

- (c) Obligations towards contractors, Sub-Contractors, suppliers and all payments made;
- (d) Application of debt fund; and
- (e) Application of equity fund.
- 17.2 RLDA shall have the right to inspect the records of the Lessee during office hours and require copies of relevant extracts of books of account, duly certified by Auditors of the Lessee, which the Lessee shall be bound to provide to RLDA.
- 17.3 The Lessee also agrees and undertakes that it shall within 30 (thirty) days of the close of each quarter of a Financial Year/Accounting Year, furnish to RLDA 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 companies listed on a stock exchange.
- 17.4 It is expressly agreed between the Parties hereto that for the purposes of this Article 17, RLDA may appoint an independent auditor, the cost whereof during the Construction Period shall be borne by the Lessee and thereafter; the same shall be borne by RLDA.

#### Article 18 -Change of ownership and equity lock-in

- 18.1 The Lessee shall not be permitted to undertake or permit any change in ownership except as provided hereunder in this Article 18.
- 18.2 Notwithstanding anything to the contrary contained in the Agreement, the Lessee agrees and acknowledges that:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Lessee; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Lessee by any person either by himself or together with any person or persons acting in concert with him,

shall each be subject to prior approval of RLDA on the Lessee giving prior information to RLDA of any such proposed change in its shareholding together with excerpts of relevant Applicable Laws that permit the Lessee to do so and in case of failure to do so, RLDA shall have the right to terminate the Agreement, forfeit the lease premium amount already paid, encash the bank guarantee for the remaining installments, if any, encash the performance guarantee and take such other steps as may be available to RLDA without in any manner being liable to the Lessee. Further, in the event of a change in control of a holding/subsidiary whose technical experience was taken into consideration for the purposes of technical eligibility at the time of submission of the Bid and in case such change in ownership results in the originally Selected Bidder becoming technically ineligible, RLDA shall terminate the Lease Agreement and forfeit the amounts as specified above.

For the purposes of this Sub-Clause:

- (i) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Lessee;



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- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Lessee; and
- (iii) power to appoint, whether by Agreement or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Lessee, not less than half of the directors on the Board of Directors of the Lessee or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Lessee shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Lessee.
- 18.3 Selected Bidder shall hold more than 50% (fifty percent) in the paid-up and subscribed equity share capital of the Lessee upto a minimum period of one year after the Completion Date or till the payment of full amount of Lease Premium including interests thereof and any other overdue payment till that date, by the Lessee to RLDA, whichever is later. In the event the Selected Bidder is a Consortium, each Member of the Consortium whose Gross Revenues has been considered to fulfill the Financial Eligibility Criteria shall individually hold a minimum of 26% (twenty six percent) equity/ownership and each Member of the Consortium whose Technical Experience has been considered to fulfill the Technical Eligibility Criteria shall hold a minimum of 10% (ten percent) of the equity/ownership in the Lessee. The Lead Member shall individually hold at least 26% (twenty six percent) of the Equity and Members of the Consortium shall collectively hold more than 50% (fifty percent) of the Equity of the Lessee up to a minimum period of one year after the Completion Date or until the payment of full amount of Lease Premium payable to RLDA including interest and any other overdue payment till that date, whichever is later, in accordance with the provisions of the Agreement.
- 18.4 It is clarified that in case the Selected Bidder is a Consortium, then the Members (other than the Lead Member & any Member who has contributed towards Financial and Technical Eligibility) of such a Consortium shall be allowed to divest their shareholding in the Equity of the Lessee as long as the other remaining Members hold the minimum Equity specified above.
- 18.5 In exceptional circumstances, when a Member (other than the Lead Member) who has contributed towards Financial or Technical Eligibility is required to divest its equity/ownership in the Lessee, prior to the Equity lock-in period specified above, RLDA may consider granting permission for the same on the specific request of the Lessee and reasons given thereof provided, however, that remaining Consortium Members continue to hold more than 50% of the Equity in the SPC and that the new Member must have had the Financial or Technical Eligibility, as the case may be, equal to or better than that of the Member being replaced as on Bid submission date and also on the date of replacement duly fulfilling the original eligibility criteria specified for the selection of the Lessee in the Bid Documents/Information to Bidders. Further, part divestment of equity of a Member in such a case shall not be permitted. It is clarified that the change in Technical or Financial Member, shall be considered as divestment of equity and if such change leads to divestment of equity more than the time specified above, the change shall not be permitted.

#### Article 19 - Liability and Indemnification

- 19.1 **Liability in respect of the Project:** The Lessee shall be solely responsible for the construction, operation and management of the Project and shall have the overall



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responsibility and liability with respect to the Project and all Assets and Project Utilities located upon the Site. In no event shall RLDA have any liability or be subject to any claim for any damages arising out of the design, Drawings, development, financing, construction, operation, maintenance or management of the Project and the Assets and Project Utilities located upon the Site.

- 19.2 **Deemed Knowledge and Disclaimer:-** The Lessee shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the Project regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) including underground utilities and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and the Lessee shall not have any right whether express or implied to bring any claim against, or to recover any compensation or other amount from RLDA in respect of the Project other than for those matters in respect of which express provision is made herein.
- 19.3 **General Indemnity:-**The Lessee hereby indemnifies and agrees and undertakes that from the Effective Date and thereafter during the Term and even after expiry of the Term or upon the earlier termination of the Agreement, it shall keep indemnified and otherwise saved and harmless RLDA, its agents and employees, its consultants from and against any and all claims, demands made against and/or loss caused and/or the damages suffered and/or cost, charges/expenses incurred or put to and/or penalty levied and/or any claim due to injury or death of any person and/or loss or damage caused or suffered to any property owned or belonging to RLDA, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by Lessee or as a result of failure on the part of Lessee to perform any of its obligations or on the Lessee committing breach of any of the terms and conditions or on the failure of the Lessee to perform any of its statutory duty and/or obligations or failure or negligence on the part of Lessee to comply with any Applicable Laws or Applicable Permits or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by any third party including Sub-Lessees or Government Authority or as a result of any failure or negligence or default of the Lessee or the Sub-Contractors and/or invitees as the case may be, in connection with or arising out of the Agreement or arising out of or in connection with Lessee's use and occupation of the Site and Assets located thereon or due to the non performance by the Lessee of any of its obligations under the Sub-Lease Deed with Sub-Lessees.
- 19.4 **Indemnity during Marketing:-** The Lessee and not RLDA shall be solely responsible for the timely implementation of the Project. In the event of any breach by the Lessee of its obligations towards the allottees/sub-lessees/any other third party, even if such breach has been caused by any non-performance by RLDA of its obligations as contained in the Agreement, the Developer shall on its own indemnify such parties for all losses and damages incurred by such parties on account of such breach and RLDA shall not be responsible for any such losses.
- 19.5 Notwithstanding anything to the contrary contained herein, in no event shall RLDA, its officers, employees or agents be liable to indemnify the Lessee for any matter arising out of or in connection with the Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by the Lessee.
- 19.6 It is expressly understood by the Parties that this Article 19 shall survive the termination or expiry hereof.
- 19.7 **RLDA's Limitation of Liability:-** Notwithstanding anything contained in the Agreement, during the entire Term, the maximum liability of RLDA towards the Lessee in respect of



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the Project resulting out of any default of RLDA or any dispute and subsequent claim by the Lessee in terms of the Agreement shall not exceed the Termination Payment payable to the Lessee in terms of Agreement or aggregate amount already paid by the Lessee to RLDA towards the Consideration whichever is higher.

