, however, apply to information which:
- (a) is or becomes publicly available without the fault of any Party;
 - (b) was known to any Party on a non-confidential basis prior to disclosure;
 - (c) is independently developed by any Party without use of the Proprietary Information;
 - (d) is disclosed by the owner of such information to a Third Party without restrictions similar to those contained herein;
 - (e) is disclosed in order to enable the sell-down/ draw-down of debt or to proposed Third Party transferees, provided that the recipient executes a confidentiality undertaking to use the information solely for that purpose;
 - (f) is disclosed in order to comply with the requirements of Applicable Laws including any requirements for the stock exchange listing of the Concessionaire or any entity, which directly or indirectly, holds Equity Shares;
 - (g) is disclosed to any of the consultants (legal, financial, technical or otherwise) of the Parties, provided that the recipient executes a confidentiality undertaking to use the information solely for the purpose disclosed.
- 9.4 The Shareholders agree with each other and the Concessionaire to use their, and to cause the Concessionaire to use its, best efforts to assure that all information disclosed in connection with the business of the Concessionaire and not otherwise generally available shall be kept confidential and shall not be revealed.

10. GOVERNING LAW AND CONSENT TO JURISDICTION; ARBITRATION

- 10.1 This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India. Subject to Clause 10.3, the courts in the State shall have exclusive jurisdiction over this Agreement.



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10.2 The Parties agree that they shall attempt to resolve through good faith consultation, all and any issue, dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (“**Disputes**”), and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation: Provided that if such good faith consultations have not resulted in a resolution of the dispute within 60 (sixty) days of such consultations having commenced, the provisions of Clause 10.3 shall apply.

10.3 Arbitration

10.3.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to a sole arbitrator to be appointed by the Chief Justice of the High Court having jurisdiction. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and Arbitration and Conciliation (Amendment) Act, 2015.

10.3.2 The arbitrator shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

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

11. MISCELLANEOUS

11.1 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.2 Force Majeure

Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that no relief shall be granted to any Party under this



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Agreement for, or on account of, Force Majeure.

11.3 Specific performance of obligations

The Parties to this Agreement agree that, to the extent permitted under Applicable Laws, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a defaulting Party. The Parties acknowledge that any breach of the provisions of this Agreement will cause immediate irreparable harm to the adversely affected Party ("**Affected Party**") for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the Affected Party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a court of competent jurisdiction in the event of any such breach or threatened breach by any other Party. The Parties agree and stipulate that the Affected Party shall be entitled to such injunctive relief, specific performance or other equitable relief without (i) the necessity of proving actual damages; or (ii) posting a bond or other security. Nothing contained herein shall limit the Affected Party's right to any remedies at law or in equity, including without limitation the recovery of damages from the defaulting Party.

11.4 Entire Agreement

11.4.1 Subject to the provisions of the Clause 11.4.2, this Agreement, together with all Annexures, Schedules, Exhibits and attachments hereto, represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the Parties may have had.

11.4.2 Nothing contained herein shall:

- (a) affect the provisions of the Concession Agreement;
- (b) prevent the Private Participants from having any other inter-se arrangements regarding their shareholding in the Concessionaire, provided that no such arrangements shall in any way affect the rights of the Authority under this Agreement or under the Concession Agreement.

For the avoidance of doubt, it is clarified that in the event of a conflict between the provisions of the Concession Agreement and this Agreement, the provisions of the Concession Agreement shall prevail.

11.5 Amendments

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if, but only if, in writing and signed in person or by an authorised representative of each Party.

11.6 Severability

If any article, clause, section or paragraph, or part thereof, of this Agreement or any agreement or document appended hereto or made a part hereof is invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future Applicable



Laws, then it is the intention of the Parties that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause this Agreement to become materially adverse to any Party in which case the Parties shall negotiate in good faith such changes to the Agreement as will best preserve for the Parties the benefits and obligations under such provision.

11.7 Counterparts

This Agreement may be executed in two or more counterparts, and by each Party on the same or different counterparts, but all of such counterparts shall together constitute one and the same instrument.

11.8 Waivers

No failure by a Party to take any action with respect to a breach of this Agreement or a default by any other Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any Party of any breach or failure to comply with any provision of this Agreement by a Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach or failure to comply with any other provision of this Agreement.

11.9 No agency

This Agreement shall not constitute any Party as the legal representative or agent of another Party, nor shall any Party have the right or authority, to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of another Party.

11.10 No third party beneficiaries

Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any entity other than the Parties hereto (and their respective successors and permitted assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained.

