

PROJECT DEVELOPMENT AND MANAGEMENT AGREEMENT

between

GUJARAT COUNCIL OF SCIENCE CITY (AUTHORITY)

and

(DEVELOPER)

For

RFP for Supply, Installation, Commissioning, Operation, and Maintenance of IMAX 3D GT laser projection system at Gujarat Science City on PPP mode



Gujarat Council of Science City
Department of Science & Technology, Govt. of Gujarat
Science City Road, Ahmedabad – 380 060

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PROJECT DEVELOPMENT AND MANAGEMENT AGREEMENT

This Project Development and Management Agreement (“**PDMA**” or “**Agreement**”) mutually agreed and entered into on this the _____ day of _____, Two Thousand and _____ at Ahmedabad.

BETWEEN

Gujarat Council of Science City, Department of Science and Technology, Government of Gujarat having its office at Science City Road, Ahmedabad – 380 060 (hereinafter referred to as the “**Authority**” or the “**GCSC**”) which expression shall, unless repugnant to the context include the administrators, successors and assigns on the First Part.

AND

[●], a [●] incorporated and registered under the provisions of the [●]¹ and having its registered office at [●], (hereinafter referred to as the “**Developer**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

OR

M/s [.....], being the Lead Member of the Consortium, comprising of consortium member [.....]; being a {company/partnership firm/Proprietor, incorporated/constituted} having its registered office at [●], (hereinafter referred to as the “**Developer**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

The Authority and Developer are collectively referred to as “**Parties**” and individually as “**Party**”.

WHEREAS,

- A. The Authority is functioning as an autonomous body under the aegis of the Department of Science & Technology (“**DST**”), Government of Gujarat (“**GOG**”). GCSC has emerged as an effective and large-scale science, education and popularization platform in the State of Gujarat and country to promote innovative and experimental activities through hands-on activities and minds-on exposures.
- B. The Authority with a view to attract more footfalls into the region intends to upgrade the projection system to IMAX GT Laser at Gujarat Science City “**Project Site**”). The Authority intends for Supply, Installation, Commissioning, Operation, and Maintenance of IMAX 3D GT laser projection system at Gujarat Science City on Public Private Partnership (“**PPP**”) under Renovate, Operate, Maintain and Transfer (**ROMT**) basis (“**Project**”).

¹ Reference may be made alternatively to the nature of entity company/partnership firm/ proprietorship which is implementing the Project

- C. Pursuant thereto, the Authority through an open, transparent and competitive bidding process invited proposals from interested parties for the Project by issuing Request for Proposal (“**RFP**”) document dated _____ containing inter-alia the minimum qualification criteria and the terms and conditions for implementing the Project.
- D. After evaluating the proposals, the Authority has accepted the bid submitted _____ [insert the name of the Single Entity/Consortium], as the Successful Bidder (the “Successful Bidder”) and issued Letter of Award (“LOA”) No. _____ dated _____ [insert the number and date of issue of LOA]. The Successful Bidder has duly acknowledged the same vide its Letter No. _____ dated _____ [insert the letter number and date].
- E. The Developer represents and warrants that they have duly fulfilled all the terms and condition necessary for the execution of this Agreement as per the terms and condition in Bid documents and are in a position to execute this Agreement and Implement the Project as envisaged in the Bid and this document.

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:

ARTICLE 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 ascribed to them hereunder:

“**Advance Guarantee**” shall have the meaning ascribed thereto in Clause 8.2.2.4 of this Agreement.

“**Advance Payment**” shall have the meaning ascribed thereto in Clause 8.2.2.4 of this Agreement.

“**Affected Party**” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Clause 9.1.

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

“**Agreement Period**” shall have the meaning ascribed thereto in Clause 3.2.1 of this Agreement.

“**Applicable Law**” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project / the Parties in relation to the Project.

“**Applicable Permits**” means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the respective Parties under the Applicable Laws including those specified in Schedule 4, in connection with the development, operation, maintenance & management of the Project during the subsistence of this Agreement.

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.

“**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.

“**Book Value**” shall mean the expenditure incurred for development of Project Facilities as per the books of the Developer, net of depreciation charged and calculated as per the Companies Act, 2013. For the purpose of calculation of the Book Value only the cost incurred by the Developer on the development of Project Facilities up to the Commercial Operation Date shall be considered. It is clarified that for the purposes of Termination Payment, computation of the Book Value shall not include Project Facilities created out of the Grant.

“**Change in Law**” means the occurrence of any of the following after the Bid Due Date:

- i. the enactment of any new Indian law;
- ii. the repeal, modification or re-enactment of any existing Indian law;

- iii. the commencement of any Indian law, which has not entered into effect until the Bid Due Date;
- iv. 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 Due Date;
- v. any change in the rates of any of the indirect Taxes that have a direct effect on the Project; or
- vi. any lockdown orders or orders restricting the movement of persons/goods/vehicles issued by central/state Government under the Epidemic Diseases Act, 1897 and/or the Disaster Management Act, 2005.

“**Change of Scope**” shall have the meaning ascribed to it in Clause 17.1;

“**Change of Scope Limit**” shall have the meaning ascribed to it in Clause 17.1;

“**Change of Scope Notice**” shall have the meaning set forth in Clause 17.2.1;

“**Change of Scope Order**” shall have the meaning set forth in Clause 17.2.3

“**Commercial Operation Date**” shall mean the date on which the Project Completion Certificate is issued by the Authority in accordance with Clause 5.7.4 upon procuring of the Completion Certificate with respect to all the Project Facilities by the Developer.

[“**Consortium**” shall mean the consortium consisting of (i) _____ and (ii) _____ formed pursuant to the Joint Bidding Agreement dated _____ for the purpose of undertaking the Project.]

[“**Consortium Member(s)**” shall mean any or all of the members of Consortium and in the event of reconstitution of the Consortium; it shall include members of such reconstituted Consortium.]

“**Construction Works**” means all works and things necessary to complete the Project in accordance with this Agreement;

“**Construction Period**” means the period of 12 (twelve) months commencing from the Execution Date during which Construction Works are undertaken by the Developer.

“**Completion Certificate**” shall mean the certificate issued by the Authority upon completion of each of the Project Facilities in accordance with Clause 5.7.4, whereupon such Project Facility shall commence its commercial operation.

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 14;

“**Emergency**” shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project including the safety of the users thereof or which poses an immediate threat of material damage to the Project.

“**Encumbrance**” means any encumbrance 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Site or Project Facilities.

“Estimated Contract Price” means the estimated cost of the Project i.e. INR 18 crores only (Rupees 18 Crores only). This cost includes the cost of procurement of materials, installation of various parts along with their interiors of the Project Facilities within the specified timelines and excludes O&M costs and other civil repair costs and is indicative in nature, solely for purpose for Developers reference only

"Expiry" means expiry of this Agreement by efflux of time.

“Expiry Date” means the date on which Expiry occurs.

“Execution Date” means the date of signing of this Agreement.

“Financial Year” means the period commencing from April 1 of any given year to March 31 of the succeeding year.

“Financing Documents” means collectively the documents evidencing Lenders’ commitment to finance the Project.

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

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation & management or supervision or monitoring thereof of any of them of a project similar to that of the Project.

“Government Agency” shall mean Government of India, Government of Gujarat or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Developer, the Project or any portion thereof, or the performance of all or any of the services or obligations of the Developer under or pursuant to this Agreement.

“Grant” shall have the meaning ascribed to it in Clause 8.2.1;

“Gross Revenue” means all pre-tax gross revenues and receipts earned by the Developer under or pursuant to this Agreement, at any time from the achievement of COD, computed on monthly basis in accordance with this Agreement upon the Expiry Date or Termination Date, as the case may be, but shall exclude the following:

- (a) any insurance proceeds received by the Developer 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 Developer 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; and

- (b) any monies received by the Developer, for or on behalf of any Government Agency, as an authorized agent of such Government Agency i.e indirect taxes and similar levy.

It is expressly clarified that:

- (i) insurance proceeds referred to in exclusion (a) above, shall not include insurance proceeds received for loss of revenues and/or business interruption;
- (ii) monies referred to in exclusion (b) above, shall be excluded only if the same has been credited or will be credited by the Developer to the relevant Government Agency 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;
- (iii) Gross Revenue Share shall be payable and reconciled subject to and in accordance with the provisions of this Agreement.

“Independent Auditor” shall have the meaning set forth in Clause 8.1 (ii) (a)

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Developer pursuant to Clause 5.14, and includes all insurances required to be taken out by the Developer under Clause 5.14 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.

“Lenders” means financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided financial assistance to the Developer for financing any part of the Project.

“Material Adverse Effect” means a material adverse effect on (a) the ability of the Developer to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

“Material Breach” means a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

“O&M Requirements” shall mean the requirements as to the operation and maintenance of the Project Facilities as set forth in **Schedule 11**.

“Operations Period” shall mean the period commencing from the COD and ending on the Expiry Date;

“Performance Security” shall have the meaning ascribed to it in Clause 5.1.1;

“Performance Security Period” shall have the meaning ascribed to it in Clause 5.1.5;

“Performance Guarantee” shall have the meaning ascribed to it in Clause 5.2.1;

“Person” shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, society, sole proprietorship, unincorporated organization, government or Government Agency or any other legal entity.

“Preliminary Notice” means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

“Project” means and includes development of the Project Facilities, operation, maintenance and management thereof and transfer of the Project Facilities in accordance with the terms and conditions of this Agreement.

“Project Facilities” means the Project Site, the existing Project Facilities on the Project Site more fully described in the Schedule 5 and includes all the structures, fittings & fixtures, common areas, infrastructure, all amenities/ facilities proposed to be build, provided or procured within the Project Site by the Developer, consistent with Good Industry Practice and the terms of this PDMA.

“Project Completion Certificate” shall mean the certificate issued by the Authority upon completion of all the Project Facilities in accordance with the Approved Project Implementation Plan.

“Project Implementation Plan” shall mean the detail plan submitted by the Developer with regard to development of Project Facilities and its operation and management thereof in accordance with this Agreement and to be appended as Schedule 9 to this Agreement.

“Project Milestone” means the project milestones set forth in Clause 8.2.2.

“Project Site” means the property belonging to the Authority more fully described in Schedule 1.

“Rights” shall have the meaning ascribed thereto in Clause 3.1.1 of this Agreement.

“Scheduled Commercial Operation Date” shall have the meaning ascribed to it in Clause 5.7.1;

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

“Tax” shall mean and includes all taxes including GST, fees, cess, duties (including stamp duties), levies that may be payable by the Developer for execution of this Agreement and during the Agreement Period under Applicable Law.

“Termination” means early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include Expiry.

“Termination Date” means the date specified in the Termination Notice as the date on which Termination occurs.

“Termination Notice” means the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

“**Tests**” means the tests set forth in Schedule 9 to determine the completion of Project Facilities in accordance with the provisions of this Agreement;

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

“**User Fee**” means all charges, costs, fees, tariff and other amounts by whatever name called, collected by the Developer from the users through cash or online payment, pursuant to this Agreement, for usage of the Project.

1.2 Interpretation

1.2.1 Interpreting the conditions in this PDMA, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of this Agreement unless specifically defined. The documents forming part of the Agreement shall be interpreted in the following order of priority

- a. This Agreement along with Schedules as amended from time to time;
- b. Letter of Award issued to the Successful Bidder;
- c. Bid of the Successful Bidder;
- d. Clarification/Corrigendum/Addendum to the Bidding Document, if any;
- e. Bidding Document with all its Annexure and Appendices.

1.2.2 Subject to the provisions of Clause 1.2.1, 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.

1.3 Joint and several liability²

1.3.1 If the Developer has formed a Consortium of two or more persons for implementing the Project:

² This Clause 1.3 may be omitted if the Developer is not a Consortium

- (a) these persons shall, without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the Authority for the performance of the Agreement; and
- (b) the Developer shall ensure that no change in the composition of the Consortium is affected without the prior consent of the Authority.

1.3.2 Without prejudice to the joint and several liability of all the members of the Consortium, the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Developer. The Developer shall ensure that the other member of the Consortium shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member. The Authority shall have the right to release payments/Grant solely to the Lead Member and shall not in any manner be responsible or liable for the *inter se* allocation of payments among members of the Consortium. }

ARTICLE 2- SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Agreement Period:

- a. Design, installation and commissioning of the Project on the Site set forth in Schedule 1 together with provision of Project Facilities in conformity with the Specifications and Standards set forth in Schedule 11 and the Approved Project Implementation Plan set forth in Schedule 9;
- b. operation and maintenance of the Project Facilities in accordance with the provision of this Agreement;
- c. Transfer of Project Site along with the Project Facilities in good operational conditions on the Termination Date or Expiry Date, as the case may be, in accordance with the terms and conditions of this Agreement; and
- d. performance and fulfilment of all other obligations of the Developer 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 Developer under this Agreement.

ARTICLE 3- RIGHTS

3.1 Grant of Rights

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants the following rights (the “Rights”) and authorizes the Developer:

- i. to carry out surveys, investigation, study, design, engineer, procure, finance, construction, operation and management of the Project Facilities in accordance with this Agreement and for this purpose it may regulate the entry into and use of the same by the third parties;
- ii. to exercise and/ or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement including the right to collect, retain and appropriate User Fee from the users of the Project Facilities during the Agreement Period, through the utilization of Authority’s payment gateway only ; and
- iii. to fix the User Fee to be charged from the users for the Project Facilities with prior intimation to the Authority. However, in no case, the User Fee shall not be greater than INR 150.00 (Rupees one fifty only) for adults and INR 100.00 (Rupees one hundred only) for the children (upto 14 years of age) for non-commercial till the first anniversary of the COD. There is no capping in user fees for commercial movies. Subsequently, thereafter during the remaining Agreement Period, Developer shall be entitled to the annual escalation of up to 10% on the preceding year’s User Fee, subject to the Authority’s approval. In the event the User Fee is collected in cash, it shall be deposited on the same business day or first hour of the next business day. The above user fees are excluding GST
- iv. to sell food and beverages at competitive market selling price except bottled drinking water which shall be capped at MRP only.

3.1.2 The Developer shall not lease, mortgage, assign, transfer or create any lien or Encumbrance on the whole or any part of the Project Site or Project Facilities, save and except as expressly permitted by this Agreement.

3.1.3 Subject to the terms of this Agreement and other relevant provisions under Applicable Laws, the Developer shall have the right to enter into agreements with such Persons/ as it may deem necessary and appropriate, for performing its obligations under this Agreement.

3.2 Agreement Period

3.2.1 The tenure of the Operations Period shall be for a period of 15 (fifteen) years commencing from COD and ending on the Expiry Date, and the Construction Period shall be for 12 months commencing from the Execution Date (the “Agreement Period”). Further, provided that in the event of Termination, the Agreement Period shall mean and be limited to the period commencing from the Execution Date and ending with the Termination Date.