#### Article 20 Expiry and Vesting Provisions

- 20.1 Unless terminated earlier in accordance with Article 21 or by mutual agreement between the Parties in writing, the Agreement shall expire at the end of the Term. Upon such termination or expiry, as the case may be, the Site together with all Assets, Project Utilities and work-in-progress existing on the Site shall automatically vest in RLDA and the Agreement shall stand terminated.
- 20.2 **Right of First Refusal in Fresh Bidding:-** Subject to the Applicable Laws, in the event the Railway Administration/RLDA, as the case may be, decides to grant rights for operation & maintenance of the Assets and Project Utilities upon the Site to private Lessees/entities for a period beyond the date of expiry of the Term through a competitive bidding process, the Lessee shall have the option to compete and match the bid of the highest bidder, so obtained through the competitive Bidding process, towards undertaking the said operation and maintenance on such terms and conditions, as may be stipulated in the bid documents issued at that time. However, such option may be available to the Lessee only if he is eligible as per the requirements and criteria mentioned in the aforesaid bidding document, participates in the aforesaid Bid process and his bid is within a certain margin (to be decided by the Railway Administration/RLDA at the time of bidding) of the bid of the highest bidder. For the avoidance of doubt it is hereby clarified that the flexibility hereinabove, granted to the Lessee shall be subject to the Lessee being in absolute compliance to the terms, conditions and its obligations under the Agreement and the prescribed criteria under the bid documents issued at that time, to the satisfaction of Railway Administration/RLDA, and shall not be, in any manner whatsoever, claimed by the Lessee as an enforceable right against the Railway Administration/RLDA. RLDA may start the bidding process two years prior to the expiry of the Term and so as to conclude the bidding process and award the rights of operation and maintenance to the selected bidder in terms of this Article 20 one year prior to the expiry of the Term. In such a case the vesting of the Assets and Project Utilities by the Lessee in terms of this Article 20.3 shall be in favour of such selected bidder. If the Lessee itself gets selected as the successful bidder, the vesting of the Assets and Project Utilities shall be in favour of itself under the new lease agreement.
- 20.3 **Vesting Provisions:-**In case of expiry of the Term, the process of transfer and vesting shall start at least 2 (two) years prior to expiry of the Term with a joint survey by RLDA and the Lessee of all the Assets and Project Utilities, Sub Lessees occupying the Site/Assets including their Sub-Lease with the Lessee. In case RLDA decides against offering the Assets and Project Utilities on lease for a further term on mutually agreed terms and conditions, the Lessee shall ensure that all the Sub-Lessees vacate the Site at least a fortnight prior to the expiry of the Term so that the Site and Assets and Project Utilities are transferred to RLDA free from Encumbrances. In case a new party is selected by RLDA for another term, such party, at its own discretion, may decide to re-negotiate with any or all Sub-Lessees for continuation of Sub-Lessees beyond the Term. In such a case the new selected party shall inform the Lessee at least six months prior to the expiry of the Term about the continuation of such Sub-Lessees who shall continue to occupy the Assets. The Lessee shall allow such Sub-Lessees to remain in occupation of the Assets while vacating the others before transferring the Site, Assets and Project Utilities to the new selected party on the date of expiry of the Term.



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- 20.4 **Termination prior to expiry of Term:-** In case of termination prior to the expiry of the Term:
- 20.4.1 all the Assets and Project Utilities including works-in-progress, as existing on the Site together with the Site shall be vested in RLDA or its nominee;
- 20.4.2 possessions of the Redevelopment Assets and Redevelopment Utilities including all Redevelopment Work in progress upon the Redevelopment Land, if any shall vest with RLDA and the Lessee shall have no right to access or right of way on the Redevelopment Land without the prior consent of RLDA;
- 20.4.3 all rights and obligations of the Lessee in all Sub-Contracts in respect of the Project shall, unless otherwise determined by RLDA, stand attorned in favour of RLDA which shall act in place of the Lessee;
- 20.4.4 all rights and obligations of the Lessee in all agreements with third parties in respect of Sub-Lease of Assets shall, unless otherwise determined by RLDA or the Nominated Company stand attorned in favour of RLDA which shall act as the Lessee;
- 20.5 **Liabilities to be borne by RLDA as a result of termination prior to expiry of Term:-** No liability (accrued or contingent) of the Lessee in relation to any Sub-Contract for the Project on account of actions or inactions prior to the date of transfer of rights and obligations in terms of Article 20.4 above shall be assumed or transferred to RLDA or its nominee pursuant to vesting of the Site, Assets and Project Utilities with RLDA. RLDA at its own discretion may continue with these Sub-Contracts or discharge them without any financial liability on RLDA. Further, RLDA at its sole discretion may continue with the Sub-Lease deeds. If RLDA decides to discharge these agreements and make the Assets, Project Utilities and the Site completely Encumbrance free it shall refund the amount of Sub-Lease fees paid for the un-availed period of Sub-Lease to the individual Sub-Lesseees after carrying out an independent audit of such liabilities through a professional chartered accountant/ auditor as under:
- (a) In the event of termination of Agreement before the completion of the Project, RLDA may cancel the letter of allotments issued to third parties by the Lessee. Such parties shall be entitled to refund of all sums paid by them to the Lessee specified in clause 13.1.1 as instalments (excluding any registration charges) after deduction of 10% (ten percent) from such sums towards processing fee.
- (b) In the event of termination of Agreement after the completion of the Project, RLDA may terminate any or all Sub-Lease Deeds, letter of allotments and any such marketing agreements in respect of the Project executed by the Lessee with any third party while such parties shall be entitled to refund of all monthly Sub-Lease rentals paid in advance for the un-availed period of the Sub-Lease.
- 20.6 **Transfer and Indemnity:-** On Termination or Expiry, whichever is earlier, the Lessee Agrees to transfer the physical possession of the Site, Redevelopment Land (if any), Assets and Project Utilities along with the original documents of all approvals, permits, NOCs, TDRs and other such rights in the Assets and Project Utilities on or before the Transfer Date. In case of Termination Notice issued by RLDA the Lessee agrees to transfer the physical possession along with the original documents as above on such date as may be specified by RLDA in the Termination Notice but in no case later than 10 (ten) days from the date of issue of the Termination Notice. If the Lessee fails to do so, RLDA shall have the right to take over the physical possession ex-parte anytime thereafter. The Lessee agrees to indemnify and keep indemnified, RLDA, its nominee or the Nominated Company from and against all action proceedings, losses, damages, liabilities claims, costs and expenses which may be sustained or suffered by RLDA as a result of any actions or omissions of the Lessee prior to the Transfer Date.



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- 20.7 Transfer costs, and taxes, if applicable, for the transfer of the Site, Assets and Project Utilities consequent to the expiry and termination of the Agreement shall be borne by the Lessee.