11.11 Independence of the Parties with respect of each other and of the Concessionaire

The Parties are and shall remain independent. None of the Parties shall be considered an agent of the other, nor shall they have authority to enter into any contract or any obligation for, or make any warranty or representation on behalf of the other, or the Concessionaire.

11.12 Arms' length

All relationships between each Party of the one part, and the Concessionaire of the other part, shall be conducted at arms length and on competitive terms.

11.13 Encumbrance



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The Parties agree that the Private Participants shall not be entitled to Encumber their shareholding in the Concessionaire other than in favour of or for the benefit of the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project.

11.14 Consequential Loss


Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to any other Party (on the basis of contract, indemnity, warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of, or in connection with, this Agreement in respect of any Consequential Loss suffered by such other Party. For the purposes of this provision, “**Consequential Loss**” means any indirect or consequential loss (including loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements, or liability to third parties) resulting from such breach and whether or not the Party committing the breach ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach and includes the payment or repayment of any amounts (or any acceleration thereof) to lenders or creditors of the aggrieved Party from time to time, but excludes death or personal injury resulting from the negligence of the Party liable, its officers, employees or agents.

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20 hereunto affixed in the presence of _____, Director, who has signed these presents in token thereof and Company Secretary/Authorised Officer who has countersigned the same in token thereof

SIGNED, SEALED AND DELIVERED For and on behalf of AUTHORITY:

SIGNED, SEALED AND DELIVERED For and on behalf of Private Participant



Annex – I
(Schedule P)

PRIVATE PARTICIPANTS

{Insert the Names of Private Participants}

[Handwritten signature]

[Handwritten signature] 

Annex-II
(Schedule-P)

RESERVED MATTERS

- (a) to alter or add to the provisions of the memorandum;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Concessionaire;
- (d) to purchase the Concessionaire's own shares or specified securities;
- (e) to issue sweat equity shares;
- (f) to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
- (g) to reduce the share capital;
- (h) to remove the registered office of the Concessionaire outside the limits of the State where it is located;
- (i) to commence any new lines of business;
- (j) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- (k) to consent to a Director or his relative or partner or firm or private company holding an office or place of profit, except that of Managing Director, manager, banker, or trustee for debenture-holders of the Concessionaire;
- (l) to make inter-corporate-loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10 per cent of the Concessionaire's paid-up share capital;
- (m) to apply to a court to wind-up the Concessionaire;
- (n) to wind-up the Concessionaire voluntarily;
- (o) for various other matters pertaining to the winding up of the Concessionaire; and
- (p) any other matter which is required by the Companies Act, 2013, or any re-enactment or amendment thereof, to be passed by a special resolution of the shareholders of the company.



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Annex- III

(Schedule-P)

DEED OF ADHERENCE

This **DEED OF ADHERENCE** (“**Deed**”) is executed this day of , by a company/ body corporate incorporated under the laws of India, with its registered office at (the “**Transferee**”)

WHEREAS:

- A. By a Shareholders’ Agreement dated ____20... (the “**Shareholders’ Agreement**”) amongst the Authority, and the Concessionaire, the Shareholders agreed to a mutual distribution / regulation of their rights and liabilities as Shareholders of the Concessionaire.
- B. Clause 3.2.1 (ii) of the Shareholders’ Agreement requires, inter alia, that, concurrently with the transfer of shares in the equity capital by any Shareholder (“**Parent**”) to any third party, such third party shall, as a pre-condition of such transfer of shares to it, execute this Deed and be bound by the Shareholders’ Agreement.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Definitions and Interpretation:

Capitalised terms used but not defined in this Deed shall, unless the context otherwise requires, have the respective meanings ascribed thereto in the Shareholders Agreement.

2. Undertakings



The Transferee hereby acknowledges that it has heretofore received a copy of, and has read and understands the Shareholders’ Agreement, the Concession Agreement and other Project Agreements, and covenants, agrees and confirms that it shall be bound by all provisions of the Shareholders’ Agreement as if it was an original party thereto, including with respect to the rights and obligations of the transferor Party contained therein, and the Shareholders’ Agreement shall have full force and effect on it, and shall be read and construed to be binding on it.

3. Governing Law

This Deed shall be governed by and construed in accordance with the laws of the India. The terms and conditions of the Shareholders’ Agreement in relation to the provisions regarding arbitration and other terms and conditions shall be deemed to have been incorporated in this Deed.

By

Name and Title: In the presence of: Witness



1.

2.

mi

V. Chand