3.2.2 The Developer shall have the right to extend the Agreement Period hereof by an additional term of up to 5 (five) years, at any time after the 8th anniversary of the Execution Date to the 12th anniversary of the Execution Date, by giving a written notice to the Authority. The Authority shall respond to such notice within 30 days. Provided however that this right of extension shall not be granted to the Developer if any Developer Event of Default has occurred during the preceding two (2) years prior to the date on which the Developer

exercises its extension right through aforesaid notice to the Authority.

Provided further that if any Developer Event of Default occurs at any time between the date on which the Authority grants the extension and the 10th anniversary of the Execution Date, the Developer's right of extension for an additional term of up to 5 (five) years shall lapse, unless otherwise agreed by the Authority in its sole discretion.

3.3 Acceptance of Rights

In consideration of the rights, privileges and benefits conferred upon by the Authority and other good and valuable consideration expressed herein, the Developer hereby accepts the Rights and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions of this Agreement.

3.4 Access rights to the Authority and others

The Developer shall allow free access to the Project Site and Project Facilities at all times for the authorized representatives and vehicles of the Authority and for the persons and vehicles duly authorized by any Government Agency to:

- (a) inspect the Project Site and the Project Facilities and investigate any matter with their authority and upon reasonable notice to the Developer; and
- (b) allow access to and use of the Project Site for laying/ installing / maintaining telegraph lines, electric lines or for such other public purposes as the Authority may specify. Provided that such access or use shall not result in a Material Adverse Effect and that the Authority shall, in the event of any physical damage to the Project Site / Project Facilities on account thereof, ensure that the Project Site / Project Facilities is promptly restored at its cost and expenses.

Provided further, that to the extent such access and use allowed by the Developer affects the performance of any of its obligations hereunder, the Developer shall not be deemed or construed to be in breach of its obligations nor shall it incur/ suffer any liability on account thereof.

ARTICLE 4- PROJECT SITE

4.1 Handover of Project Site

- 4.1.1 Prior to the handover of Project Site to the Developer, the Authority and the Developer shall within 15 (fifteen) days from the Execution Date conduct joint inspection of the Project Site and agree to the inventory of the existing facilities therein and jointly prepare and sign a joint inspection report. The joint inspection report shall form part of Schedule 5.
- 4.1.2 The Authority shall, within 15 (fifteen) days from the date of signing of the joint inspection report by both the Parties handover to the Developer, on as-is-where-is basis, vacant and peaceful physical possession of the Project Site, free from Encumbrance and encroachment, for the purpose of implementing the Project. In the event that (i) the Authority does not handover the Project Site within 15 (fifteen) days from the date of signing the joint inspection report, and (ii) the delay has not occurred as a result of breach of this Agreement by the Developer or due to Force Majeure, the Authority shall pay to the Developer 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 handing over of the Project Site, subject to a maximum amount equal to 10% (ten percent) of the Performance Security, and upon reaching such maximum, the Developer may, in its sole discretion, terminate this Agreement.
- 4.1.3 Upon handover of the Project Site, the Developer shall have the right to enter upon, use and make at its own costs such investigation necessary or appropriate to prepare the Project Implementation Plan for development of Project Facilities on the Project Site and operation and management thereof in accordance with the provisions of this Agreement and the Approved Project Implementation Plan.

4.2 Peaceful Possession

The Authority hereby warrants that:

- a) The Project Site has been acquired through the due process of law and belongs to and is vested with the Authority and that the Authority has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement.
- b) In the event the Developer is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof, or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge or the Project Site or any part thereof, the Authority shall, if called upon by the Developer, defend such claims and proceedings and also keep the Developer indemnified against any consequential loss or damages which the Developer may suffer, on account of any such right, title, interest or charge.

4.3 Use of the Project Site

- a) Pursuant to Clause 4.1, the Developer shall have the right to enter upon, occupy and use the Project Site and to make at its costs, charges and expenses such investigations and development activities (including but not limited to land filling, levelling, clearing, landscaping and related works including overcoming site constraints, if any) and any other activity as may be necessary or appropriate to implement the Project.
- b) Subject to the terms of this Agreement, the Developer shall have the right to develop,

create, obtain, set up, construct as the context admits or requires, and operate and maintain the Project Facilities by itself.

- c) The Developer shall have the right to use the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry into and use of the same by third parties, provided that the Developer will be required to provide unrestricted access to any site of religious nature falling within the Project Site.
- d) Developer shall not without the prior written approval of Authority use the Project Site for any purpose other than for the purpose of development of Project and purposes incidental or ancillary thereto.

ARTICLE 5- OBLIGATIONS OF THE DEVELOPER

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Developer shall have the following obligations:

5.1 Performance Security

5.1.1 The Developer shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority within 30 (thirty) days of the Execution Date of this Agreement, an irrevocable and unconditional guarantee from a nationalised Bank or any other bank specified in Government of Gujarat, GR No: EMD/10/2019/50/DMO dated November 1, 2019 (and as amended from time to time) for a sum equivalent to INR 1,80,00,000 (Rupees One Crore Eighty Lakh only) substantially in the format set forth in Schedule 8 Annex - I (the "**Performance Security**"). The Developer shall maintain and keep in force the Performance Security for the entire duration of the Performance Security Period in accordance with this Clause 5.1.5. Until such time the Performance Security is provided by the Developer pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Developer.

5.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Developer to provide the Performance Security in accordance with the provisions of Clause 5.1.1 and within the time specified therein or such extended period as may be provided by the Authority, in accordance with the provisions of Clause 5.1.3, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Developer under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Developer, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

5.1.3 In the event that (i) the Developer does not provide Performance Security within 30 (fifteen) days from the Execution Date, and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure, the Developer 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 handing over of the Project Site, subject to a maximum amount equal to 10% (ten percent) of the Performance Security, and upon reaching such maximum, the Authority may, in its sole discretion, terminate this Agreement.

5.1.4 Appropriation of Performance Security

Upon occurrence of a Developer Event of Default, 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 as Damages for the Developer Event of Default. Upon such encashment and appropriation from the Performance Security, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security valid for the duration of the Performance Security Period, as the case may be, and the Developer shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 10. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Developer shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Developer Event of Default, and in the event of the not curing its default 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 10.

5.1.5 Release of Performance Security

The Authority shall release the Performance Security within 60 (sixty) days from Commercial Operation Date (“**Performance Security Period**”) and shall be released upon provision of a Performance Guarantee in accordance with the provisions of Clause 5.2 below.

5.2 Performance Guarantee

5.2.1 The Developer shall, for the performance of its obligations hereunder during the Operation Period, provide to the Authority no later than 30 (thirty) days prior to expiry of the Performance Security Period, an irrevocable and unconditional guarantee from a Nationalised Bank or any other bank specified in Government of Gujarat, GR No: EMD/10/2019/50/DMO dated November 1, 2019 (and as amended from time to time) for a sum equivalent to INR 1,80,00,000 (Rupees One Crore and Eighty Lakh Only) in the form set forth in Schedule 8 Annex -II (the "**Performance Guarantee**"). Until such time the Performance Guarantee is provided by the Developer pursuant hereto and the same comes into effect, the Performance Security shall remain in force and effect, and upon such provision of the Performance Guarantee pursuant hereto, the Authority shall release the Performance Security to the Developer.

5.2.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Guarantee is not provided by the Developer within a period of 30 (thirty) days prior to expiry of the Performance Security Period, the Authority may encash the Performance Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Developer under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Developer, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

5.2.3 Appropriation of Performance Guarantee

Upon occurrence of a Developer Event of Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Guarantee as Damages for such Developer Event of Default. Upon such encashment and appropriation of the Performance Guarantee, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Guarantee, and in case of appropriation of the entire Performance Guarantee provide a fresh Performance Guarantee, as the case may be, and the Developer shall, within the time so granted, replenish or furnish fresh Performance Guarantee as aforesaid, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 10. Upon replenishment or furnishing of a fresh Performance Guarantee, as the case may be, as aforesaid, the Developer shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Developer Event of Default, and in the event of the Developer not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Guarantee as Damages, and to terminate this Agreement in accordance with Article 10.

5.2.4 Release of Performance Guarantee

The Performance Guarantee shall remain in force and effect during the remaining Agreement Period and subject to provisions of Clause 5.2.3 above, shall be released after 150 (one hundred and fifty) days of the Expiry Date (“Performance Guarantee Period”) in accordance with this Agreement.

5.3 Financing Arrangement

5.3.1 The Developer shall at its cost, expenses and risk make such financing arrangement as would be necessary to develop and implement the Project and to meet all of its obligations under this Agreement, in a timely manner. The Developer shall submit to the Authority notarized true copies of the Financing Documents within 10 (ten) days of its execution.

5.4 Submission of Project Implementation Plan

5.4.1 The Developer shall within 30 (thirty) days from the date of handover of Project Site submit to the Authority a detailed project implementation plan (“**Project Implementation Plan**”) and make a presentation on the same to the Authority. The Project Implementation Plan should set out in reasonable detail the information required as detailed in Schedule 2. The Developer as part of the Project Implementation Plan

5.4.2 The Authority shall review the Project Implementation Plan for compliance with applicable provisions and information requirements as specified in Schedule 2 of the Agreement and either approve or convey its comments/observations, if any within 30 (thirty) days from the date of receipt of the Project Implementation Plan by the Developer. On receipt of such comments/observation from the Authority, the Developer shall within 15 (fifteen) days submit a revised Project Implementation Plan to the Authority for its approval. The Project Implementation Plan will be considered deemed approved by Authority if any comments /observations are not shared with the Developer within 30 (thirty) days of receipt of the Project Implementation Plan from the Authority. After approval by the Authority, the Project Implementation Plan (“**Approved Project Implementation Plan**”) shall be signed by the Parties and appended to this Agreement as Schedule 9.

5.4.3 If the Developer fails to submit the Project Implementation Plan within the period of 30 (thirty) days from the date of handover of the Project Site, and the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure, the Authority shall subject to payment of Damages in an amount calculated at the rate of 0.2% (zero point two percent) of the Performance Security for each day's delay until submission of the Project Implementation Plan to the Authority, subject to maximum 30 (thirty) days. In case the Project Implementation Plan is not submitted within the extended period of 30 (thirty) days, the Authority may, in its sole discretion, be entitled to terminate this Agreement.

5.4.4 Notwithstanding any review or failure to review or the comments/observations of the Authority, the Developer shall be solely responsible for the adequacy of the Approved Project Implementation Plan and shall not be relieved or absolved in any manner whatsoever of any of its obligations set forth in this Agreement.

5.4.5 The Developer shall be responsible for marketing and promotion plan of the facility, clearly identifying potential markets, marketing and promotional strategies, execution strategies and time frames for the plans to attract more footfall to the project.

5.5 Development Obligations of the Developer

5.5.1 Obligations prior to commencement of Works

5.5.1.1 Within 20 (twenty) days of the Execution Date, the Developer shall:

- (a) appoint its representative, duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (b) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Works under and in accordance with this Agreement, Applicable Laws and Applicable Permits; and
- (c) make its own arrangements for supply of materials and procurement needed for the Project under and in accordance with Applicable Laws and Applicable Permits.
- (d) Prepare, submit, revise Project Implementation Plan as per terms hereof.
- (e) carry out the safety audit the Project in accordance with Applicable Laws and Good Industry Practice.
- (f) Obtain all required permissions/licenses to execute the works as per the extant provisions of the law

5.5.2 The Authority may appoint Authority's Engineer to discharge the functions and duties as per directions issued by the Authority from time to time, and shall notify to the Developer the name, address and the date of appointment of the Authority's Engineer forthwith. Notwithstanding such appointment by the Authority, the Developer shall, until such time that Authority's Engineer is appointed, shall continue to execute the works as per terms hereof.

5.6 Design and Drawings

5.6.1 Design and Drawings shall be developed in conformity with the applicable standards and Good Industry Practice

5.6.2 In respect of the Developer's obligations with respect to the design and drawings of the Project the following shall apply:

- (a) The Developer shall, prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Implementation Plan, 3 (three) copies each of the design and Drawings, duly certified by a proof check consultant proposed by the Developer ("**Proof Consultant**"), to the Authority/ Authority's Engineer for review. The Authority at its sole discretion, at its own cost, may submit the design and Drawings and seek opinion of an independent engineer, who will be appointed by the Authority to review the design and Drawings. The Developer has to respond to the comments made by the independent engineer on the review and incorporate the necessary modifications as may be required for approval.
- (b) by submitting the Drawings for review to the Authority or Authority's Engineer, the Developer shall be deemed to have represented that it has determined and verified that the design and engineering, including 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 21 (twenty-one) days of the receipt of the Drawings, the Authority or Authority's Engineer shall review the same and convey its observations to the Developer with particular

reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards.;

- (d) if the aforesaid observations of the Authority or Authority's 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 Developer in conformity with the provisions of this Agreement and resubmitted to the Authority or Authority's Engineer for review. The Authority or Authority's Engineer shall give its observations, if any, within 10 (ten) days of receipt of the revised Drawings. In the event the Developer fails to revise and resubmit such Drawings to the Authority's Engineer for review as aforesaid, the Developer shall not be entitled to any extension of time of Scheduled Commercial Operation Date. If the Developer disputes any decision, direction or determination of the Authority or Authority's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;
- (e) no review and/or observation of the Authority's Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall the Authority's Engineer or the Authority be liable for the same in any manner; and if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are found in the Drawings, they shall be corrected, along with the affected Works, at the Developer's cost, notwithstanding any review under this Article 5;
- (f) the Developer shall be responsible for delays in submitting the Drawings, caused by reason of delays in surveys and field investigations, and shall not be entitled to seek any relief in respect thereof from the Authority; and
- (g) the Developer warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the Authority against any damage, expense, liability, loss or claim, which the Authority might incur, sustain or be subject to arising from any breach of the Developer's design responsibility and/or warranty as set out in this Clause.

5.6.3 Any cost or delay in construction arising from review by the Authority or Authority's Engineer shall be borne by the Developer.

5.6.4 Construction Works shall be executed in accordance with the Drawings and Approved Implementation Plan provided by the Developer in accordance with the provisions of this Clause 5.6 and the observations of the Authority or Authority's Engineer thereon as communicated pursuant to the provisions of Clause 5.6.2. Such Drawings shall not be amended or altered without prior written notice to the Authority's Engineer. If a Party becomes aware of an error or defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.

5.6.5 Within 90 (ninety) days of the Commercial Operation Date, the Developer shall furnish to the Authority and the Authority's Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities, and shall hand them over to the Authority against receipt thereof.

5.7 Development Obligation of the Developer

5.7.1 The Developer shall undertake that it shall complete the Construction Works for the Project and operationalize all the Project Facilities within 12 (Twelve) Months from the Execution Date, according to the Approved Project Implementation Plan by the Authority (the “**Scheduled Commercial Operation Date**”). Except for reasons of a Force Majeure Event and reasons attributable to the Authority, the Developer shall not be entitled to any extension of time in the above period.

5.7.2 The Developer shall complete the Construction Works and operationalisation all the Project Facilities in accordance with the Drawings submitted by the Developer in accordance with Clause 5.6, Approved Project Implementation Plan set forth in Schedule-9 and Specifications and Standards set forth in Schedule 11 and Good Industry Practice.