#### Article 21 Termination and Substitution

- 21.1 RLDA shall be entitled to determine and terminate the Agreement at any time should, in the RLDA's opinion, the Lessee has committed any of the defaults specified in Article 21.2 or the Site is required for RLDA's or Railway's own use. Lenders' Representative shall have the right to substitute the Lessee with a Nominated Company if the Lessee has committed a Financial Default. The Lessee shall also be entitled to terminate the Agreement within one year of the date of execution of the Agreement should RLDA fail to provide right of way to the Site even after fulfilment of Conditions Precedent by the Lessee.
- 21.2 **Lessee's Event of Default:** Each of the following events or circumstances, to the extent not caused by Force Majeure Event, shall be considered, as Lessee's Event of Default which, if not remedied within the Cure Period upon receipt of Notice of Intention to Terminate from RLDA, shall provide RLDA the right to terminate this Agreement:
- (a) The Lessee becomes bankrupt or insolvent;
  - (b) The Lessee is under liquidation.
  - (c) The Lessee assigns the Agreement or any part thereof otherwise than as permitted under the Agreement or by RLDA;
  - (d) The Lessee abandons or manifests intention to abandon the construction/operation and maintenance of the Project without any intimation to the RLDA;
  - (e) The Lessee persistently disregards the instructions of the Nodal Officer, or contravenes any provision of the Agreement.
  - (f) The Lessee does or permits to do any act, matter, deed or thing in violation of Applicable Law and/or Applicable Permits;
  - (g) The Lessee fails to comply with the obligations specified under Article 8, Article 13 and Article 14.3 of the GCLA.
  - (h) The Lessee fails to maintain insurance (s) as required under the Agreement;
  - (i) The Lessee uses or permits or causes the use of the Site for purposes other than those specified in the Agreement;
  - (j) The Lessee sets up or claims an interest in the Site contrary to the rights granted to the Lessee through the Agreement and such right is adverse to the interest of RLDA;
  - (k) The Lessee violates the equity lock-in provisions set forth in the Agreement;
  - (l) The Lessee fails to complete the Project within the time specified in the Agreement or within such extensions as granted by the Nodal Officer in terms of the Agreement;
  - (m) The Lessee makes a Payment Default;
  - (n) The Lessee markets the Assets or Sub-Leases in a manner other than those specified in the Agreement;
  - (o) The Lessee makes an Escrow Default as defined in the Escrow Agreement, if applicable;
  - (p) The Lessee violates any condition that leads to termination of Agreement as specified in the Bid Documents during the tender stage;



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- (q) The Performance Guarantee/Security Deposit has been encashed and appropriated in accordance with the Agreement and the Lessee fails to replenish or provide fresh Performance Guarantee/Security Deposit within the specified time;
- (r) Any Representation or Warranty of the Lessee herein contained which is, as on date thereof, found to be materially false, incorrect or misleading or the Lessee at any time hereafter found to be in breach thereof.

21.3 **RLDA's Event of Default:** Each of the following events or circumstances, to the extent not caused by a Force Majeure Event, shall be considered, as RLDA's Event of Default which, if not remedied within the Cure Period upon receipt of Notice of Intention to Terminate, shall provide the Lessee with the right to terminate the Agreement:

- (a) RLDA fails to provide to the Lessee the right of way to the Site in terms of the Agreement for more than twelve months.
- (b) RLDA breaches any obligation which has a Material Adverse Effect on the Lessee's ability to perform its obligations under the Agreement.

Provided however that the Lessee shall have a right to terminate the Agreement on grounds of RLDA's Event of Default specified at sub-para (b) above only within one year from the Effective Date and notwithstanding anything contained in the Agreement the Lessee cannot exercise the right to issue Notice of Intention to Terminate after expiry of one year from the Effective Date for the same.

21.4 **Notice of Termination:** Without prejudice to any other rights or remedies which the non-defaulting Party may have under the Agreement or under the Applicable Laws, upon the occurrence of either a Lessee Event of Default or a RLDA Event of Default, the defaulting Party shall be liable for the breach caused and consequences thereof and the non-defaulting Party shall have the right to issue a Notice of Intention to Terminate to the defaulting Party and the Lenders. Upon the issuance of a Notice of Intention to Terminate, the defaulting Party shall have the right to rectify or cure the breach within the Cure Period. If the breach is not rectified by the defaulting Party within the Cure Period, the non-defaulting Party shall have the right to terminate the Agreement by issuance of a Termination Notice.

21.5 Notwithstanding anything to the contrary, RLDA shall be entitled to determine and terminate the Agreement by giving a 60 (sixty) day Termination Notice if the Site is required for RLDA's or Railway's own use and the Lessee hereby expressly waives his right to challenge the same.

21.6 **Substitution by Lenders' Representative:-** In the event of Lessee's default, RLDA shall, if there be Lenders, send a copy of the Termination Notice to the Lenders' Representative to inform and grant 15 (Fifteen) days to the Lenders' Representative, for making a representation on behalf of the Lenders stating the intention to substitute the Lessee. In case RLDA receives a representation on behalf of the Lenders, RLDA shall withhold the termination for a period not exceeding 180 (one hundred and eighty) days, for enabling the Lenders' Representative to exercise the Lenders' right of substitution in accordance with the Substitution Agreement.

21.7 **Substitution by RLDA:-** In the event that no company is nominated by the Lender's Representative or the company selected by the Lenders' Representative in terms of Article 21.6 is not acceptable to RLDA, it may either substitute the Lessee or Terminate the Agreement.

21.8 **Substitution Process:-** While carrying out Substitution, the Lender's Representative or RLDA, as the case may be, shall invite competitive bids from the prospective parties for substituting the Lessee. The financial bidding criteria for the bid shall be a Substitution

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Premium to be paid by the Nominated Company as a consideration to RLDA. The Substitution Premium shall be in addition to the Nominated Company agreeing to bear all the liabilities of the Lessee in terms of the Agreement, Financing Agreement, Letter of Allotment/Sub-Lease Deeds and contracts with the Sub-Contractors which shall include but not be limited to overdue and future payments towards taxes to be paid to the Government, repayment or refunds to third parties, Lease Premium (instalments and interests thereof) to be paid to RLDA, Annual Lease Rents to be paid to RLDA, liquidated damages to be paid to RLDA, payment to Sub-Contractors relating to the Project, expenses incurred and claims by RLDA on the Project due to the Lessee's default in terms of the Agreement to be paid to RLDA, servicing of Debt Due to the Lenders etc. Moreover, as part of the condition of bidding, the Nominated Company shall be required to invest an additional minimum amount in the Project within 30 days of its appointment as the Nominated Company to clear all overdue amounts in respect of payments specified here above.

21.9 **Consequences of Substitution: -**

- 21.9.1 RLDA shall grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into Sub-Contracts) together with all other rights subject to fulfilment of Lessee's obligation by the Nominated Company Agreement, for the remainder of the Term, by the Novation of the Agreement, if applicable, in favour of the Nominated Company. RLDA shall also execute a new Substitution Agreement with the Nominated Company and the Lenders, if there be any.
- 21.9.2 All Sub-Contracts and agreements in respect of the Project including Escrow Agreement and Financing Agreement executed by the Lessee shall stand transferred and novated in favour of the Nominated Company. Further all rights of the Lessee on the Site, Assets and Project Utilities in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. All approvals/clearances of RLDA received by the Lessee shall stand transferred and novated in favour of the Nominated Company. All letter of allotments, Sub-Lease Deeds or any other agreements executed by the Lessee for marketing the Project in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. The Lessee shall get replaced by the Nominated Company for all purposes related to the Project.

**Article 22 - Substitution payment and termination payment**

22.1 **Termination Payment**

22.1.1 Except when terminated in terms of provisions of Article 18.2 in the event of termination of this Agreement pursuant to a Lessee Event of Default, RLDA shall pay a Termination Payment to Lessee as follows after recovering the outstanding dues toward Annual Lease Rent, any claims for losses/damages suffered by RLDA or by the Railway Administration due to any action by the Lessee or its Sub Contractors/ Sub-Lessees:

- (a) In the event of Termination before the commencement of the Commercial Operation an amount equal to 85% of the total amount of Lease Premium (excluding any interest) paid by the Lessee to RLDA till the date of Termination.
- (b) In the event of Termination after the commencement of Commercial Operation an amount equal to the difference of the amount specified in Article 22.1.1 (a) above and the amount of Distributions withdrawn by the Lessee till the date of Termination. If the Lessee has already withdrawn more than the amount specified in sub-clause (a) above, the amount of Termination Payment shall be zero.



Part - II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

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(c) It is clarified that the Lessee shall not be entitled to any interest on the Lease Premium or any return on Equity beyond what it has already withdrawn from the Escrow Account as Distributions till the date of Termination. However, the Lessee shall be entitled for refund of the cost of Redevelopment Works as per the estimated cost specified in the Agreement, provided that all the Redevelopment Works have been completed and Completion Certificate have been issued by the Nodal Officer for the same.