5.7.3 Project Completion Certificate

- (a) At least 30 (thirty) days prior to the likely completion of the Project Facilities, the Developer shall notify the Authority of its intent to subject the Project Facilities to Tests and shall along with such notice submit the documents supporting the completion of the Construction Works as per the requirement of this Agreement. The date and time of each of the Tests shall be determined by mutual consent and the Authority shall designate its representative to witness the Tests. In the event of the Developer and the Developer failing to mutually agree on the dates for conducting the Tests, the Developer shall fix the dates by not less than 10 (ten) days’ notice to the Authority.
- (b) All Tests shall be conducted in accordance with **Schedule 9** of this Agreement, Applicable Laws and Good Industry Practice. The Authority shall observe, monitor and review the results of the Tests to determine compliance of the Project Facilities with Specifications and Standards, Approved Project Implementation Plan and Design and Drawings. Upon completion of each Test, Developer shall provide to the Authority copies of all Test data including detailed Test results. The costs required to be incurred on such Tests shall be borne by the Developer.
- (c) If it is reasonably anticipated or determined by the Authority during the course of any Test that the performance of the Project Facilities or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Developer to carry out remedial measures and rectify the defects or deficiencies. 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 also be borne solely by the Developer.
- (d) Upon completion of all the Tests successfully in accordance with this Clause 5.7.3, the Developer shall, along with the copies of all Test data including detailed Test results, apply to the Authority for issuance of Completion Certificate. The Authority shall on receipt of such request from the Developer and upon determining the Tests to be successful, forthwith issue to the Developer a certificate signifying completion of the Project and readiness for commercial operations (the "**Project Completion Certificate**").
- (e) **Rescheduling of Test:** If the Authority certifies to the Developer that it is unable to issue the Project Completion Certificate because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Developer shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

5.7.4 Commercial Operation Date (COD)

- (f) The Project Facilities shall be deemed to be ready for operations when the Completion Certificate is issued by the Authority, and accordingly the commercial operation date of the Project shall be the date on which such Project Completion Certificate is issued in accordance with Clause 5.7.4 (the "**COD**") and the same shall be achieved within Scheduled Commercial Operation Date. The Developer shall be entitled to operate the Project Facilities only after COD is achieved.
- (g) If the Developer fails achieve COD within the Scheduled Commercial Operation Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Developer shall be liable to pay damages to the Authority equivalent to a sum calculated at the rate of 0.5% of the Performance Security for each day of delay until COD is achieved. Failure to achieve COD by the Developer within 200 (two hundred) days of Scheduled Completion Operation Date shall lead to Termination as provided in the Article 10 thereof.
- (h) Upon completion of the Construction Works, the Developer shall clear all development equipment, surplus materials, debris and temporary installations from the Project Site. The Project Site and Project Facilities should be kept tidy and an aesthetically pleasing appearance to the satisfaction of the Authority. It is expected that the existing projection system be suitably stored in a location, so as to enable GCSC to utilize these equipment to be showcased as a display within Science City

5.8 Operation and Management Obligations

- 5.8.1 The Developer shall ensure that each of the Project Facilities are opened for usage within 7 (seven) days from the COD in respect thereof and shall operate and manage the same till the Expiry Date or the Termination Date, as the case may be.
- 5.8.2 The Developer shall operate, manage & maintain the Project Site and the Project Facilities entirely at its own cost in accordance with the Good Industry Practice. The Developer may undertake the operations and maintenance of the Project Facilities by itself or through a Person possessing requisite technical, financial and managerial expertise/capability; however, the Developer shall be solely responsible for operations and maintenance of the Project.
- 5.8.3 The Developer shall make adequate provisions for safety of the users and for emergency evacuation in accordance with the Approved Project Development Plan and the Applicable Laws;
- 5.8.3 The Developer shall ensure that the Project Facilities are being maintained in accordance with Approved Project Implementation Plan throughout the Agreement Period. Accordingly, the Developer shall carry out all necessary and periodical Tests in accordance with the Applicable Laws and shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- 5.8.5 The Developer shall from COD and till the Expiry Date have the sole and exclusive right to:
 - i. Charge, demand, collect, recover, retain and appropriate the User Fee at predetermined rates from Users of the Project and for the goods, services, facilities and amenities etc. relating to the Project/Project Facilities at the Site that are

provided, arranged or procured by the Developer by itself and in line with the requirements as elaborated in Clause 3.1.1. Collection of User Fee by the Developer shall be done through Authority's ticketing system only.

- ii. Provide separate customized services or tariff packages or differential rates or special or seasonal discounts for specific, bulk, regular Users or different category of users or during different parts of the year or for timely or early payment.
- 5.8.6 At all reasonable times and on reasonable notice, afford access to the Project Site/ Project Facilities to the representatives of or Persons duly authorized by the competent authority/ Authority concerned with safety, security or environmental protection to inspect the Project Facility thereon and to investigate any other matter within its authority and the Developer shall further afford such Persons reasonable access to the Project Facility necessary to carry out their respective duties and functions.
- 5.8.7 The Developer shall, during the Agreement Period have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to or operate the Project Facilities, to deal with the Authority and be responsible for all necessary exchange of information required pursuant to this Agreement;
- 5.8.8 The Developer shall be deemed to be in Material Breach of O&M Requirements upon occurrence of following events:
- a) Where the Developer has failed to operate and maintain the Project Facilities in accordance with O&M Requirements, and such failure has not been remedied within 60 (sixty) days from the date of notice to that effect issued by the Authority (“**Notice to Remedy**”);
 - b) Where the Authority, acting reasonably and in accordance with the provisions of this Agreement, determines that due to breach of its obligations by the Developer;
 - i) the maintenance of the Project Facilities or any part thereof has deteriorated to a level which is below the acceptance level as may be prescribed by O&M Requirements, and
 - ii) there has been a serious or persistent breach in adhering to the O&M Requirements and thereby the Project Facilities or any part thereof are not safe for operations.
- 5.8.9 Upon occurrence of persistent Material Breach of O&M Requirements, the Authority shall, without prejudice to and notwithstanding any other consequences provided thereof under this Agreement, be entitled to terminate this Agreement. For avoidance of doubt, persistent breach shall mean:
- a) any breach of O&M Requirements by the Developer which has not been remedied by the Developer despite a Notice to Remedy in respect thereof issued by the Authority;
 - b) recurrence of a breach by the Developer, during the pendency of Notice to Remedy by the Authority requiring the Developer to remedy a breach, and
 - c) repeated occurrence of a breach, notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

5.9 Development, Operation and Management Report

The Developer shall, no later than 7 (seven) days after the close of each month, furnish to the Authority a monthly development report on progress of the development of the Project Facilities. The Developer shall also promptly give such other relevant information

as may be required by the Authority in its development including the details mentioned in **Schedule 3**.

The Developer shall, no later than 7 (seven) days after the close of each year, furnish to the Authority a yearly operation & management report on progress of the operation & management of the Project Facilities. The Developer shall also promptly give such other relevant information as may be required by the Authority in its operation & management including the details mentioned in **Schedule 3**.

5.10 Environmental and Safety Compliance

The Developer shall conform to the laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto and other such ecological/ sustainable solutions/mechanisms and conforming to Good Industry Practice for securing the safety of the users of the Project Facilities.

5.11 Alterations, Modifications or Expansion

5.11.1 The Developer may with the prior approval of the Authority and in adherence to Applicable Law and Applicable Permits, carry out necessary alterations or modifications to the Project Facilities. Provided however that such alteration, or modification, shall not at any time cause any damage or have a dangerous effect on either the stability of the Project Facilities or otherwise adversely affect the safety of the users of the Project Facilities. The said Project Facilities is required to be operated after obtaining the approval of the Authority in writing. However, the Developer will not be permitted to undertake permanent new construction.

Prior to undertaking any alteration, modifications or expansion, the Developer shall submit to the Authority a proposal (hereinafter referred to as “**Modification Proposal**”) clearly describing such alteration, modifications or expansion and its impact on the structural stability of the Project Facilities, at least sixty (60) days prior to carrying out such any alteration, modifications or expansion. Any such proposal submitted by the Developer will be approved by the Authority within 30 days of receipt after thorough examination of the proposal. The Authority shall not withhold approval without any genuine cause except in case of national / state / society or public interest.

5.11.2 In case of any such damages due to alterations/modifications/expansion to the Project Facilities, the Developer shall bear all such costs related to such damages. In case the Developer does not rectify the damages within the time specified by the Authority, the Authority may rectify the said damages and deduct the cost incurred in rectifying the damages from the Performance Security.

5.11.3 No demolition (including the cutting of trees) would be allowed, unless specifically approved by the Authority.

5.12 General Obligations

Subject to and on the terms and conditions of this Agreement, the Developer shall at its own cost and expense during the Agreement Period:

- (a) Protect the Project Site and the Project Facilities from any encroachments or Encumbrances, or illegal activities.

- (b) Ensure that the Project Site and the Project Facilities is not used for any activities which are prohibited under the Applicable Laws.
- (c) Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and Applicable Permits including the permits set out in Schedule 4 and keep in force in conformity with the Applicable Laws.
- (d) Pay all taxes including GST, property tax, import duties, duties (including stamp duties) and outgoings, utility charges relating to the execution of the Agreement, development of Project Facilities and operation & management thereof.
- (e) Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and all possible claims and employment related liabilities of its staff employed in relation with the Project Facilities. The Developer shall indemnify the Authority against any claims, damages, expenses or losses in this regard and in no case the Authority shall be treated as employer;
- (f) Ensure and procure its Developers obtain all Applicable Permits and comply with Applicable Law in performance by them of the Developer's obligations under this Agreement;
- (g) Pay all utility charges (including electricity consumption and water supply charges) relating to the Project Facilities.
- (h) Provide adequate lighting and ventilations devices, utilization of wastewater, landscaping, appropriate security systems, including provision for fitting CCTV systems, waste management systems, cleaning systems, etc.
- (i) not do or omit to do any act, deed or thing which may in any manner be in violation of any of the provisions of this Agreement;
- (j) transfer the Project Site and Project Facilities to Authority on the Expiry Date or Termination Date, as the case may be, in accordance with the provisions thereof;
- (k) make adequate provisions for safety of the users and for emergency evacuation in accordance with the Approved Project Development Plan and the Applicable Laws; and
- (l) provide emergency medical aid, as set forth in the Approved Project Development Plan, Applicable Laws and in accordance with Applicable Permits. The Developer shall set up and operate and maintain a medical aid post and ambulance services for victims of accidents on the Project Site.

5.13 Specific Obligations

- a. The Developer shall erect a signboard of a size not less than 2 ft. x 4 ft. and mention that the Project Site belongs to the Authority. The said signboard should be of fire retardant, low smoke, zero halogen material and comply with all Indian and international standards and the Developer shall maintain the same in good condition throughout the Agreement Period.
- b. The Developer shall also erect an outdoor display system of a size not less than 2 ft. X 4 ft. adjacent to the main entrance to the Project Site and handover the same to the Authority for promotion of facility and the Developer shall maintain the same in good condition throughout the Agreement Period. The said signboard should be of fire retardant, low smoke, zero halogen material and comply with all Indian and international standards.
- c. The Developer shall conduct proper due diligence and police verification while recruiting staff for the Project.
- d. The Developer shall ensure security in the Project by deploying sufficient security personnel as per good industry practice.
- e. In the event of any accident at the Project Site, the Developer shall immediately inform the concerned civil and police authorities and also the Authority and take necessary actions.

5.14 Insurance

(a) During the Agreement Period

The Developer shall at its cost and expense, purchase & maintain by due re-instatement or otherwise, during the development of the Project Facilities, such insurance as are necessary including but not limited to the following:

- (i) Developer's all risk insurance;
- (ii) loss, damage or destruction of the Project Facilities at replacement value;
- (iii) comprehensive third-party liability insurance including injury or death to personnel/representatives of Persons who may enter the Project Site;
- (iv) workmen's compensation insurance;
- (v) any other insurance that may be necessary to protect the Developer, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

(b) Validity of Insurance

The Developer shall from time to time promptly pay insurance premium, keep the insurance policies in force and valid throughout the Agreement Period and furnish copies thereof to the Authority.

If at any time the Developer fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, the Authority may at its option (but not being obliged to do so) obtain and maintain such insurance and all sums incurred by the Authority thereof shall be reimbursed by the Developer to the Authority together with interest thereon at 5% over Bank Rate from the date the respective sums were incurred by the Authority, within 7 (seven) days from the receipt of claim in respect thereof made by the Authority.

(c) Application of Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by the Developer towards repair, development, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Developer may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Developer shall carry out such repair, development, restoration or re-instatement to the extent possible in such manner that the Project after such repair, development, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

5.15 No Breach of Obligations

The Developer shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- i. Force Majeure Event, subject to Clause 9.2, and
- ii. the Authority Event of Default.

ARTICLE 6- AUTHORITY 'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Authority shall have the following obligations:

6.1 Specific Obligations

- 6.1.1 The Authority shall grant in a timely manner all such approvals, permissions and authorizations which the Developer may require under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availment of utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by the Authority, within fifteen days (15) days from receipt of request from the Developer to make available such authorization.
- 6.1.2 The Authority shall subsequent to signing of joint inspection report by both the Parties hand over to the Developer, on as-is-where-is basis, vacant and peaceful physical possession of the Project Site free from Encumbrance and encroachment, for preparation of the Project Implementation Plan and for renovation, development, operation and management of the Project Facilities.
- 6.1.3 The Authority shall upon satisfactory completion of development of each of the Project Facilities on the Project Site issue Project Completion Certificate in accordance with Clause 5.7.3.

6.2 General Obligations

- 6.2.1 The Authority shall where appropriate provide necessary assistance to the Developer in securing Applicable Permits.
- 6.2.2 observe and comply with all its obligations set forth in this Agreement and Applicable Laws, and act reasonably, while exercising its discretionary power under this Agreement.

ARTICLE 7- AUTHORITY'S ENGINEER

7.1 Appointment of the Authority's Engineer

- 7.1.1 The Authority may at its discretion appoint a consulting engineering firm or an consulting engineer or representative of the Authority, to be the engineer under this Agreement (the "Authority's Engineer").
- 7.1.2 The appointment of the Authority's Engineer may be made no later than 15 (fifteen) days from the date of this Agreement. The Authority shall notify the appointment or replacement of the Authority's Engineer to the Developer forthwith.

7.2 Duties and functions of the Authority's Engineer

- 7.2.1 The Authority's Engineer shall perform its duties and discharge its functions in accordance with the direction of the Authority.
- 7.2.2 No decision or communication of the Authority's Engineer shall be effective or valid unless it is accompanied by an attested true copy of the approval of the Authority for and in respect of any matter specified in Clause 7.2.1.

7.3 Instructions of the Authority's Engineer

- 7.3.1 The Authority's Engineer may issue to the Developer instructions for remedying any defect. The Developer shall take such instructions from the Authority's Engineer only.
- 7.3.2 The instructions issued by the Authority's Engineer shall be in writing. However, if the Authority's Engineer issues any oral instructions to the Developer, it shall confirm in writing the oral instructions within 2 (two) working days of issuing such oral instructions.
- 7.3.3 In case the Developer does not receive the confirmation of the oral instructions within the time specified in Clause 7.3.2, the Developer shall seek the written confirmation of the oral instructions from the Authority's Engineer and shall obtain acknowledgement from the Authority's Engineer of the communication seeking written confirmation. In case of failure of the Authority's Engineer to reply to the Developer within 2 (two) days of the receipt of the communication from the Developer, the Developer may not carry out the instruction.

7.4 Remuneration of the Authority's Engineer

The remuneration, cost and expenses of the Authority's Engineer shall be paid by the Authority.

7.5 Termination of appointment of the Authority's Engineer

The Authority may anytime, in its discretion, replace the Authority's Engineer.

7.6 Interim Arrangement

In the event that the Authority has not appointed an Authority's Engineer, or the Authority's 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 Authority's Engineer in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 7.6 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

ARTICLE 8- PAYMENT OBLIGATIONS AND ESCROW ACCOUNT

8.1 Gross Revenue Share

8.1.1 In consideration of the Rights hereby granted, the Developer shall, subject to terms hereof, pay to the Authority, share in its Gross Revenue (“**Gross Revenue Share**”), which shall be equivalent to 5 % of the Gross Revenue and shall be payable on a monthly basis commencing from the Commercial Operation Date.

The Gross Revenue Share for a particular month shall be payable by the Developer by the 7th (seventh) day of the next month and shall be subject to verification and reconciliation on a quarterly, semi-annual or annual basis, as required by the Authority in its discretion. For this purpose, the Parties hereto agree as follows.

- i. Authority and its representatives shall be permitted to inspect at any reasonable time the books, records and other material kept by or on behalf of the Developer in order to check or audit any information related to the calculation of Gross Revenue Share as paid/reported to the Authority. The Developer shall make available to the Authority and its representatives such information and grant such access as they shall reasonably require in connection therewith.
- ii. The applicable Gross Revenue used for final verification/reconciliation shall be the revenue as certified by independent auditor, to be appointed in following manner:
 - a) The Authority shall nominate a panel of 3 (three) chartered accountancy firms, out of which the Developer and Authority, upon mutual agreement, shall appoint any 1 (one) nominee. Subject to provisions of Clause 8.1.1 (ii) (b), cost of the independent auditor (“**Independent Auditor**”) shall be borne by the Authority.
 - b) Pursuant to such certification, if it is established that previous reporting of Gross Revenue is inaccurate then the Developer shall, notwithstanding anything to the contrary contained in this Agreement pay the differential amount with interest at the rate of SBI MCLR as applicable on the date of closure of the audit plus 3% (three percent). and also, fully bear the cost of engaging independent auditor. The interest shall be levied from 7th day of the month following the close of the month when such amount should have been payable until the date when payment is actually made to the Authority.

8.2 Grant

8.2.1. The Authority agrees to provide to the Developer cash support by way of an outright grant equal to the sum set forth in the Bid, namely, [Rs. (Rupees in words.....)], to be disbursed subject to and in accordance with the provisions of this Clause 8.2.1 (the “**Grant**”).

8.2.2. Disbursement of Grant

8.2.2.1 The Grant shall be disbursed by way of credit of the relevant amount to the Escrow Account and shall be paid upon achievement of the Project Milestone as specified below:

Stage	Particulars	% of Grant	Conditions to be fulfilled
1	Mobilization Advance.	10%	Advance Bank Guarantee as per clause 8.2.2.4
2	Completion and installation of all Civil, MEP and finishing works including but not limited to repair of existing theater , supply and installation of IMAX 3D GT Projection system as defined in the scope of works and as per the design brief and as per the BOQ approved by GCSC. It is clarified that this milestone will cover all obligations of the developer during the construction/development period, except those that are covered under S.No. 3 to S.no. 5 in this table	30%	Project Milestone upon certification by the Authority
3	100% completion of procurement and delivery of all equipment including but not limited to projection system, electricals and electronics, software and hardware, Sound system, Screen, and control systems as per the design brief and as per the BOQ approved by GCSC.	40%	Milestone upon Certification by the Authority
4	Upon Successful User Acceptance Test/Final Acceptance Test of the Project Facilities	10%	Project Milestone upon Certification by the Authority
5	3 months after commissioning and smooth operations of the system/from Commercial Operations Date	10%	

8.2.2.2 Submission of BOQ

The Developer prior to the commencement of Construction Works for the Project Milestone stipulated in serial number 2 and 3, The Developer shall, prepare and submit a detailed BOQ (Bill of Quantities) to the Authority/ Authority's Engineer for review.

- a. within 10 (ten) days of the receipt of the BOQ, the Authority or Authority's Engineer shall review the same and convey its observations to the Developer;
- b. if the aforesaid observations of the Authority or Authority's Engineer indicate that the BOQ is not in conformity with the Provisions of this Agreement, the BOQ shall be revised by the Developer in conformity with the provisions of this Agreement and resubmitted to the Authority or Authority's Engineer for review. The Authority or Authority's Engineer shall give its observations, if any, within 10 (ten) days of receipt of the revised BOQ. If the Developer disputes any decision, direction or determination of the Authority or Authority's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;

8.2.2.3 Disbursement of Grant

The Authority shall disburse each tranche of the Grant as and when due, but not later than 15 (fifteen) days of receiving a request from the Developer along with necessary particulars demonstrating its entitlement to receive the Grant in accordance with the terms of this Agreement.

8.2.2.4 Advance Payment

The Developer shall in accordance with terms hereof, be entitled to seek from Authority an advance payment of an amount equivalent to INR..... (Rupees Only) (namely, 10% of the Grant) (“the **Advance Payment**”), to be secured through an unconditional and irrevocable bank guarantee, from a Nationalised Bank or any other bank specified in Government of Gujarat, GR No: EMD/10/2019/50/DMO dated November 1, 2019 (and as amended from time to time), substantially in the form provided at Schedule-12 (the **Advance Guarantee**”), enforceable at its branch at Ahmedabad, of an amount equal to 110% of the **Advance Payment**, to be furnished by Developer to Authority before such Advance Payment is sought by Developer. The Advance Guarantee shall, subject to any renewal requirement set forth below, be required to be kept valid and in force for an initial period commencing from Execution Date until of 90 (ninety) days after the Scheduled Commercial Operation Date including 90 (ninety) days of claim period, and shall be released upon successful user acceptance Tests/final acceptance Tests to the satisfaction of Authority. In case the Advance Payment is not fully accounted during the aforementioned period, then the Authority shall be entitled, regardless of anything contained herein, to encash the Advance Guarantee to account for the relevant amount. All costs associated with obtaining, providing and maintaining the relevant Advance Guarantee shall be borne solely by the Developer. It is clarified that, subject to the foregoing the Advance Payment shall be released by the Authority within 15 (fifteen) working days of the submission of the Advance Guarantee. Further, the Parties hereto agree and understand clearly that if instructed by Authority, the Developer shall renew and roll over the validity period of Advance Guarantee by required time notified by Authority; and, if the Developer fails to renew or extend the validity of its Advance Guarantee, if required, then the Authority may encash the same in full and hold the proceeds as cash security. Subject to this clause, the Advance Guarantee, shall be released upon expiry of its term.

8.3 Escrow Account

- 8.3.1 The Developer shall, within 30 days from the Execution Date, open and establish an escrow account (“**Escrow Account**”) with a Bank (the **Escrow Bank**) in accordance with this Agreement read with the Escrow Agreement.
- 8.3.2 The nature and scope of the Escrow Account are fully described in the agreement to be entered into amongst the Developer, the Authority, Escrow Bank which shall be substantially in the form set forth in Schedule 7 (the **Escrow Agreement**”).
- 8.3.3 The provisions of this Article 8 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in the Escrow Agreement have been discharged.

ARTICLE 9- FORCE MAJEURE

9.1 Force Majeure

9.1.1 The Developer or Authority, as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that the Authority or the Developer, as the case may be, is unable to render such performance by reason of an event of Force Majeure (a "**Force Majeure**").

9.1.2 In this Agreement, "Force Majeure" means any event or circumstance or combination of events and circumstances, which satisfies all the following conditions:

- a) materially and adversely affects the performance of an obligation;
- b) are beyond the reasonable control of the Affected Party;
- c) such Party could not have prevented or reasonably overcome the materially adverse effect with the exercise of Good Industry Practice or reasonable skill and care;
- d) do not result from the negligence or misconduct of such Party or the failure of such Party to perform its obligations hereunder; and
- e) any consequence of which have an effect described in Clause 9.1.1

9.1.3 "Force Majeure" includes the following events and/or circumstances to the extent that they, or their consequences satisfy the requirements set forth in Clause 9.1 and Clause 9.2:

- i. Change in Law as referred in Clause 16.1 to be deemed as Force Majeure
- ii. war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting India;
- iii. revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case within India;
- iv. nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Project Facilities, unless the source or cause of the explosion, contamination, radiation or hazardous thing is brought to or near the Project Facilities by the Developer or any affiliate of the Developer or any contractor or sub-contractor of the Developer or any such affiliate or any of their respective employees, servants or agents;
- v. strikes, go-slows and/or lockouts which are in each case widespread, nationwide or political; provided, however that local strikes only affecting (actually or as claimed) Developer and/or its contractors shall not be deemed as Force Majeure.
- vi. any effect of the natural elements, including lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, within India;
- vii. explosion (other than a nuclear explosion or an explosion resulting from an act of war) within India;
- viii. epidemic (including COVID-19 or plague) within India;
- ix. any event or circumstances of a nature analogous to any events set forth in paragraphs (i) to (viii) above, within the State.

9.1.4 The non-availability of the Manpower and strike as specified in clause above shall not be considered as Force Majeure and it shall be the responsibility of the Developer to arrange for appropriate alternatives to maintain the services and work as stipulated in this Agreement.

9.2 Procedure for Force Majeure

9.2.1 If a Party claims relief on account of a Force Majeure event, then the Party claiming to be affected by the Force Majeure event shall, immediately on becoming aware of the Force Majeure event, give notice of and describe in detail: (i) the Force Majeure event(s) that has occurred;(ii) the obligation(s) affected as described in Clause 9.1; (iii) the dates of

commencement and estimated cessation of such event of Force Majeure and (iv) the manner in which the Force Majeure event(s) affect the Party's obligation(s) under this Agreement. No Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above.

- 9.2.2 The Affected Party shall have the right to suspend the performance of the obligation(s) affected as described in Clause 9.1, upon delivery of the notice of the occurrence of a Force Majeure event in accordance with Clause 9. 2.1 above.
- 9.2.3 The time for performance by the Affected Party of any obligation or compliance by the Affected Party with any time limit affected by Force Majeure, and for the exercise of any right affected thereby, shall be extended by the period during which such Force Majeure continues and by such additional period thereafter as is necessary to enable the Affected Party to achieve the level of activity prevailing before the event of Force Majeure. During the subsistence of Force Majeure, the Parties shall enter into Good faith discussions with a view to resolve the hardship/adverse impact of the Force majeure, and towards this may mutually agree to modify the terms and conditions relating to the obligation of the Developer under this Agreement.
- 9.2.4 The Party receiving the claim for relief under Force Majeure shall, if it wishes to dispute the claim, give a written notice of dispute to the Party making the claim within 15 (fifteen) days of receiving the notice of claim. If the notice of claim is not contested within 15 (fifteen) days as stated above, all the Parties to this Agreement shall be deemed to have accepted the validity of the claim. If any Party disputes a claim, the Parties shall follow the procedures set forth in Clause 14.

9.3 Mitigation

The Party claiming to be affected by an event of Force Majeure shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of such event of Force Majeure.

- 9.4 Termination due to Force Majeure
- 9.4.1 If Force Majeure event continues for more than continuous period of 180 days or for aggregate period of 270 days in a year, either Party shall have the right to terminate this Agreement by giving a notice of termination in respect thereof.
- 9.4.2 Termination Payment for Force Majeure Events
Upon Termination of this Agreement due to Force Majeure, pursuant to Clause 9.4.1, Termination Payment to the Developer shall be made in accordance with the following:
- a. Return of the Performance Security or Performance Guarantee submitted, as the case may be, after adjusting applicable deductions/ Liquidated Damages as per the provisions of this Agreement; and
 - b. Termination Payment equal to 100% of the Book Value, less Insurance Cover.

ARTICLE 10- EVENTS OF DEFAULT AND TERMINATION

10.1 Events of Default

Event of Default means either Developer Event of Default or the Authority Event of Default or both as the context may admit or require.

(a) Developer Event of Default

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Developer 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 30 (thirty) days, the Developer shall be deemed to be in default of this Agreement ("**Developer Event of Default**") unless such event has occurred as a result of a Force Majeure Event or the Authority Event of Default or any governmental action for reasons other than any breach, default or lapse on the part of the Developer:

- i. The Performance Security and Performance Guarantee, as the case may be, has been encashed and appropriated by the Authority in accordance with this Agreement and the Developer fails to replenish or provide fresh Performance Security within a cure period of 30 days;
- ii. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 5.1.4 or the Performance Guarantee in accordance with Clause 5.2.3 , as the case may be, the Developer fails to cure, within a Cure Period of 30 (thirty) days, the Developer Event of Default for which whole or part of the Performance Security or the Performance Guarantee, as the case may be, was appropriated;
- iii. the Developer has failed to make any payment including but not limited to Gross Revenue Share to the Authority within the period specified in this Agreement;
- iv. The Developer has failed to submit the Project Implementation Plan within the time specified in Clause 5.4.
- v. COD does not occur within the period specified in Clause 5.7.4;
- vi. The Project Facilities are damaged or modified without obtaining approval from the Authority;
- vii. The Developer is in Material Breach of any of its other obligations under this Agreement on account of its own acts of omission or commission and the same has not been remedied for more than 60 (sixty) days;
- viii. Any representation made or warranty given by the Developer under this Agreement is found to be false or misleading;
- ix. A resolution for voluntary winding up has been passed by the shareholders of the Developer;
- x. Any petition for winding up of the Developer has been admitted and liquidator or provisional liquidator has been appointed or the Developer has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of the Authority, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Developer under this Agreement and provided that:
 - (a) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this

Agreement;

- (b) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Developer as at the Execution Date.
- xii. The Developer has abandoned or manifests intention to abandon the development of and /or operation & management of the Project Facilities without the prior written consent of the Authority.
- xiii. The Developer has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xiv. If the Developer fails to pay the necessary insurance premiums in terms of this Agreement and thereby causes the insurance coverage to diminish, terminate or expire;
- xv. The Developer has leased, mortgaged, assigned, transferred or created any lien or Encumbrance on the whole or any part of the Project Site or Project Facilities, save and except as expressly permitted by this Agreement; and
- xvi. an Escrow Default has occurred, and the Developer fails to cure the default within a Cure Period of 15 (fifteen) days.