22.1.2 In the event of termination of this Agreement pursuant to a RLDA Event of Default, RLDA shall pay a Termination Payment not exceeding 100% of amount of Instalments of the Lease Premium and the Annual Lease Rent (including any interest thereof) that has already been paid to RLDA including interests from the date of receipt of such payments by RLDA at a simple interest rate of 5% (five percent) per annum after recovering outstanding dues and any claims for losses/damages suffered by RLDA or by the Railway Administration due to any action by the Lessee or its Sub Contractors/ Sub-Lessees.

22.1.3 In the event of termination of this Agreement by RLDA for taking over the Assets and Project Utilities for its own use or for the use of Railway (before expiry of the Term) the RLDA shall pay a Termination Payment as follows after recovering outstanding dues toward Annual Lease Rent and any claims for losses/damages suffered by RLDA or by the Railway Administration due to any action by the Lessee or its Sub Contractors/ Sub-Lessees:

(a) In the event of termination prior to 2N/3 years from the Effective Date:-

$$\text{Termination Payment} = \left[ \frac{5}{6} \left( \frac{2N-3n}{2N} \right) + \frac{1}{6} \right] [L.P. + C.O.A. + R.C.] * \frac{WPI_n}{WPI_e}; \text{ or}$$

(b) In the event of termination after 2N/3 years from the Effective Date:-

$$\text{Termination Payment} = \left[ \frac{1}{2} \left( \frac{N-n}{N} \right) \right] [L.P. + C.O.A. + R.C.] * \frac{WPI_n}{WPI_e};$$

Where

L.P. = Lease Premium and Annual Lease Rent, including interests thereof, already paid by the Lessee to RLDA;

C.O.A. = Estimated Cost of Assets as specified in Part-IV SCLA or actually incurred by the Lessee, whichever is lower;

R.C. = Estimated Cost of Redevelopment Works, if any, as specified in Part-IV SCLA;

WPI<sub>n</sub> = Wholesale Price Index as prevailing on the Transfer Date subsequent to termination;

WPI<sub>e</sub> = Wholesale Price Index as prevailing on the Effective Date;

n = no. of full completed years from the Effective Date + 1

N = the Term in no. of years as specified in Part-IV SCLA

22.1.4 **Deduction of dues due to RLDA from the Lessee:-** All outstanding dues toward Annual Lease Rent, Revenue Share and any claim for losses/damages suffered by RLDA or by the Railway due to any neglect by the Lessee or its Sub-contractors or Sub-Lessees/Sub-Licensees shall be deducted from the amounts derived in Article 22.1.1, Article 22.1.2 and Article 22.1.3.

22.1.5 **Deduction of liabilities vesting on RLDA due to termination:-**The total amount of financial liabilities assessed in terms of Article 20.5 for refunds to all Sub-Lessees shall be deducted from the amounts payable to the Lessee under Article 22.1.4. The resultant amount shall be the entitlement of the Lessee as Termination Payment. If an Escrow



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Account exists at the time of Termination, the Termination Payment shall be deposited in the Escrow Account and the Lessee shall get its dues through the Escrow Account.

22.1.6 Notwithstanding anything contained in this Article 22.1, in the event of issue of Notice of Intention to Terminate by RLDA due to Lessee's Event of Default, whether leading to Substitution or Termination, the Performance Bank Guarantee shall be forfeited by RLDA.

22.1.7 Any Termination Payment due to the Lessee from RLDA under the Agreement shall be payable within twelve (12) months of the Transfer Date.

## 22.2 Substitution Payment

22.2.1 The Lessee shall be entitled to a substitution payment as compensation towards substitution only if the Nominated Company has paid a positive Substitution Premium to RLDA and invested the required minimum amount in the Project towards the overdue payment liabilities specified hereinabove. If the Substitution Premium paid by the Nominated Company is positive and sufficient, the Lessee shall be entitled to the Substitution Premium subject to such payment not exceeding 85% of the total amount of Equity and Subordinated Debt Due as on the date of issue of notice of termination. If the Substitution Premium paid by the Nominated Company is more than this amount, the remaining amount shall be paid to RLDA. It is clarified that the Lessee shall not be entitled to any return on Equity.

22.2.2 If the Substitution Premium paid by the Nominated Company is less than the maximum entitlement of the Lessee in terms of the Article 22.2.1 above, the Lessee shall be entitled to only the Substitution Premium paid by the Nominated Company. However, if the Substitution Premium offered by the Nominated Company is negative, no compensation shall be paid to the Lessee and the resulting cost due to negative Substitution Premium shall be borne by the Lenders and RLDA in the following manner :

- (a) If the Substitution is done by the Lenders' Representative, the entire cost shall be borne by the Lenders ;
- (b) If the Substitution is done by RLDA, the cost shall be borne in the following order:
  - (i) The Lenders shall bear the cost up to an amount equal to the Debt Due by way of forgoing it to the extent of the entire amount of Debt Due to that extent;
  - (ii) RLDA shall bear the remaining cost, if such cost is not fully met through the provisions of the sub-para (i) above.

22.2.3 An independent chartered accountant/auditor shall be appointed by RLDA or the Lender, as the case may be, for audit of the accounts of the Lessee for arriving at the payments due for refund to the Lessee as above. The cost of the independent chartered accountant/auditor shall be deducted from the amount due for refund to the Lessee in terms of Article 22.2.2 above.

22.3 **Claiming Termination & Substitution Payment:-** After termination of the Agreement or substitution of the Lessee by a Nominated Company, the Lessee shall prepare and furnish to the Nodal Officer an account giving full and detailed particulars of all claims for payment to which the Lessee may consider himself entitled to in terms of the Agreement. Notwithstanding any such claim, the Lessee shall be paid the Substitution Payment and Termination Payment strictly in terms of the Agreement and the decision of RLDA in respect of such payments shall be final and binding on the Lessee.

22.4 **Signing of "No Claim" Certificate:-** Any payment in respect of Article 22.1.1(a), Article 22.1.1(b), Article 22.1.2 and 22.2.1 above shall be made by RLDA only after receipt of a No-Claim Certificate from the Lessee declaring that the payments received by the Lessee is full and final and it has no further claim against the Project. The Lessee shall not be



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entitled to make any claim whatsoever against RLDA under or by virtue of or arising out of the Agreement, nor shall RLDA entertain or consider any such claim, if made by the Lessee after he shall have signed a "No Claim" Certificate in favour of RLDA in such form as shall be required by RLDA after the amount of the relevant payment is finally assessed by RLDA. The Lessee shall be debarred from disputing the correctness of the assessment of payment covered by "No Claim" Certificate or demanding a clearance to arbitration in respect thereof.

- 22.5 **Post Payment Audit:**-It is an agreed term of Agreement that RLDA reserves to itself the right to carry out a post-payment audit and or technical examination of the Lessee's claim including all supporting details, and to make a claim on the Lessee for the refund of any excess amount paid to him if as a result of such examination any over-payment to him is discovered to have been made in respect of Termination Payment, Substitution Payment or terminal value under the Agreement.