(b) Authority Event of Default

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 30 (thirty) 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 Event of Default**"), unless the default has occurred as a result of any breach of this Agreement by the Developer or due to Force Majeure. The defaults referred to herein shall include the following:

- (i) The Authority is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Developer;
- (ii) the Authority has failed to make any payment to the Developer within the period specified in this Agreement
- (i) 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;

10.2 Termination due to Event of Default

a) Termination for Developer Event of Default

- i) Without prejudice to any other right or remedy which Authority may have in respect thereof under this Agreement, upon the occurrence of a Developer Event of Default, Authority shall be entitled to terminate this Agreement in the manner as set out under Clause 10.2 (a) (ii) and Clause 10.2 (a) (iii).
- ii) If Authority decides to terminate this Agreement pursuant to Clause 10.2 (a) (i), it shall in the first instance issue Preliminary Notice to the Developer. Within 60 (sixty) days of receipt of the Preliminary Notice, the Developer shall submit to Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**Developer's Proposal to**

Rectify”). In case of non-submission of the Developer's Proposal to Rectify within the said period of 60 (sixty) days, Authority shall be entitled to terminate this Agreement by issue of Termination Notice.

- iii) If the Developer's Proposal to Rectify is submitted within the period stipulated herein, the Developer shall have further period of 30 days (“**Cure Period**”) to remedy/ cure the underlying Event of Default. If, the Developer fails to remedy/ cure the underlying Event of Default within such further period allowed, Authority shall be entitled to terminate this Agreement, by issue of Termination Notice.

b) Termination for Authority Event of Default

- i) Without prejudice to any other right or remedy which the Developer may have in respect thereof under this Agreement, upon the occurrence of Authority Event of Default, the Developer shall be entitled to terminate this Agreement by issue of Termination Notice.
- ii) If the Developer decides to terminate this Agreement pursuant to Clause 10.2 b) (i), it shall in the first instance issue preliminary notice (“**Preliminary Notice**”) to Authority. Within 60 days of receipt of Preliminary Notice, Authority shall forward to the Developer its proposal to remedy/ cure the underlying Event of Default (the "**Authority Proposal to Rectify**"). In case of non-submission of Authority Proposal to Rectify within the period stipulated therefore, the Developer shall be entitled to terminate this Agreement by issue of Termination Notice.
- iv) If Authority Proposal to Rectify is forwarded to the Developer within the period stipulated herein, Authority shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however Authority fails to remedy/ cure the underlying Event of Default within such further period allowed, the Developer shall be entitled to terminate this Agreement by issue of Termination Notice.

(b) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to Clause 10.2 (a) or 10.2 (b), as the case may be, it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the date of Termination which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated termination payment including the details of computation thereof; and,
- (iv) any other relevant information.

(c) Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities;
- (ii) the termination payment, if any, payable by the Authority in accordance with the following Clause 10.2 (e) is paid to the Developer on the Termination Date; and
- (ii) the Project Site and the Project Facilities are handed over to the Authority by the Developer on the Termination Date free from any Encumbrance along with any payment

that may be due by the Developer to the Authority.

(d) Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

Provided that the Party in breach shall compensate the other Party for any direct costs/consequences occasioned by the Event of Default which caused the issue of Termination Notice.

(e) Termination Payments

(i) Upon Termination of this Agreement on account of Developer's Event of Default, the Authority shall be entitled to pay Termination Payment equal to 75% of the Book Value, less Insurance Cover and appropriate the Performance Security or Performance Guarantee, as the case may be.

(ii) Upon Termination of this Agreement on account of the Authority Event of Default, the Authority shall pay to the Developer, Termination Payment equal to 110% of the Book Value, less Insurance Cover and shall release the Performance Security or the Performance Guarantee, as the case may be after adjusting applicable deductions/Damages as per the provisions of this Agreement.

10.3 Rights of the Authority on Termination

(a) Upon Termination of this Agreement for any reason whatsoever, the Authority shall upon making the Termination Payment, if any, to the Developer have the power and authority to:

- (i) enter upon and take possession and control of the Project Site and Project Facilities and
- (ii) prohibit the Developer and any person claiming through or under the Developer from entering upon/ dealing with the Project Facilities;

(b) Notwithstanding anything contained in this Agreement, the Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Developer in connection with the Project, and the hand back of the Project Site along with the Project Facilities by the Developer to the Authority shall be free from any such obligation.

10.4 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the termination payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

10.5 Lender's Step-in Rights

- a) Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby agree that:
- i. Upon the Lenders recalling and demanding the debt outstanding under the Financing Documents (following an event of default under the Financing Documents), or
 - ii. Upon a Termination Notice being issued by the Authority.

The Lenders shall, without prejudice to any other remedy available to them, have the option to propose to the Authority the substitution of the Developer by another suitable operating company ("**Proposed Developer**"). Any such proposal shall contain in sufficient detail all the relevant information about the Proposed Developer and the terms and conditions of the substitution.

- b) Upon receipt of the Lenders' proposal pursuant to the preceding Clause 10.10 (a), the Authority shall, at its discretion, have the right to accept substitution of the Developer on such terms and conditions as it may deem fit.

ARTICLE 11- DEFECTS LIABILITY

11.1 Defects Liability Period

11.1.1 Liability for defects after Termination

The Developer shall be responsible for all defects and deficiencies in the Project Facilities for a period of 120 (one hundred and twenty) days after Termination Date or Expiry Date; as the case may be, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority/Authority's Engineer in the Project Facilities during the aforesaid period. In the event that the Developer 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 Developer's risk and cost so as to make the Project Facilities conform to the O&M Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Developer 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 Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 11 shall not apply if Termination occurs prior to COD.

ARTICLE 12- MONITORING AND INSPECTION

12.1 Project Review Committee

- (a) A Committee comprising members nominated by the Authority and by the Developer (refer Schedule 6) (the “**Project Review Committee**”), is to be established within 30 (thirty) days of signing of agreement. The Authority and the Developer shall be obligated to depute their authorized representative(s) to such committee by the stipulated date. The tenure of the Project Review Committee shall commence from the date of constitution thereof and shall continue until the end of the Agreement Period.
- (b) The Authority nominee shall be the Chairman of the Project Review Committee. The Project Review Committee shall, to the extent possible, act by consensus, failing which it will act by majority vote. The Project Review Committee shall determine the procedure to be followed for its meetings and carrying out its functions.
- (c) The Project Review Committee shall monitor and review the renovation, operation and maintenance of the Project Facility by the Developer in accordance with the criteria provided in Appendix 1 of Schedule 6 and provisions hereof and it shall perform the following duties:
 - i. Review the periodic reports submitted by the Developer;
 - ii. Review the curing of defects and defaults in the operation and maintenance of the Project Facilities;
 - iii. Review the safety and security of the operations and maintenance activities relating to the Project;
- (d) The Project Review Committee shall meet at least once every quarter during Agreement Period.
- (e) The Developer shall extend full co-operation to the Project Review Committee in performing its functions.
- (f) The Project Review Committee may from time to time appoint Expert(s) to assist it in carrying out its functions.
- (g) The Developer shall provide Project Review Committee/persons authorized by it/Experts appointed by it access to all parts of the Project Facilities and to all documents, records and relevant materials and information relating to the Project.
- (h) Any failure on the part of the Project Review Committee in respect of its functioning shall not:
 - i. amount to any consent or approval of the activities of the Developer; and
 - ii. release or discharge the Developer of its obligation to carry out the maintenance of the Project Facilities.

12.2 Inspection

- (a) Notwithstanding any provisions of this Agreement and without prejudice to any of the other rights vested under the provisions hereof, the Authority and the Project Review Committee

and any Person authorized by either of them shall, at all reasonable times and upon reasonable notice have access to the Project Site and the Project Facilities to inspect and examine the Project Facilities and all the documents, reports, data, books, accounts, information for compliance thereof with the provisions hereof and to check the progress of the works or for performing statutory duties and the Developer shall provide the necessary cooperation and assistance to them in this behalf.

- (b) The Authority and the Project Review Committee shall also have the right, without prejudice to the aforesaid, to carry out surprise checks of the operations and documents and records relating to the Project Facilities.

12.3 Performance Review and Termination

- (a) The Developer shall prepare and present a quarterly report on operation and maintenance to the Project Review Committee as per the O&M Requirement.
- (b) The report shall be presented, discussed and finalized in the meeting of the Project Review Committee.
- (c) The Project Review Committee shall review the performance of the Developer on the basis of report presented by the Developer and inputs of the Authority as per the report in the Clause 12.3 (a).
- (d) In case, committee opines that Developer's performance is not at par with Good Industry Practice and O&M Requirements. Authority may exercise its power and issue a show cause notice to the Developer and require the Developer to make sure that remedial action is taken to ensure that the performance is at par with Good Industry Practice and O&M Requirements.
- (e) In case, Developer's performance is found below par with Good Industry Practice for a continuous period of 3 quarters, it shall be considered as the Developer Event of Default and shall be subjected to the provisions of Clause 10.2 of Project Development and Management Agreement.
- (f) In case, Developer's performance is found below par with Good Industry Practice for any 4 quarters within a continuous period of 3 years, it shall be considered as the Developer Event of Default and shall be subjected to the provisions of Clause 10.2 of Project Development and Management Agreement.
- (g) The renewal of the Agreement according to Clause 3.2.2 of the Agreement will be conditional to the Developer Developer's performance is found at par with Good Industry Practice and O&M Requirements for more than 2 quarters in the last 2 years of Operations Period prior to renewal of the Agreement.

12.4 Reporting Requirements

The Developer shall, in addition to the reporting requirements set forth elsewhere in this Agreement, comply with the reporting requirements hereunder. The Authority and the Project Review Committee may from time to time specify any changes in the formats or periodicity for any reports. The Developer shall be liable for and shall indemnify, protect, defend and hold harmless, the Authority, the Project Review Committee and their officers, employees and agents from any liability, costs, expenses, settlements and judgments arising out of any failure to prepare and submit reports in accordance with the requirements of law, directive or clearance.

12.4.1 Construction Period Reports

The Developer shall provide to the Authority and the Project Review Committee a monthly progress report during the Construction Period for Project Facilities, which shall contain the following information.

- (A) **Summary of Progress:** Summary of the progress of the Project for that month which shall detail:
- i. any areas of significant concern and the action being taken to resolve any significant difficulties;
 - ii. the actual progress made during that month against the renovation plan provided by the Developer including a description in reasonable detail of the work carried out;
 - iii. any matters which have come to light which are likely materially and adversely to affect the renovation of the Project Facility;
 - iv. any potential or actual deviations from the renovation schedule, the Specifications and Standards and Good Industry Practice or otherwise confirmation that renovation is proceeding in accordance therewith; and
 - v. a commentary on the progress plan;
- (B) **Completion:** Details of any changes to the proposed date of completion of renovation and the reasons for such changes; and
- (C) **Applicable Permits:** Written confirmation that all Applicable Permits then required are in full force and effect including a list of such clearances.

12.4.2 Operations Period Reports

The Developer shall provide to the Authority and the Project Review Committee a quarterly operation and maintenance progress report during the Operations Period, which shall contain the following information:

- (a) **Revenue:** Details of occupancy including modes of booking viz. online, offline, agents, etc., and revenue for the quarter.
- (b) **Maintenance Plan:** Maintenance plan of the Project Facilities for the next quarter and a report on maintenance carried out during the previous quarter (including any material deviation from expected maintenance activities as set out in the maintenance plan).

12.4.3 Additional Information

The Developer agrees to provide the Authority and the Project Review Committee such further information as any of them may reasonably request in order for them to monitor the progress and performance of the Project.

The Developer shall also provide the Authority and the Project Review Committee, with such reports, which are required to comply with the instructions of Competent Authority or the standing procedures for any clearance, etc.

12.4.4 **Other Information**

The Developer will provide the following information to the Authority, promptly after becoming aware of it:

- (a) **Force Majeure:** Details of any Force Majeure Event which has occurred, or which is imminent and fortnightly updates with respect to it as long as it continues or is imminent;
- (b) **Litigation:** Details of any actual, pending or threatened material litigation, arbitration, claim or any dispute;
- (c) **Legislation:** Details of contravention of any Applicable Law or with the terms of any clearance and any fines or penalties that have or may thereby be incurred;
- (d) **Notices:** All penalties or notices of violation issued by any Competent Authority; and
- (e) **Financial Condition:** Notification of any adverse material change in the financial condition of the Developer or the Project promptly following such occurrence.

ARTICLE 13- EXIT MANAGEMENT

13.1 Ownership

Without prejudice and subject to this Agreement, the ownership of the Project Site along with the Project Facilities, including all improvements made therein by the Developer, shall at all- time remain that of the Authority.

13.2 Developer's Obligations

- (a) Upon the expiry of the Agreement Period by efflux of time and in the normal course, the Developer shall on the Expiry Date, hand back vacant and peaceful possession of Project Site and the Project Facilities to the Authority free of cost and in good operable condition.
- (b) At least 365 (three hundred and sixty-five) days before the Expiry Date a joint inspection of the Project Site and Project Facilities shall be undertaken by the Authority and the Developer. The Authority shall, within 45 (forty-five) days of such inspection prepare and furnish to the Developer a list of works, if any, to be carried out so as to keep the Project Facilities in good operational condition. The Developer shall promptly undertake and complete such works at least 120 (one hundred and twenty) days prior to the Expiry Date and also ensure that the Project Facilities continue to meet such requirements until the same are handed back to the Authority on the Expiry Date. In case the Developer fails to undertake and complete such works, the Authority shall undertake the same and deduct the expenses incurred towards such works from the Performance Security or else the Developer is liable to pay such expenses incurred by the Authority within 1 (one) month from the date of such expense incurred by the Authority and submission of supporting bills in this regard by the Authority.
- (c) The Authority shall, within 45 (forty-five) days of the joint inspection undertaken under Clause 13.2 (b) prepare and furnish to the Developer a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to the Authority along with the Project Site and Project Facilities.
- (d) The Developer hereby acknowledges Authority's rights specified in Clause 10.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Developer undertakes to comply with and discharge promptly all such obligations.

ARTICLE 14- DISPUTE RESOLUTION

14.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Clause 14.1 (b).
- (b) Either Party may require such Dispute to be referred to the Authority, and the Chief Executive Officer/Director/Partner of the Developer for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 14.2.

14.2 Arbitration

- (a) **Procedure**

Subject to the provisions of Clause 14.1, any Dispute which is not resolved amicably shall be finally settled by reference to arbitration. 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 any amendment thereof. There shall be a sole arbitrator mutually appointed by both the Parties, the appointment shall be made in accordance the provisions of the Arbitration and Conciliation Act, 1996 and any amendment thereof.