### Article 23 Dispute Resolution

- 23.1 The Parties agree to use their best efforts for resolving the Dispute promptly, equitably and in good faith and further shall provide each other with reasonable access during normal business hours to all non-privilege records, information and data pertaining to the Dispute. All Disputes so notified in writing by either Party to the other Party shall, in the first instance, be attempted to be resolved mutually within 60 (sixty) days after the written notice of a Dispute, failing which the Parties shall subject themselves to conciliation proceeding in accordance with the procedure set forth in Article 23.2 below.
- 23.2 **Conciliation:-** In the event of any Dispute between the Parties that is not settled mutually in terms of Article 23.1 above, either Party may call upon the Vice Chairman (or in his absence the Chairman) of RLDA and upon such reference the Dispute shall be referred to the Conciliation Committee. The Conciliation Committee shall be fully empowered to deal with all aspects of such reference including withdrawal, compromise or settlement of such Dispute or any part thereof. Upon such reference, the representatives of the Lessee and members of RLDA's Conciliation Committee shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 60 (sixty) days of the reference to the Conciliation Committee in writing or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 23.5.
- 23.3 **RLDA Arbitration Rules:-** Provisions specified in Article 23.3, Article 23.4 and Article 23.5 shall be called as RLDA Arbitration Rules. Arbitration in respect of the Project shall be held in accordance with these Rules. The governing law of the arbitration shall be the laws of India and the venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English. The provisions relating to Arbitration shall become operative only after the Conditions Precedent are fulfilled.
- 23.4 **Excepted Matters:-** All disputes in connection with the Agreement shall be referred by either Party to the Vice Chairman of RLDA provided that matters for which provisions have been made in Article 2.5.2, Article 5, Article 8.17, Article 14.2.3, Article 20, Article 21, Article 22.5, Article 25.3 shall be deemed as Excepted Matters (matters not arbitrable) and the decision of RLDA thereon shall be final and binding on the Lessee, provided further that 'excepted matter' shall stand specifically excluded from the purview of the arbitration clause.



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- 23.5 Procedure for Arbitration**
- 23.5.1 In the event of any Dispute between the Parties hereto as to the construction or operation of this Agreement, or the respective rights and liabilities of the Parties on any matter in question, Dispute on any account or as to the withholding by RLDA of any certificate to which the Lessee may claim to be entitled to, or if RLDA fails to take a decision within the time specified in this regard and in any such case, but except in any of the Excepted Matters referred to in Article 23.4 of these conditions, the Lessee, after the time specified in this regard of its presenting its final claim on Disputed matters shall demand in writing that the Dispute or difference be referred to arbitration.
- 23.5.2 The demand for arbitration shall specify the matters which are in question, or subject of the Dispute as also the amount of total and item wise claim. Only such Disputes, in respect of which the demand has been made, together with counter claims or set off, given by RLDA, shall be referred to arbitration and other matters shall not be included in the reference.
- 23.5.3 The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by RLDA.
- 23.5.4 The claimant shall submit his claim stating the facts supporting the claims along with all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.
- 23.5.5 The respondent shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from the Arbitral Tribunal thereafter, unless otherwise extension has been granted by the Arbitral Tribunal.
- 23.5.6 No new claim shall be added during proceedings by either Party. However, a Party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by the Arbitral Tribunal having due regard to the delay in making it.
- 23.5.7 If the Lessee does not prefer its specific and final claims in writing, within a period of 90 days of receiving the intimation from RLDA that the assessment for Substitution Payments, Termination Payment or the terminal value of the Assets and Project Utilities is ready for payment, it will be deemed to have waived its claim and RLDA shall be discharged and released of all liabilities under the Agreement in respect of these claims.
- 23.5.8 **Obligation During Pendency of Arbitration** - Project under the Agreement shall, unless otherwise directed by the Nodal Officer, continue during the arbitration proceedings, and no payment due or payable by the Lessee shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not the Project should continue during arbitration proceedings.
- 23.5.9 In cases where the total value of all claims in question added together does not exceed Rs.1,00,00,000/- (Rupees one Crore only), the Arbitral tribunal shall consist of a sole arbitrator who shall be a retired Gazetted officer of Railway (not below S.A. grade) nominated by the Vice Chairman of RLDA from the panel of arbitrators maintained by RLDA or otherwise. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by the Vice Chairman.
- 23.5.10 In cases not covered by Article 23.5.9 above, the Arbitral Tribunal shall consist of three retired officers of a Railway public sector undertaking (not below GM level) and/or retired Gazetted officers of Railway (not below S.A. grade). For this purpose, a list of more than 3 names drawn from the panel of Arbitrators maintained by RLDA or otherwise will be sent to the Lessee within 60 days from the day when a written and valid demand for arbitration is received by the Vice Chairman of RLDA. The Lessee will be asked to



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suggest at least 2 names out of the list for appointment as Lessee's nominee within 30 days from the date of dispatch of the letter to the Lessee. The Vice Chairman of RLDA shall appoint at least one out of them as the Lessee's nominee and will, also simultaneously appoint the balance number of arbitrators from the panel of Arbitrators maintained by RLDA or otherwise, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. Vice Chairman shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of the Lessee's nominee.

- 23.5.11 If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the Vice Chairman is biased or fails to act without undue delay, the Vice Chairman shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Arbitral Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).
- 23.5.12 The Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper and it shall be the duty of the Parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The Arbitral Tribunal should record day to-day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements.
- 23.5.13 While appointing arbitrator(s) under this Article 23, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the Agreement relates or who in the course of his/their duties as Railway servant(s) or employees of RLDA expressed views on all or any of the matters under the Dispute. The proceedings of the Arbitral Tribunal or the award made by such Arbitral Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the Agreement relates or who in the course of his/their duties expressed views on all or any of the matters under Dispute.
- 23.5.14 The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred there from.
- 23.5.15 A Party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award and interpretation of a specific point of award to Arbitral Tribunal within 60 days of receipt of the award.
- 23.5.16 A Party may apply to the Arbitral Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
- 23.5.17 In case of the Arbitral Tribunal, comprising of three Members, any ruling or award shall be made by a majority of Members of Arbitral Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
- 23.5.18 Where the arbitral award is for the payment of money, no interest shall be payable on whole or any part of the money for any period till the date on which the award is made.
- 23.5.19 The cost of arbitration shall be borne by the respective Parties. The cost shall inter-alia include fee of the arbitrator(s), as per the rates fixed by the RLDA Board from time to time and the fee shall be borne equally by both the Parties. Further, the fee payable to the arbitrator(s) would be governed by the instructions issued on the subject by RLDA Board



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from time to time irrespective of the fact whether the arbitrator(s) is/ are appointed by the Vice Chairman or by the court of law unless specifically directed by Hon'ble court otherwise on the matter.

- 23.5.20 Under these Rules, in the absence of Vice Chairman, Chairman shall exercise the powers of Vice Chairman of RLDA. Subject to the provisions of the Arbitration and Conciliation Act, 1996 and the rules made there under and any statutory modifications thereof shall apply to the arbitration proceedings
- 23.6 Notwithstanding anything contained in the Agreement, Article 23.5 of the GCLA shall not be applicable for settlement of claims or disputes notified by the Lessee if the present value of all such claims made by the Lessee including previous claims or awards of Arbitral Tribunal, determined at compound annual interest rate of 15%, is more than 20% of the present value, determined at the compound annual interest rate of 15%, of all payments received by RLDA from the Lessee towards consideration till the date of receipt of the claim/dispute and arbitration shall not be a remedy for settlement of such claims or disputes.