- (b) **Place of Arbitration**

The place of arbitration shall ordinarily be in Ahmedabad by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

- (c) **English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

- (d) **Enforcement of Award**

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the Provision of the arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

14.3 Performance during Dispute Resolution

Pending the submission of and/or decision on a Dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 15- REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties of the Developer

The Developer represents and warrants to the Authority that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Developer's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (g) there are no actions, suits, proceedings or investigations pending or to the Developer's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Developer Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (j) subject to receipt by the Developer from the Authority of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Developer in and to the Project shall pass to and vest in the Authority on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Developer or the Authority;
- (k) no representation or warranty by the Developer contained herein or in any other document furnished by it to the Authority or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Developer to any person to procure the Project.
- (m) Without prejudice to any express provision contained in this Agreement, the Developer acknowledges that prior to the execution of this Agreement, the Developer has after a complete and careful examination made an independent evaluation of the Project, and the information provided by the Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Developer in the course of performance of its obligations hereunder.

The Developer also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Authority shall not be liable for the same in any manner whatsoever to the Developer.

15.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Developer that:

- (a) The Authority has full power and authority to grant the Project;
- (b) The Authority has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes the Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) There are no suits or other legal proceedings pending or threatened against the Authority in respect of the Project Site or the Project Facilities.

15.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE 16- CHANGE IN LAW

16.1 Increase in Cost

If as a result of Change in Law, the Developer suffers an increase in costs or reduction in net after-tax return or other financial burden, the Developer may so notify the Authority and propose amendments to this Agreement so as to place the Developer in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased cost, reduction in return or other financial burden/financial gain as aforesaid. Upon notice by the Developer, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

16.2 Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Developer may by notice, along with documentary proof to establish the increase in costs or reduction in net after-tax return or other financial burden, require the Authority to pay an amount that would place the Developer in the same financial position that it would have enjoyed had there been no such Change in Law. Upon receipt of such notice, along with particulars and documentary proof thereof, the statutory Independent Auditor of the Authority shall verify the same and upon satisfaction that the Change in Law has resulted in increase in costs or other financial burden on the Developer, pay to the Developer, the amount specified therein within 15 days of the notice; provided that if the Authority shall dispute such claim of the Developer, the same shall be settled in accordance with the dispute resolution mechanism as per Article 16. For the avoidance of doubt, it is agreed that this Clause 16.2 shall be restricted to changes in Law directly affecting the Developer's costs of performing its obligations under this Agreement. For avoidance of doubt, if due to Change in Law the arrangement envisaged under this Agreement becomes untenable or the purpose of the Agreement stands defeated or frustrated, the same shall be deemed as Force Majeure and will be dealt with as spelt out under the provisions of Article 9 hereto.

16.3 Reduction in costs

If as a result of Change in Law, the Developer benefits from a reduction in costs or increase in net after-tax return or other financial gains, the Authority may so notify the Developer and propose amendments to this Agreement so as to place the Developer in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Developer to pay an amount that would place the Developer in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Developer shall pay the amount specified therein to the Authority; provided that if the Developer shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 16.3 shall be restricted to changes in law directly affecting the Developer's costs of performing its obligations under this

Agreement. For avoidance of doubt, if due to Change in Law the arrangement envisaged under this Agreement becomes untenable or the purpose of the Agreement stands defeated or frustrated, the same shall be deemed as Force Majeure and will be dealt with as spelt out under the provisions of Article 9 hereto.

ARTICLE 17- CHANGE OF SCOPE

17.1 Change of Scope

The Authority may, notwithstanding anything to the contrary contained in this Agreement, require provision of additional works or services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Provided however, the Change of Scope shall not exceed 25% (twenty five percent) of the Estimated Contract Price (“**Change of Scope Limit**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 17 and the costs thereof shall be borne by the Developer and reimbursed to it by the Authority in accordance with agreed terms and conditions of such Change of Scope.

17.2 Procedure for Change of Scope initiated by Authority

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

17.2.2 Upon receipt of a Change of Scope Notice, the Developer shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support thereof;

17.2.3 Upon receipt of information set forth in Clause 17.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Developer, and the Parties shall, thereupon make good faith efforts to agree upon the manner of implementation thereof including inter alia payment terms, extension of Agreement Period etc. Upon reaching an Agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Developer 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 Developer to proceed with the performance thereof;

17.3 Notwithstanding anything to the contrary contained in this Article 17, the Developer shall be entitled to nullify any Change of Scope Order if it exceeds Change of Scope Limit.

ARTICLE 18- DISCLAIMER

18.1 Disclaimer

- 18.1.1 The Developer acknowledges that prior to the execution of this Agreement, the Developer has, after a complete and careful examination, made an independent evaluation of the Request for 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 and the Developer confirms that it shall have no claim whatsoever against the Authority in this regard.
- 18.1.2 The Developer acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 18.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Developer, their Associates or any person claiming through or under any of them.
- 18.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 18.1.1 above shall not vitiate this Agreement or render it voidable.
- 18.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 18.1.1 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 18.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 18.1.1 and shall not in any manner shift to the Authority any risks assumed by the Developer pursuant to this Agreement.
- 18.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Developer and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 19- ACCOUNTS AND AUDIT

19.1 Audited accounts

- 19.1.1 The Developer shall maintain books of accounts recording all its receipts (including all fees and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Developer 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 180 (one hundred and eighty) 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 to inspect the records of the Developer 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.
- 19.1.2 The Developer 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, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 19.1.3 On or before the thirtieth day of September each Year, the Developer shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (a) the traffic count for each category of Users using the Project and liable for payment of fee therefor, (b) fees charged and received and other revenues derived from the Project, and (c) such other information as the Authority may reasonably require.

19.2 Certification of claims by Statutory Auditors

- 19.2.1 Any claim or document provided by the Developer 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.

ARTICLE 20- LIABILITY AND INDEMNITY

20.1 General Indemnity

- 20.1.1 The Developer shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents and Authority owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Developer 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 Developer to the Authority or to any User or from any negligence of the Developer 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 Authority Indemnified Persons.
- 20.1.2 The Authority shall indemnify, defend, save and hold harmless the Developer 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 Developer 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 Developer, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Developer.

20.2 Indemnity by the Developer

- 20.2.1 Without limiting the generality of Clause 20.1, the Developer shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- a) failure of the Developer to comply with Applicable Laws and Applicable Permits;
 - b) payment of taxes required to be made by the Developer in respect of the income or other taxes of the Developer’s contractors, suppliers and representatives; or
 - c) non-payment of amounts due as a result of materials or services furnished to the Developer or any of its contractors which are payable by the Developer or any of its contractors.
- 20.2.2 Without limiting the generality of the provisions of this Article 20, the Developer shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Developer or by the Developer’s contractors in performing the Developer’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 Developer 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 Developer 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 Developer is unable to secure such licence within a reasonable time, the Developer 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.

20.3 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 20 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

20.4 Defence of claims

- 20.4.1 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 20, 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.
- 20.4.2 If the Indemnifying Party has exercised its rights under Clause 20.3, 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).
- 20.4.3 If the Indemnifying Party exercises its rights under Clause 20.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate

in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- a. the employment of counsel by such party has been authorized 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 defenses 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 20.4.3 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.

20.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 20, 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.

20.6 Survival on Termination

The provisions of this Article 20 shall survive Termination.

ARTICLE 21- MISCELLANEOUS

21.1 Assignment and Charges

- a) Subject to Sub-Clause 21.1 (b) and 21.1 (c), the Developer shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of the Authority.
- b) Subject to Sub-Clause 21.1 (c) below, the Developer shall also not create nor permit to subsist any Encumbrance over the Project except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason whatsoever.
- c) Restraint set forth in Clause 21.1 (a) and (b) shall not apply to:
 - (i) Liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Developer;
 - (ii) Pledges/hypothecation of goods/moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project. For avoidance of doubt, mortgage in this clause refers to mortgage of only built up structures on the Project Site;
 - (iii) Assignment of Developers rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.

21.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest rate of SBI MCLR as applicable on the date when such payment becomes due plus 3% (three percent). from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in Clause 21.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

21.3 Governing Law and Jurisdiction

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

21.4 Waiver

- (a) 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:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorised

representative of such Party; and
(iii) shall not affect the validity or enforceability of this Agreement in any manner.

(b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

21.5 Survival

Termination of this Agreement

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

21.6 Amendments

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

21.7 Notices

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

If to the Authority:
Gujarat Council of Science City
Science City Road,
Sarkhej Gandhinagar Highway,
Ahmedabad, Gujarat 380060
Email: ed-gcsc@gmail.com

If to the
Developer:

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at

- that address, and
- (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

21.8 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

21.9 Delayed payments

21.9.1 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 rate of SBI MCLR as applicable on the date when such payment becomes due plus 3% (three percent)., and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

21.9.2 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.
Liability for review of Documents and Drawings

21.10 Except to the extent expressly provided in this Agreement

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

21.11 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 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 Developer arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

21.12 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

21.13 Language

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

21.14 Exclusion of Implied Warranties etc.

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

21.15 Counterparts

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

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

SIGNED SEALED AND DELIVERED
Gujarat Council of Science City

(Signature)
(Name)
(Designation)

In the presence of:

- 1)
- 2)

For and on behalf of

_____ (Developer) by:

(Signature)
(Name)
(Designation)

SCHEDULE 1 – SITE

SCHEDULE 2 – PROJECT IMPLEMENTATION PLAN

The Project Implementation Plan (**PIP**) should include in reasonable detail the proposed components, the development & marketing plan, and the operational plan for the property. The Project Implementation Plan shall be in conformance with the various provisions of the Agreement, applicable rules and Good Industry Practice. The Project Implementation Plan shall include but not be limited to the following details:

1. Site evaluation and analysis
2. Overall development plan for the entire site including renovation / upgradation plan for the existing facility
3. Design configuration, conceptual planning and architectural layouts for project facilities, Architectural plans, Structural engineering and designing, MEP drawings etc.
4. Methods & technique for erection, testing and commissioning of the various project components, projection equipment, civil, structural, electrical, fire safety, etc.
5. Ensuring energy efficient buildings / infrastructure and energy management
6. Graphic signage
7. Provision of first aid, and emergency medical assistance
8. Adequacy and effectiveness of resource allocations, plant, machinery and manpower
9. Adequacy and appropriateness of chosen technology
10. Testimonials on safety & time adherence
11. Technology management & know how transfer arrangements
12. Details of different categories of project drawings (name, type, drawing number, submission schedule etc.)
13. Project completion schedule / schedule for development of project facilities including phase wise development and operation
14. Financial stake (equity percentage) and financing arrangements (percentage of debt and the extent of tie-up)
15. Marketing and promotion plan, clearly identifying potential markets, marketing and promotional strategies, execution strategies and time frames for the plans
16. Details / tie-ups for development & operation of project facilities
17. Deployment plan for resources / personnel
18. Contingency plans and disaster management plans
19. Extent of compliance stipulated in Bidding Documents
20. Constructive justification behind deviations, if any
21. Approvals required, received, and the timeline for getting approvals
22. Quality Acceptance Plan, tests for commissioning, user acceptance tests and final acceptance test.

Note: The above-mentioned components are only indicative, and the Developer has to finalize the components and get the Project Implementation Plan approved by the Authority.

SCHEDULE 3 - REPORTING REQUIREMENTS

The reporting and information that generally need to be provided by the Developer are given below. The requirements given below are indicative of the type of information to be provided. The format of such reports, recording requirements, software standards and number of copies required would be finalised in consultation with the Authority. All reports and records shall be in the English language.

1. Monthly Development Report

During the development period, within 7 (seven) days of the end of each month, the Developer shall provide to the Authority a monthly report (Monthly Development Report) containing the progress made, identify slippages if any, and project the future activities to be undertaken (including rectifications) and would, inter alia, include the following:

- (i) Listing of working drawings/sketches submitted
- (ii) Comments of the Authority, if any on the working drawings/sketches submitted
- (iii) Developer's response to the comments on the Drawings/sketches
- (iv) Listing of the "As Built" drawings submitted
- (v) Progress of pre-development activities - mobilization of plant and equipment, personnel, site office, utility relocation etc.
- (vi) Developer 's compliance inspection report, if any required
- (vii) Constraints in development
- (viii) Project data and sectional completion details
- (ix) Suspension of development, if any, reasons, duration and the steps undertaken to resume development
- (x) Change of Scope Notice issued by the Authority, if any, and status thereof
- (xi) All actual or potential deviations from the Approved Project Implementation Plan
- (xii) Disagreements/ Disputes, if any and proposed measures to be taken
- (xiii) Management activities carried out by the Developer on the existing carriageway
- (xiv) Monthly weather report with any other significant event
- (xv) Injury to any development personnel during development, its severity, cause and remedial measure(s) taken to avoid recurrence
- (xvi) Brief report of any accident / incident within the Project, injury/fatality, property damage, cause of accident and actions taken to avoid recurrence
- (xvii) Notes of meetings between the Developer, the Authority highlighting critical decisions taken or agreements reached. Minutes of the meeting issued by the Authority shall also be included in the yearly progress reports.

2. Yearly and Quarterly Operation and Management Report

During the Agreement Period, within 7 days of the end of each quarter and year, the Developer shall provide to the Authority yearly operation & management report which shall contain following minimum information:

- (i) Details of major management undertaken, and expense incurred towards the same
- (ii) Inspections undertaken by the Developer during the quarter and year and action taken/ proposed thereafter;
- (iii) Operation and Management inspection compliance report
- (iv) Management activities undertaken during the quarter and year ended and
- (v) Details of any Emergency and action taken
- (vi) Photographs of the Project Facilities
- (vii) Details of facility management
 - a. number of complaints, types and nature of complaints and their resolution
 - b. Report on site cleanliness, renovation and repair works, breakdowns,
 - c. Staff attendance report

(viii) Financial details, number of visitors.

SCHEDULE 4 - INDICATIVE LIST OF APPLICABLE PERMITS

The list of Applicable Permits includes, but is not limited to:

1. Approval/ Clearances as per the applicable laws, policies and guidelines
2. All trade licenses as applicable.
3. Approval/permits from fire safety authorities.
4. Environmental clearances/approvals, as applicable.
5. Other relevant statutory approvals/permits for development and operation of the Project.

SCHEDULE 5 – JOINT INSPECTION REPORT

Joint Inspection Date: _____

Property Name

1. Land record details _____
<ownership details along with Khata and Khasra number, plot area, boundary markings, map to be attached>
2. Number of buildings (if applicable) _____
3. Details of immovable items _____
4. Details of movable items _____
5. Property tax/ municipal dues (pending if any) _____
7. Power supply (status and outstanding bills if any) _____
8. Water supply (status and outstanding bills if any) _____
9. Telephone (status and outstanding bills if any) _____
10. Sewerage/ drainage facility _____
12. Access road (along with frontage) _____
13. Encroachment/ hindrances (if any) _____
14. Any other _____

(SITE PHOTOS TO BE ATTACHED)

SIGNED AND SEALED

For and on behalf of
Gujarat Council of Science City by

For and on behalf of _____
(Developer) by:

(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)

SCHEDULE 6 – PROJECT REVIEW COMMITTEE

No.	Name	Role	Nominated By
1.	Secretary, GCSC	Secretary	Authority
2.	Executive Director, GCSC	Executive Developer	Authority
3.	Developer	Member	Developer
4.	Developer	Member	Developer
5.	Industry Expert	Special Invitee	Authority

Note:

1. On behalf of the Authority, Gujarat Council of Science City (GCSC) for the concerned district or any other representative authorized by the Authority might be deputed to undertake the evaluation and present the report to the committee.
2. The committee shall finalize the evaluation for the facility after considering the inputs from the Developer and its representatives during the meeting.
3. Industry experts / local invitee's may be invited by the Authority for the committee meetings.