#### Article 24 Force Majeure

##### 24.1 Force Majeure Event:

- 24.1.1 The Lessee or RLDA, as the case may be, shall be entitled to initially suspend the performance of its respective obligations under the Agreement to the extent that the Lessee or RLDA, as the case may be, is unable to render such performance due to a Force Majeure Event.
- 24.1.2 In the Agreement, no event or circumstance and/or no combination of events and circumstances shall be treated as a Force Majeure Event unless it satisfies all the following conditions:
- materially and adversely affects the performance of an obligation;
  - are beyond the reasonable control of the affected Party;
  - such Party could not have prevented or reasonably overcome with the exercise of Good Industry Practice or reasonable skill and care;
  - do not result from the negligence or misconduct of such Party or the failure of such Party to perform its obligations hereunder; and
  - which, by itself or consequently, has an effect described in Article 24.1.1;
- 24.1.3 Force Majeure Event includes the following events and/ or circumstances to the extent that they or their consequences satisfy the requirements set forth in Article 24.1.2:
- 24.1.3.1 war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting the Site;
  - 24.1.3.2 revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case within the Site or near vicinity;
  - 24.1.3.3 nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Site and/or the Assets, unless the source or cause of the explosion, contamination, radiation or hazardous thing is brought to or near the Site by the Lessee or any affiliate of the Lessee or any Sub-Contractor of the Lessee or any of their respective employees, servants or agents;
  - 24.1.3.4 strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political and affects the Site;



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- 24.1.3.5 any effect of the natural elements, including lighting, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, within the Site or near vicinity;
- 24.1.3.6 explosion (other than a nuclear explosion or an explosion resulting from an act of war) within the Site or near vicinity;
- 24.1.3.7 epidemic or plague within the Site or near vicinity; and,
- 24.1.3.8 any event or circumstances of a nature analogous to any events set forth in Article 24.1.3.1 to Article 24.1.3.7 within the Site or near vicinity.
- 24.1.4 Procedure for Force Majeure:**
- 24.1.4.1 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 this Article 24 (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 ability to perform its obligation(s) under the 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. The Parties expressly agree that payment of Annual Lease Rent shall not be suspended during the pendency of Force Majeure Event and/or its effect.
- 24.1.4.2 The affected Party shall have the right to suspend the performance of the obligation(s) affected as described in Article 24.1.4.1 above, upon delivery of the notice of the occurrence of a Force Majeure Event in accordance with Article 24.1.4.1 above. The affected Party, to the extent rendered unable to perform its obligations or part thereof under the Agreement, as a consequence of the Force Majeure Event, shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.
- 24.1.4.3 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 Event, and for the exercise of any right affected thereby, shall be extended by the period during which such Force Majeure Event 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 Event.
- 24.1.4.4 Each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event.
- 24.1.4.5 The Party receiving the claim for relief under Force Majeure Event shall, if it wishes to dispute the claim, give a written notice of Dispute to the Party making the claim within 30 (thirty) days of receiving the notice of claim. If the notice of claim is not contested within 30 (thirty) days as stated above, all the Parties 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 Article 23.5.
- 24.1.5 Mitigation of Force Majeure:** The Party claiming to be affected by a Force Majeure Event shall take all reasonable steps to prevent, reduce to a minimum and mitigate the



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effect of such Force Majeure Event. The affected Party shall also make efforts to resume performance of its obligations under the Agreement as soon as possible and upon resumption, shall forthwith notify the other Party of the same in writing. Further, each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event and the time for performance by the affected Party of any obligations or compliance by the affected Party with any time limit affected by Force Majeure Event and for the exercise of any right affected thereby, shall be extended as may be decided by the Nodal Officer by the period during which such Force Majeure Event continues and by such additional period thereafter as is necessary to enable the affected Party to achieve the level of activity prevailing before the Force Majeure Event, provided the expiry of term remains as it is.

#### Article 25 - MISCELLANEOUS

- 25.1 **Governing Law and Jurisdiction:** This Agreement shall be governed by and construed in accordance with the laws of India and subject to this Article 25.1, the courts at New Delhi alone shall have exclusive jurisdiction on matters pertaining to or arising from this Agreement.
- 25.2 **Compliance to regulations and bye-laws:** The Lessee and the Sub-Contractor appointed or hired by the Lessee shall at all times during the Term of the Agreement conform to the provision of all Applicable Laws relating to the Project and regulations and bye- laws of any local authority and of any water and lighting companies or undertakings, with whose system the work is proposed to be connected and shall before making any variation from the Drawings or the specifications that may be necessitated by so confirming, give to the Nodal Officer notice specifying the variation proposed to be made and the reason for making the variation and shall not carry out such variation until he has received instructions from the Nodal Officer in respect thereof. The Lessee shall be bound to give all notices required by statute, regulations or bye-laws as aforesaid and to pay all fees and taxes payable to any authority in respect thereof.
- 25.3 **Illegal Gratification:**
- 25.3.1 Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Lessee or his partner, agent or servant or, anyone on his behalf, to any officer or employee of RLDA, or to any person on his behalf in relation to obtaining or execution of this or any other contract with RLDA shall, in addition to any criminal liability which it may incur, subject the Lessee to the rescission of the Agreement.
- 25.3.2 The Lessee shall not lend or borrow from or have or enter into any monetary dealings or transactions either directly or indirectly with any employee of RLDA and if he shall do so, RLDA shall be entitled forthwith to rescind the Agreement. Any question or dispute as to the commission or any such offence under this clause shall be settled by the Vice Chairman of RLDA, in such a manner as he shall consider fit and sufficient and his decision shall be final and conclusive. In the event of rescission of the Agreement under this clause, the Lessee will not be paid any compensation and any Security Deposit/Performance Guarantee will be forfeited.
- 25.4 **Communications & Service of Notices:**
- 25.4.1 All notices, communications, reference and complaints made by RLDA or the Nodal Officer or the Nodal Officer's Representative or the Lessee interest concerning the Project shall be in writing.
- 25.4.2 The Lessee shall furnish to the Nodal officer the name, designation and address of his authorised agent whom all complaints, notices, communications and references shall be



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25.4.3 All notices, communications, reference and complaints shall be sent through Registered Post, Speed Post or shall be delivered personally in hand and shall deemed to have been (unless there is evidence that it has been received earlier) received within 3 (Three) business days of the same being sent through Registered Post, Speed Post or on the same day if delivered personally by hand during the normal business hours of the Party to whom such notice or communication is being delivered. In addition, the notice shall also be sent by facsimile and email.

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

- Attention: [ ]
- Address:
- E mail: [ ]
- Facsimile: [ ]

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

25.6 **Agreement to Override Other Agreements:** The Agreement supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto. This Agreement, GCLA, SCLA, Schedules, Annexures, LOA and the Bid Documents together constitute a complete and exclusive understanding of the terms of the Lease Agreement between the Parties on the subject hereof.

25.7 **No Waiver; Remedies:** No failure on the part of any Party to exercise and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other of further exercise thereof or the exercise of any other right, power or privilege.

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

25.9 **Language:** All notices, certificates, correspondence or other communications under or in connection with the Agreement, any other Project documents or the Project shall be in English.

25.10 **Counterparts:** This Agreement is made in 3 (three) original copies, each having the same contents and the Parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses. All counterparts shall constitute one and the same Agreement.



Part II General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

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- 25.11 Assignment**
- 25.11.1** Save and except otherwise permitted by the Agreement, Lessee shall not assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities under the Agreement.
- 25.11.2** RLDA shall have the unilateral right to assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities (including those relating to arbitration) under the Agreement to any entity.
- 25.12 Survival**
- Article 17 shall continue to bind the Parties notwithstanding the termination or expiry of the Agreement.
- 25.13 Costs and Expenses**
- Each Party shall bear its own costs (and expenses, including without limitation any fees payable to its advisors) in connection with the negotiation, preparation and execution of the Agreement. Provided that all the taxes including the stamp duty and registration charges with respect to the Agreement shall be borne by the Lessee. The Parties expressly agree that it shall be the responsibility of the Lessee to comply with the requirements in relation to the registration of the Agreement with any relevant Government Authority.
- 25.14 No Agency**
- The Parties agree that nothing in the Agreement shall be in any manner, interpreted to constitute an agency or partnership for and on behalf of any other Party and the relationship between the Parties is as a principal to principal and on an arm's length basis. Except as otherwise expressly agreed to, nothing contained herein shall confer on any Party to incur any obligation or liability on behalf of the other Party or bind the other.
- 25.15 Third Party Benefit**
- Nothing herein expressed or implied is intended, nor shall it be construed to confer upon or give to any third party any right, remedy or claim under or by reason of this Lease Agreement or any part hereof.
- 25.16 Exclusion of Implied Warranties etc.:** The Agreement expressly excludes any warranty, representation, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.
- 25.17 Joint and Several Liability:** The Selected Bidder and the Lessee shall be jointly and severally liable for the performance under the Agreement till the later of:
- 25.17.1 one year after the Completion Date
- 25.17.2 payment of all instalments including the interest thereon towards the Lease Premium.
- 25.18 Modification to Agreement to be in writing:** In the event of any of the provisions of the Agreement requiring to be modified after the Agreement have been signed, the modifications shall be made in writing and signed by RLDA and the Lessee. Any verbal or written arrangement abandoning, modifying, extending, reducing or supplementing the Agreement or any of the terms thereof shall be deemed invalid and



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shall not be binding on RLDA unless and until the same is incorporated in a formal instrument and signed by RLDA and the Lessee.

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Shalimar Skyline Private Limited

Authorized Signatory

Part -II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

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# ANNEXURES



Shalimar Skyline Private Limited

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Part - II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

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ANNEXURE - AESCROW AGREEMENT

This Escrow Agreement dated this [ ] day of [ ] 20XX is entered into at \_\_\_\_\_

BY AND BETWEEN:

1. [insert name of the Lessee], a company incorporated under the Companies Act, 1956 and having its registered office at [insert address] (hereinafter referred to as the "Lessee", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors, liquidators and permitted assigns) of the **FIRST PART**.
2. [insert name and particulars of Lenders' Representative], and having its registered office at [insert address] acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Escrow Agreement (hereinafter referred to as the "Lenders' Representative" which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and substitutes); of the **SECOND PART**
3. [Insert name and particulars of the Escrow Bank] and having its registered office at [insert address] (hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and substitutes); of the **THIRD PART** and
4. Rail Land Development Authority, a statutory authority constituted under the Railways (Amendment) Act, 2005 (No 47 of 2005) (hereinafter referred to as "RLDA", having its office at \_\_\_\_\_ which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and assigns) of the **FOURTH PART**

Lessee, Lenders' Representative, Escrow Bank and RLDA shall hereinafter individually be referred to as "Party" and collectively as "Parties".

**WHEREAS**

- A. RLDA has entered into a Lease Agreement dated [insert date] with the Lessee (the "Lease Agreement") for the conceptualizing, designing, financing, construction, marketing, Leasing/Licensing, operating and maintaining of the Project a copy of which is annexed hereto and marked as Annexure-A to form part of this Escrow Agreement.
- B. The Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Lease Agreement requires the Lessee to establish Escrow Account (hereinafter referred to as the "Escrow Account") inter-alia, on the terms and conditions stated therein.

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Escrow Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties with the intent to be legally bound, hereby agree as follows.



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JGM (F)

JGM (LAW)

Shalimar Skyline Private Limited

Authorised Signatory

Part-II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

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**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

"**Cure Period**" means the period specified in this Escrow Agreement for curing any breach or default of any provision of this Escrow Agreement by the Lessee, and shall commence from the date on which a notice is delivered by RLDA or the Lenders' Representative, as the case may be, to the Lessee asking the latter to cure the breach or default specified in such notice;

"**Lease Agreement**" means the Lease Agreement referred to in Recital (A) above and annexed hereto as Annexure-A;

"**Escrow Account**" means the Escrow Account as mentioned in Recital C hereto and established in terms of and under this Escrow Agreement and shall include the Sub-Accounts;

"**Escrow Default**" shall have the meaning ascribed thereto in Article 6.1;

"**Lenders' Representative**" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"**Payment Date**" means, in relation to any payment specified in Articles 4.1 and 4.2, the date(s) specified for such payment;

"**Payment Period**" shall refer to mean the period commencing from the date of the execution of the Lease Agreement till the date all the amounts due and payable to RLDA by the Lessee is paid in accordance with the provisions of the Lease Agreement;

"**Reserve Sub Account/ Retention Account** shall have the meaning ascribed to it in Article 4.1.1 (viii); and,

"**Sub-Accounts**" means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Article 4.1 would be credited every month and paid out if due, and if not due in a month, then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the respective payment date(s).

**1.2 Interpretation**

1.2.1 In this Escrow Agreement, unless the context otherwise requires, references to Lenders' Representative shall mean references to the Lenders' Representative, acting for and on behalf of Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Escrow Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Escrow Agreement and not defined herein but defined in the Lease Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Lease Agreement.

1.2.3 References to Articles are, unless stated otherwise, references to Articles of this Escrow Agreement.

1.2.4 The rules of interpretation stated in Article 1.2 of the General Conditions of Lease Agreement shall apply, *mutatis mutandis*, to this Escrow Agreement.

Shalimar Skyline Private Limited

**ARTICLE II**  
**ESCROW ACCOUNT**

**2.1 Escrow Bank to act as Trustee**

2.1.1 The Lessee hereby appoints the Escrow Bank to act as trustee for RLDA, the Lenders' Representative and the Lessee collectively in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and

*Signature*  
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discretion as are reasonably incidental and/or ancillary thereto, also to perform and undertake such obligations as set out in this Escrow Agreement and the Escrow Bank accepts such appointment pursuant to the terms hereof.

- 2.1.2 The Lessee hereby declares that all rights, title and interest in and to the Escrow Accounts shall be vested in the Escrow Bank, which shall hold the same in trust for RLDA, the Lenders' Representative and the Lessee collectively, and applied in accordance with the terms of this Escrow Agreement. No person other than RLDA, the Lenders' Representative and the Lessee, shall have any rights and/or interests as the beneficiaries of or third party beneficiaries under this Escrow Agreement.

## 2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all the payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Escrow Agreement. The Escrow Bank shall hold and safeguard the Escrow Accounts during the term of this Escrow Agreement and shall treat the amount in the Escrow Accounts as monies deposited by the Lessee, the Lenders and RLDA with the Escrow Bank. In performing its functions, obligations and duties under this Escrow Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, RLDA, the Lenders' Representative and the Lessee or their nominees, successors or assigns, in accordance with the provisions of this Escrow Agreement.

## 2.3 Establishment and operation of the Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Escrow Agreement, and in any case prior to the Appointed Date, the Lessee shall open and operate the Escrow Accounts with the \_\_\_\_\_ (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Indian Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Accounts in accordance with the terms of this Escrow Agreement, and/or its usual practices, Applicable Laws and pay the maximum rate of interest payable to similar customers on the balance in the said accounts from time to time.
- 2.3.3 The Escrow Bank and the Lessee shall, after consultation with RLDA and the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Accounts, but in the event of any conflict or inconsistency between this Escrow Agreement and such mandates, terms and conditions, or procedures, this Escrow Agreement shall prevail.

## 2.4 Escrow Bank's fee

In consideration of exercise of the rights, powers, authorities, discretion and performance of obligations, the Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Lessee. For the avoidance of doubt, such fee and expenses shall form part of the Operation & Maintenance Expenses (as defined in the Lease Agreement) and shall be appropriated from the Escrow Account in accordance with Articles 4.1 and 4.2.

## 2.5 Right of the Parties

The rights of RLDA, the Lenders' Representative and the Lessee in the monies held in the Escrow Account are set forth in their entirety in this Escrow Agreement and RLDA, the Lenders' Representative and the Lessee shall have no other rights against or to the monies in the Escrow Accounts.

## 2.6 Substitution of the Lessee

The Parties hereto acknowledge and agree that upon Substitution of the Lessee with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Escrow Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and



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obligations of the Lessee under this Escrow Agreement on and with effect from the date of substitution of the Lessee with the Nominated Company.