The checklist will be customized for the facility after the approval of the Project Implementation Plan submitted by the Developer.

SCHEDULE 7 – ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made at ____ on _____ by and amongst:

1. [•], [a company incorporated in India under the Companies Act, 1956 / a banking company registered under the Banking Regulation Act, 1949], with its registered office at [•] (hereinafter referred to as the "Escrow Bank" which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the FIRST PART;
2. [•], a [•] incorporated and registered under the provisions of the [•]³ and having its registered office at [•], (hereinafter referred to as the "Developer" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the SECOND PART.

OR

M/s [.....], being the Lead Member of the Consortium, comprising of consortium member [.....]; being a {company/partnership firm/Proprietor, incorporated/constituted} having its registered office at [•], (hereinafter referred to as the "Developer" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the SECOND PART.

3. Gujarat Council of Science City, Department of Science and Technology, Government of Gujarat having its office at Science City Road, Ahmedabad – 380 060 (hereinafter referred to as the "Authority" or the "GCSC") which expression shall, unless repugnant to the context include the administrators, successors and assigns on the Third Part.

The Escrow Bank, the Developer and Authority are hereinafter collectively referred to as the "Parties" and individually as the "Party".

WHEREAS:

- a. The Authority is functioning as an autonomous body under the aegis of the Department of Science & Technology ("DST"), Government of Gujarat ("GOG"). GCSC has emerged as an effective and large-scale science, education and popularization platform in the State of Gujarat and country to promote innovative and experimental activities through hands-on activities and minds-on exposures.
- b. Authority and the Developer have entered into a Project Development and Management Agreement dated [] (hereinafter referred to as "PDMA"/ "Development Agreement), whereby Authority has granted to the Developer the right to undertake the Project (as defined hereunder), and the Developer has agreed to undertake the Project on the terms and conditions contained therein.
- c. The Agreement requires the Developer to establish an Escrow Account, and all Receivables of the Developer shall be deposited by the Developer into an escrow account and disseminated therefrom in a particular priority order.

³ Reference may be made alternatively to the nature of entity company/partnership firm/ proprietorship which is implementing the Project

- d. This Agreement sets forth the detailed mandates, terms and conditions and operating procedures for such escrow account.

NOW, THEREFORE, in consideration of the premises contained herein, the Parties hereto agree as follows:

1. Definitions

1.1 For the purposes of this Agreement, unless the context otherwise requires, capitalised terms shall have the meaning set forth hereunder.

“**Beneficial Parties**” means collectively the Developer, and the Authority and “Beneficial Party” refers individually to each of them;

“**Business Day**” means any day of the week (excluding Saturdays, Sundays and public holidays) on which banks in Ahmedabad are generally open for business;

“**Dispute**” shall mean any dispute, difference, question or controversy between the Parties arising out of, in connection with or in relation to this Agreement.

“**Event of Default**” shall mean an event of default of the Developer under the PDMA, as certified by the Authority in a written notice in this regard to the Escrow Bank.

“**Gross Revenue Share**” for any Month, shall mean 5% share in the Gross Revenue payable by the Developer to the Authority under the terms of PMDA.

“**Month**” shall mean a calendar month.

“**Priority Cash-flow Application**” shall have the meaning ascribed to the term in Section 3.5(B)(a) hereunder;

“**Project**” means the Supply, Installation, Commissioning, Operation, and Maintenance of IMAX 3D GT laser projection system at Gujarat Science City on PPP Mode;

“**Receivables**” means any and all cash flows and cash realizations of the Developer accruing from or in relation to the Project Facilities from any source, including all proceeds from any draw-downs under its loan agreements, any equity funding received by the Developer, refund of taxes, any and all monies due or to become due to the Developer from any source including from any performance bonds, letters of credit and instruments of a similar nature and proceeds from any insurance contracts;

“**Statutory Dues**” for any Month, shall mean the Tax liability of the Developer for such Month, as certified by a third party tax consultant in a certificate to be procured and submitted by the Developer to the Escrow Bank by the 1st day of the preceding Month, and as revised by such third party tax consultant during the course of the preceding Month.

“**Tax**” shall mean the taxes, duties, charges, cess, levies and other such analogous payments due under Applicable Law.

Other capitalised terms used herein (and not defined herein) but defined under the PDMA shall have the meaning ascribed to the term under the PDMA.

1.2 In this Agreement, unless the context otherwise requires, the rules of interpretation and construction as mentioned in Article 1.2 of the PDMA shall apply.

2. Establishment of Escrow Account and Declaration of Trust

2.1 Establishment of the Accounts

The Developer and the Escrow Bank confirm that the Escrow Bank has established, in the name of the Developer at the Escrow Bank's Ahmedabad branch, an account titled the "**Escrow Account**". The Escrow Account shall have the following sub accounts, maintained, controlled and operated by the Escrow Bank for the purposes of this Agreement, namely:

- (a) a sub account maintained, controlled and operated by the Escrow Bank, titled the "**Receivables Account**";
- (b) a sub account maintained, controlled and operated by the Escrow Bank, titled the "**Proceeds Account**" which shall have the following sub accounts:
- (c) a sub-account maintained, controlled and operated by the Escrow Bank, titled the "**Authority Fee Account**"; and
- (i) a sub-account maintained, controlled and operated by the Escrow Bank, titled the "**Statutory Dues Account**;
- (iii) a sub-account maintained, controlled and operated by the Escrow Bank, titled the "**Surplus Account**".

2.2. Declaration of Trust

The Developer hereby settles in trust with the Escrow Bank a sum of Rs 100 (Rupees Hundred) for the benefit of the Beneficial Parties. The Developer further declares that all the legal right, title and interest in and to the trust, the Receivables, the Escrow Account, the monies therein including any document of title in relation thereto made from the Escrow Account shall be vested in the Escrow Bank and held for the benefit of the Beneficial Parties in accordance with the terms of this Agreement and their respective interests are provided for herein. The Escrow Bank hereby accepts the abovementioned amount of Rs. 100 in the trust hereby declared upon the terms and conditions set forth in this Agreement and acknowledges that any amounts deposited in the Escrow Account from time to time shall be held in trust for the benefit of the Beneficial Parties in accordance with the terms and conditions of this Agreement. No Entity other than the Beneficial Parties shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.3 General Right of Withdrawal

The Escrow Bank shall not make any transfer or withdrawal other than in accordance with this Agreement, unless the Escrow Bank has received the prior written instructions of the Beneficial Parties authorising such use.

3. The Escrow Account

The Escrow Account shall comprise of the following sub-accounts:

3.1 Receivables Account

- (A) Deposits to the Receivables Account
The Developer hereby undertakes that it shall deposit into the Receivables Account all its Receivables immediately upon receipt thereof. In the event the User Fee is collected in cash, it shall be deposited on the same business day or first hour of the next business day.
- (B) Withdrawals from the Receivables Account Immediately on receipt of monies into the Receivables Account, the Escrow Bank shall withdraw such monies and deposit the same into the Proceeds Account.

3.2 Proceeds Account

The Proceeds Account shall be established by the Escrow Bank at its Ahmedabad branch in the name of the Developer.

(A) Deposits into the Proceeds Account

(i) The Escrow Bank shall in accordance with Section 3.1 of this Agreement, immediately on such deposit, transfer monies deposited in the Receivables Account, into the Proceeds Account.

(B) Withdrawals from the Proceeds Account

(a) As long as there is no Event of Default, on any date, the Escrow Bank shall withdraw amounts deposited in the Proceeds Account only towards the following purposes and in the following order of priority (hereinafter the “**Priority Cash-flow Application**”):

- (i) to pay amounts into the Statutory Dues Account such that by no later than the last day of any Month the amounts so transferred in that Month are equal to the monthly Statutory Dues for the following Month.
- (ii) to pay Gross Revenue Share into the Authority Fee Account as per the provision of PDMA
- (iii) To pay amounts other than Gross Revenue Share, if any, payable by the Developer to Authority under the PDMA, as notified in writing by Authority to the Escrow Bank.
- (iv) to pay any and all balance amounts into the Surplus Account.

(b) It is hereby expressly clarified that if, in any Month, the funds available in the Proceeds Account for transfer to any sub-account in accordance with Section 3.2(B)(a) are insufficient to pay the amount required to be paid in each of the sub-accounts in accordance with Section 3.2(B)(a), then the Escrow Bank shall transfer funds to the relevant sub-account in accordance with the Priority Cash-flow Application.

3.3. Statutory Dues Account

The Statutory Dues Account shall be established by the Escrow Bank at Ahmedabad in the name of the Developer.

(A) Withdrawals from the Statutory Dues Account

On the deposit of any amounts in the Statutory Dues Account in accordance with Section 3.2(B)(a)(i), the Escrow Bank shall withdraw amounts from the Statutory Dues Account as are required by the Developer to make payments of Statutory Dues as required under

Applicable Law.

3.4 Authority Fee Account

The Authority Fee Account shall be established by the Escrow Bank at Ahmedabad in the name of Developer.

(A) Withdrawals from the Authority Fee Account

On the deposit of any amounts in the Authority Fee Account in accordance with Section 3.2(B)(a)(ii), the Escrow Bank shall withdraw amounts from the Authority Fee Account as are required by the Authority

3.5 Surplus Account

The Surplus Account shall be established by the Escrow Bank in the name of the Developer.

(A) Withdrawals from the Surplus Account

The Escrow Bank shall pay, from time to time, to the Developer, within three (3) days of receiving directions in this regard from the Developer, such amounts from the Surplus Account as the Developer may direct. Provided however, in the event of the Escrow Bank receiving directions from the Lenders or their agent/ trustee, then the Escrow Bank shall follow the instructions of the Lenders (or their agents/ trustee) in relation to the Surplus Account and amounts therein.

4. Escrow Bank provisions

4.1 Escrow Bank and the Beneficial Parties (a) The Beneficial Parties hereby appoint the Escrow Bank for benefit of the Beneficial Parties in connection herewith, and authorise the Escrow Bank to exercise such rights, powers, authorities and discretions as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretions as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof. (b) The Developer hereby agree to pay to the Escrow Bank, fees of Rs. [] per [] as consideration for acting as the Escrow Bank hereunder.

4.2 Obligations of the Escrow Bank The Escrow Bank: (a) undertakes to perform only such duties as are specifically set forth to be performed in this Agreement, in accordance with the terms and conditions contained herein, and further undertakes to act in good faith and without negligence; (b) 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 Developer upon a certificate signed by or on behalf of the Developer; (c) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or documents believed by it to be authentic; (d) shall, within five (5) Business Days after receipt, deliver a copy to Authority of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from the Developer or any other Entity; (e) Shall, within five (5) Business Days after receipt, deliver a copy to the Developer of any notice or document received by the Escrow Bank (in its capacity as the Escrow Bank) from Authority or any Entity in connection herewith; and (f) Shall within seven (7) Business Days prior to any date on which any payment is due to a Beneficial Party in accordance with the terms and conditions of this Agreement, provide notice to Authority of any anticipated shortfall in the Escrow Account (or any account thereunder) for making any payments due in accordance with the

terms and conditions of this Agreement.

5. **Term and Termination**

- 5.1 This Agreement shall, unless terminated earlier by the mutual consent of the Parties or otherwise in accordance with the provisions of this Section by written notice from the Beneficial Parties to the Escrow Bank, remain in full force and effect for the duration of the PDMA.
- 5.2 Authority may, after consultation with the Developer, at any time may remove the Escrow Bank, with or without cause, and appoint a successor Escrow Bank by written notice of such action to the Developer, the Escrow Bank and the successor Escrow Bank. Provided however that Authority shall not be required to consult with the Developer (as required above) if an Event of Default has occurred and is subsisting.
- 5.3 If, at any time, the Escrow Bank or any of its associates, shall become a Beneficial Party and after such time there is an Event of Default, the Escrow Bank shall resign as Escrow Bank immediately upon the occurrence of such Event of Default, if in the sole judgement of the other Beneficial Parties (which, for this purpose, shall not include the Escrow Bank), there shall be, or be reasonably likely that there will arise, any conflict in or impediment to the Escrow Bank's performance as Escrow Bank under this Agreement.
- 5.4 The Escrow Bank shall be entitled to terminate its services under this Agreement, if the Developer/Authority fails to comply with any of its material obligations owed to the Escrow Bank under this Agreement and fails to remedy the failure within sixty (60) days after receipt of notice thereof from the Escrow Bank to the Developer, provided however, Authority has arranged for the appointment of a successor Escrow Bank and arrangements are made for the transfer of amounts deposited in the Escrow Account (including any sub-accounts thereof) to new accounts established with successor Escrow Bank.
- 5.5 (i) Any successor Escrow Bank appointed as provided in accordance with this Section 5 shall execute, acknowledge and deliver to, and for the benefit of, the Beneficial Parties and to its predecessor Escrow Bank an instrument accepting such appointment, and thereupon the resignation or removal of the predecessor Escrow Bank shall become effective and such successor Escrow Bank, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, as if it was originally named as Escrow Bank;
- (ii) provided that on the written request of the Beneficial Parties or of the successor Escrow Bank, the Escrow Bank ceasing to act shall take such steps or actions as are required of it by the Beneficial Parties, including without limitation the execution and delivery of an instrument or instruments transferring and assigning to such successor Escrow Bank (without obligation to indemnify such successor) all the rights and powers of the Escrow Bank so ceasing to act, delivery to the Beneficial Parties all documents, instruments, etc. relating to its obligations under this Agreement.
- (iii) Upon the reasonable request of any such successor Escrow Bank, the Beneficial Parties shall execute any and all instruments in writing in order more fully and certainly to vest in and confer to such successor Escrow Bank all such rights and powers.
- 5.6 Any corporation into which the Escrow Bank may be merged or converted or with which it may be consolidated or any corporation resulting from any merger, conversion or consolidation to which the Escrow Bank shall be a party, or any corporation succeeding to the

corporate Escrow Bank's rights or business or either, shall, subject to approval of Authority, be the successor of the Escrow Bank with all rights, benefits, obligations and duties as were originally available and provided for to the transferor Escrow Bank in relation to the merger, conversion or consolidation proceedings or process.

5.7 Books and Records

5.7.1 The Escrow Bank shall be responsible for maintaining a correct and complete record of all transactions, deposits, withdrawals or transfer of funds relating to the Escrow Account (and all sub-accounts thereof).

5.7.2 Authority shall have unrestricted access to review such books and records of the Escrow Bank in relation to the Escrow Account subject to restrictions in law. The Developer irrevocably grants Authority access to review the books and records of the Escrow Account and irrevocably waives any right of confidentiality, which may exist in respect of such books and records.

5.8 Determination of Amount and Events (a) The Escrow Bank shall be entitled to rely as to the following matters exclusively upon the following documents (insofar as the same are delivered to the Escrow Bank): (i) with respect to occurrences of Events of Default, the relevant notice of Authority of an Event of Default. (b) The Escrow Bank may with the consent of Authority for all purposes rely on a certificate, signed by an authorised officer of the Developer as to any fact or matter, the manner of ascertainment of which, is not specifically provided for herein.

5.9 Statement of Authorised Investments Upon the request of Authority, and in any event, not later than five (5) Business Days after the end of any calendar Month, the Escrow Bank shall deliver to the Beneficial Parties a schedule of investments acquired or disposed of during that Month in such detail as Authority may reasonably require.

5.10 Confidentiality The Escrow Bank agrees to keep all information ("Information") (including the terms and conditions of this Agreement and/or any and all of the Project Agreements) made available (whether before or after the date of this Agreement) by any of the Parties to the Escrow Bank concerning the Developer or the Project, confidential, and hereby undertakes and covenants not to communicate any Information, or allow any Information to be communicated to any third party unless: (a) in connection with any proceedings arising out of or in connection with this Agreement to the extent that such party may consider it necessary to protect its interest or the interests of the Escrow Bank; or (b) required to do so by an order of a court of competent jurisdiction whether or not in pursuance of any procedure for discovering documents; or (c) pursuant to any Applicable Law in accordance with which such party is required to act; or (d) to its auditors for the purposes of enabling the auditors to complete an audit of the Escrow Bank or to its legal advisers when seeking bona fide legal advice in connection with this Agreement; or (e) in circumstances where the relevant Information has been published or announced by the Developer and/or any other Beneficial Party in conditions free from confidentiality or has otherwise entered the public domain without default on the part of the relevant Party; or (f) the Information was obtained by such Escrow Bank from an independent or third party source who was not in breach of any confidentiality obligations with the Beneficial Parties.

5.11 Not Acting in Individual Capacity In accepting the trusts hereby created, the Escrow Bank acts solely in its capacity as a Escrow Bank and not in its individual capacity and all Entities having any claim against the Escrow Bank by reason of the transactions contemplated by the Project Agreements shall look only to the Developer for payment or satisfaction thereof, save and except

as provided in this Agreement, other than as a result of its wilful misconduct or gross negligence.

5.12 Indemnity The Developer shall indemnify the Escrow Bank for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, claims or disbursements of any kind or nature whatsoever which may be imposed upon, incurred by or asserted against the Escrow Bank in any way in connection with or arising out of the negotiation, preservation or enforcement of any rights under, or in carrying out its duties under this Agreement (other than those incurred on account of gross negligence or willful default on the part of the Escrow Bank).

6. **Representations and warranties of the Escrow Bank and the Developer**

Each of the Escrow Bank and the Developer represent and warrant that it is duly organised and validly existing under the laws of India with power to enter into this Agreement and to exercise its rights and perform its obligations hereunder and has taken all corporate and other actions required for the execution of this Agreement and the performance of its obligations hereunder. The Escrow Bank represents and warrants that it shall hold all funds in the Escrow Account in trust for the benefit of the Beneficial Parties in accordance with the provisions of this Agreement and further represents and warrants that it has obtained all approvals, permits and other clearances required for the execution of this Agreement and the performance of its obligations hereunder.

7. **Miscellaneous**

7.1 Restriction on Assignment Save as provided in Section 6, the Developer and the Escrow Bank, shall not assign or transfer any part of their respective rights or obligations under this Agreement without the prior consent of Authority. It is expressly agreed between the Parties that nothing in this Section 8.1 shall prevent Authority from assigning, novating or transferring its rights, benefits and obligations under this Agreement to any Entity.

7.2 Notices

7.2.1 All notices shall be sent to a Party hereto at its address and contact number specified in Annexure A appended hereto, or at such other address and contact number as is designated by such Party in a written notice to the other Parties hereto.

7.2.2 All such notices and communications shall be effective (i) if sent by telex, when sent (with the correct answerback), (ii) if sent by telecopier, when sent (on receipt of a confirmation to the correct telecopier number), (iii) if sent by person, when delivered, (iv) if sent by courier, (a) one Business Day after deposit with an overnight courier if for inland delivery and (b) five Business Days after deposit with an international courier if for overseas delivery and (c) if sent by registered letter when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not.

7.2.3 An original of each notice and communication sent by telex or telecopy shall be dispatched by person, overnight courier (if for inland delivery) or international courier (if for overseas delivery) and, if such person or courier service is not available, by registered airmail (or, if for inland delivery, registered first class mail) with postage prepaid, provided that the effective date of any such notice shall be determined in accordance with Section 7.2.2, as the case may be, without regard to the dispatch of such original.

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

7.4 Severability Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but that shall not invalidate the remaining provisions of this Agreement or affect such provision in any other jurisdiction.

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

7.6 Governing Law This Agreement shall be governed by and construed in accordance with the laws of India.

7.7 Dispute Settlement

7.7.1 The Parties shall use their respective reasonable endeavours to settle any Dispute amicably. If a Dispute is not resolved within thirty (30) days after written notice of a Dispute by one Party (or a group or Parties) (the "Claimant(s)") to the other Party (or group of Parties) (the "Respondent(s)") then the provisions of Section 8.7.2 to Section 8.7.7 shall apply.

7.7.2 Any and all Disputes arising out of, or in relation to, this Agreement or the interpretation or construction of any provisions herein, which are not settled amicably by the Parties pursuant to Section 8.8.1 hereinabove, shall be finally settled, as per the provisions set out herein, by arbitration in accordance with the Arbitration and Conciliation Act, 1996.

7.7.3 Any Dispute shall be referred to an arbitral tribunal consisting of three (3) arbitrators (hereinafter "Arbitral Tribunal"). The Claimant(s) and the Respondent(s) shall each appoint one (1) arbitrator to the Arbitral Tribunal and the two arbitrators thus appointed shall choose the third arbitrator, who shall also act as the presiding arbitrator of the Arbitral Tribunal.

7.7.4 The decision(s) of the Arbitral Tribunal, supported by reasons for such decision shall be final and binding on the Parties.

7.7.5 The venue of arbitration shall be Ahmedabad.

7.7.6 The governing law of the arbitration shall be the substantive laws of India.

7.7.7 This Article 7.7 shall survive the termination or expiry of this Agreement.

7.8 Regulatory Approvals

The Developer shall procure and shall thereafter maintain and comply with all regulatory approvals required for it to establish and operate the Escrow Account.

7.9 Notification of Balances Within seven (7) days following the end of each calendar Month, the Escrow Bank shall notify Authority of the respective balances in the Escrow Account (including balances in each of the sub-accounts thereunder) as on the last Business Day (of the Month).

7.10 Additional Rights Any rights conferred on the Parties pursuant to this Agreement shall be in addition to and not in substitution for or in derogation of any other rights and remedies which the Parties may at any time have under the Project Agreements or otherwise.

IN WITNESS WHEREOF the Developer has caused its Common Seal to be affixed hereto and to a duplicate hereof on the date first above written and the Escrow Bank and Authority have caused the same to be executed by the hand of an authorised official.

The signature of the authorised representative of the [Developer] has been affixed pursuant to the resolution of its Board of Directors dated the _____ day

_____, which has hereunto been affixed in the presence of Shri _____, and Shri _____, Directors who have signed these presents in token thereof and countersigned by _____, the authorised officer / Company Secretary.

SIGNED AND DELIVERED by [ESCROW BANK] by the hand of _____ its authorised official.

SIGNED AND DELIVERED by Authority by the hand of _____ its authorised official.

Annexure -A-Notice to the Party

THE Developer

Name of Party:

Address:

Tele No:

Fax No:

Attention:

ESCROW BANK

Name of Party:

Address: Tele No:

Fax No: Attention:

Authority

Name of Party: Gujarat Council of Science City, Department of Science and Technology

Tele No:

Fax No:

Attention:

SCHEDULE 8

Annex- I: PERFORMANCE SECURITY

FORM OF PERFORMANCE SECURITY

[On Stamp Paper of appropriate value]

Bank Guarantee No. [●]

THIS DEED OF GUARANTEE is executed on this *[insert date]* day of *[insert month and year]* at *[insert place]* by *[insert name of bank]* with its head/registered office at *[insert address]*, (hereinafter referred to as the **Guarantor or Bank**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

IN FAVOUR OF:

Gujarat Council of Science City, Department of Science and Technology, Government of Gujarat, represented by [●] (hereinafter referred to as the Authority which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

WHEREAS:

- (A) The Authority has entered into a project development and management agreement dated *[insert date]* (the “**PDMA**” or “**Agreement**”) with *[insert name of Developer]*, {company/partnership firm/Proprietor, incorporated/constituted} with its registered office at [●] (hereinafter referred to as the **Developer** which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).
- (B) In terms of the Agreement, the Developer has agreed to undertake the for Supply, Installation, Commissioning, Operation, and Maintenance of IMAX 3D GT laser projection system at Gujarat Science City (the **Project**), on a Public Private Partnership basis.
- (C) In terms of Clause 5.1 of the Agreement, the Developer is required to furnish to the Authority, an unconditional, irrevocable, on demand bank guarantee for an amount equivalent to INR 1,80,00,000 (Rupees One Crore and Eighty lakhs only) (the “**Guarantee Amount**”) as security for the due performance or discharge of the Developer’s obligations and liabilities during the Construction Period until the COD, including payment of any amounts due and payable by the Developer as liquidated damages, as a Condition Precedent to the effectiveness of the Agreement.
- (D) At the request of the Developer and for sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand bank guarantee (“**Guarantee**”), for the due and punctual performance or discharge by the Developer of its obligations and liabilities under the Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Developer’s obligations during the Performance Security Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Developer,

such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer not below the rank of _____ of the Authority or any officer authorised by the Authority, that the Developer 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 Developer is in default in due and faithful performance of its obligations during the Performance Security Period under the Agreement and its decision that the Developer is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Developer, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Developer 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 Developer 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 Developer 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 Developer 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 Developer, 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 Developer 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 Developer under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, during the Performance Security Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall remain in force and effect till the expiry of the Performance Security Period and unless a demand or claim in writing is made by the Authority to the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee (“**Claim Period**”), all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express

consent of the Authority in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force during the Performance Security Period pursuant to the provisions of the Agreement.
12. The Bank's obligations hereunder shall subsist until all such demands of the Authority are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Bank by the Authority shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Guarantee. The Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Bank to pay the Guarantee Amount.

Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

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:

The Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.

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 8
Annex -II: PERFORMANCE GUARANTEE

FORM OF PERFORMANCE GUARANTEE

[On Appropriate Stamp Paper]

Bank Guarantee No. [●]

THIS DEED OF GUARANTEE is executed on this *[insert date]* day of *[insert month and year]* at *[insert place]* by *[insert name of bank]* with its head/registered office at *[insert address]*, (hereinafter referred to as the **Guarantor or Bank**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

IN FAVOUR OF:

Gujarat Council of Science City, Department of Science and Technology, Government of Gujarat, represented by [●] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

WHEREAS:

- (A)(the "**Developer**") and the **Authority** have entered into an Agreement dated(the "**Agreement**") whereby the Authority has agreed to the Developer undertaking the, the Supply, Installation, Commissioning, Operation, and Maintenance of IMAX 3D GT laser projection system at Gujarat Science City on PPP mod subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Developer to furnish a Performance Guarantee to the Authority in a sum of INR 1,80,00,000 (Rupees One Crore Eighty Lakh Only) (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Operations Period (as defined in the Agreement).
- (C) We, through our Branch at have agreed to furnish this Bank Guarantee by way of Performance Guarantee (“**Guarantee**”).

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

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

during the Performance Guarantee Period under the Agreement and its decision that the Developer is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Developer, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Developer 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 Developer 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 Developer 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 Developer 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 Developer, 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 Developer 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 Developer under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, during the Performance Guarantee Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall remain in force and effect till the expiry of the Performance Guarantee Period 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 (“**Claim Period**”), all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice,

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

11. This Guarantee shall come into force with immediate effect and shall remain in force during the Performance Guarantee Period pursuant to the provisions of the Agreement.
12. The Bank's obligations hereunder shall subsist until all such demands of the Authority are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Bank by the Authority shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Guarantee. The Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Bank to pay the Guarantee Amount.

Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

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:

The Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.

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 9 – APPROVED PROJECT IMPLEMENTATION PLAN

(To be appended upon approval of the Project Implementation Plan in accordance with this Agreement)

SCHEDULE 10

Not Used

SCHEDULE 11- SPECIFICATIONS AND STANDARDS

(Refer Separate Attachment)

SCHEDULE 12: ADVANCE GUARANTEE

Form of Guarantee for Advance Payment

.....,

WHEREAS:

- (A) (insert name and address of the Developer)
(hereinafter called the “**Developer**” has executed an agreement (hereinafter called the “**Agreement**”) with the (insert name and address of the project authority), (hereinafter called the “**Authority**”) for the construction of the section of State Highway No. on Public Private Partnership (the “**PPP**”) basis, subject to and in accordance with the provisions of the Agreement
- (B) In accordance with Clause 17.2 of the Agreement, the Authority shall make to the Developer an interest free advance payment (herein after called “**Advance Payment**”) equal to 10% (ten per cent) of the Contract Price; and that the Advance Payment shall be made in three instalments subject to the Developer furnishing an irrevocable and unconditional guarantee by a scheduled bank for an amount equivalent to 110% (one hundred and ten per cent) of such instalment to remain effective till the complete and full repayment of the instalment of the Advance Payment as security for compliance with its obligations in accordance with the Agreement. The amount of {first/second/third} instalment of the Advance Payment is Rs. cr. (Rupees crore) and the amount of this Guarantee is Rs. cr. (Rupees crore) (the “**Guarantee Amount**”)⁴
- (C) We, through our branch at (the “**Bank**”) have agreed to furnish this bank guarantee (*hereinafter called the “**Guarantee**”*) for the Guarantee Amount.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful repayment on time of the aforesaid instalment of the Advance Payment under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Developer, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of a Chief Engineer of the Authority, that the Developer has committed default in the due and faithful performance of all or any of its obligations for the repayment of the instalment of the Advance Payment 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 Developer is in default in due and faithful performance of its obligations during and under the Agreement and its decision that the Developer is in default shall be final and binding on the Bank, notwithstanding any differences between the Authority and the Developer, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Developer 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 Developer 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 Developer before presenting to the Bank its demand under this Guarantee.

⁴ The Guarantee Amount should be equivalent to 110% of the value of the applicable instalment.

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 Advance Payment or to extend the time or period of its repayment or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Developer, 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 Developer 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 Advance Payment.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall cease to be in force and effect on⁵ Unless a demand or claim under this Guarantee is made in writing on or before the aforesaid date, the Bank shall be discharged from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect up to the date specified in paragraph 8 above 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.

⁵ Insert a date being 90 (ninety) days after the end of one year from the date of payment of the Advance payment to the Developer (in accordance with Clause 8.2.2.4 of the Agreement).

- (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.