**ARTICLE III**  
**DEPOSITS INTO ESCROW ACCOUNTS**

**3.1 Deposits by the Lessee**

3.1.1 The Lessee agrees and undertakes that it shall deposit or cause to be deposited into and/or credit the Escrow Account during the Term hereof with:

- (a) all funds received by the Lessee from its shareholders, in any manner or form;
- (b) all monies received in relation to the Project from any source, including the lenders, lenders of the Subordinated Debt and RLDA;
- (c) all monies received in relation to the Project Revenues and other revenues;
- (d) all proceeds received pursuant to any insurance claims with respect to the Project;
- (e) all money received by the Lessee (and not by RLDA) by way of transfer fee towards charges in respect of transfer of sub-lease; and
- (f) any Other Revenues and/or receipts in respect of the Project.

3.1.2 Provided that, it is expressly agreed by and between the Parties that 75% (seventy five percent) of all amounts received as Project Revenues and other revenues during the Term of the Lease Agreement shall be directly deposited to the Sub-Account for payment of the Lease Premium, Annual Lease Rent and such other Consideration till all such payments are fully paid to RLDA. The Lessee shall, at any time, during the subsistence of this Escrow Agreement, make deposits of its equity and other funds including Subordinated Debt into the Escrow Account and that the provisions of this Escrow Agreement shall apply to all such deposits. In case of invoking of a Bank Guarantee for any of the Subsequent Instalments or Security Deposit for Annual Lease Rent by RLDA due to the payment default by the Lessee, money realized from such proceeds shall be deemed to have been received in the Escrow Account from the Lessee through interest free Subordinate Debt and to have been paid to RLDA towards Lease Premium.

**3.2 Deposits by RLDA**

RLDA agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with Termination Payment due to the Lessee in accordance with the Lease Agreement. Provided that RLDA shall be entitled to appropriate, from the aforesaid amounts, all outstanding amounts (including the Annual Lease Rent and damages for termination) due and payable to it by the Lessee and the balance remaining shall be deposited into the Escrow Account.

**3.3 Deposits by Lenders**

The Lenders' Representative shall ensure through the Escrow Agreement that the Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to and/or in respect of the Project; provided that notwithstanding anything to the contrary contained in the Escrow Agreement, the Lenders shall be entitled to ask the Escrow Bank to directly credit its monies to a Sub-Account for payments to the Sub-Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements. Skyline Private Limited

**3.4 Interest on deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the credit balances on the respective Escrow Accounts shall be credited to the Escrow Accounts; provided that the Escrow Bank shall be entitled to appropriate therefrom, the fee and expenses due to it from the Lessee in relation to the Escrow Accounts and credit the balance amount to the Escrow Account. Signature



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**ARTICLE IV**  
**WITHDRAWALS FROM ESCROW ACCOUNTS**

**4.1 Withdrawals during the Construction Period**

It is expressly agreed between the Parties hereto that during the Construction Period, at the beginning of every month, or at such shorter intervals as the Lenders' Representative, the Lessee and RLDA may, by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the payment date(s):

- (i) all Taxes due and payable by the Lessee in relation to this Project;
- (ii) all payments towards repayment or refund of monies to third parties and as certified by RLDA in relation to this Project;
- (iii) all payments due to RLDA towards Lease Premium, Annual Lease Rent and/or liquidated damages;
- (iv) all payments to Sub Contractors relating to the Project and on the construction of the Assets and Project Utilities subject to and in accordance with the Financial Model and the conditions, if any, set forth in the Financing Agreements and the ceilings set forth in the Financing Agreements;
- (v) expenses and other cost incurred by the RLDA in terms of the Lease Agreement and certified by RLDA as due and payable to RLDA, including any claims or demands in connection with or arising out of Lessee's Event of Default;
- (vi) all direct administrative expenses of the Lessee on the construction of the Assets and Project Utilities subject to and in accordance with the Financial Model and the conditions, if any, set forth in the Financing Agreements and the ceilings set forth in the Financing Agreements;
- (vii) debt service in respect to the loans granted under the Financing Agreement provided full amount of the Lease Premium has already been paid to RLDA; and,
- (viii) credit the balance, if any to a Reserve Sub Account/ Retention Account created for the said purpose.

Provided that the monies held to the credit of the Reserve Sub Account/Retention Account shall be appropriated in the same order as provided in this Article on the next date of withdrawal from the Escrow Account or as may be directed by RLDA

Provided that notwithstanding anything contained to the contrary in the Lease Agreement, in the event of a payment default, RLDA shall be entitled to withdraw all the funds held to the credit of the Escrow Account including the Reserve Sub-Account/ Retention Account and the order of withdrawal/ disbursement as provided for in the first proviso to this Article 4.1 hereinabove shall only be restored upon the cessation of the Payment Default.

Further provided that notwithstanding anything to the contrary contained in this Lease Agreement, any instructions given by RLDA to the Escrow Bank during the subsistence of Payment Default shall be strictly complied with and adhered to unconditionally.

Explanation: For the avoidance of any doubt, it is clarified that in relation to this Escrow Agreement, the term "direct expenses" shall mean expenses towards materials and labour that relate directly to (i) design, finance, construction, development, marketing, operation and maintenance and commercial use of the Assets and Project Utilities by the Lessee during the Term; (ii) demanding, charging, collecting, retaining and revision of the Sub-Lease rentals as per the prevailing market rates to the Sub-Lessees and does not include any indirect expenses and the term "direct administrative expenses" shall mean such expenses of office and accounts related to the Project under the Lease Agreement.



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#### 4.2 Withdrawals after Completion Certificate

It is expressly agreed between the Parties hereto that after the issue of Completion Certificate by RLDA and during currency of the Term, at the beginning of every month, or at such shorter intervals as the Lenders' Representative, the Lessee and RLDA may, by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the payment date(s):

- (i) all Taxes due and payable by the Lessee;
- (ii) all payments towards repayment or refund of monies to third parties and as certified by RLDA;
- (iii) all payments due to RLDA towards Additional Lease Premium, Annual Lease Rent and Liquidated Damages;
- (iv) all payments to Sub Contractors relating to incurred or accrued O&M Expenses on the Assets and Project Utilities subject to and in accordance with the Financial Model and the conditions, if any, set forth in the Financing Agreements and the ceilings set forth in the Financing Agreements;
- (v) expenses and other cost incurred by the RLDA in accordance with the provisions of this Lease Agreement, and certified by RLDA as due and payable to RLDA including any claims in connection with or arising out of Lessee's Event of Default;
- (vi) all direct administrative expenses of the on the operation and maintenance of the Assets and Project Utilities subject to and in accordance with the Financial Model and the conditions, if any, set forth in the Financing Agreements and the ceilings set forth in the Financing Agreements;
- (vii) debt service in respect to the loans granted under the Financing Agreement;
- (viii) all direct administrative expenses of the Lessee on the operation and maintenance of the Assets and Project Utilities subject to and in accordance with the Financial Model and the conditions, if any, set forth in the Financing Agreements and the ceilings set forth in the Financing Agreements;
- (ix) sinking fund for replacement and major repair reserve subject to and in accordance with the Maintenance and Replacement Plan duly approved by RLDA;
- (x) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (xi) any reserve requirements to be credited to the Reserve Sub-Account set forth in the Financing Agreements; and
- (xii) Distributions, or balance if any, in accordance with the instructions of the Lessee.

4.3 Not later than 60 (sixty) days prior to the commencement of each Accounting Year, the Lessee shall provide to the Escrow Bank, with prior written approval of RLDA and the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations as set forth in Article 4.1 and Article 4.2; provided that such amounts may be subsequently modified, with prior written approval of RLDA and the Lenders' Representative, if such modification becomes necessary, due to or on account of any fresh information received during the course of the year.

#### 4.4 Withdrawals during Cure Period and Substitution Process

On receipt of the Notice of Intention to Terminate from RLDA, the Escrow Bank shall stop payment from respective Sub-Accounts for items specified at (vi) to (vii) of Article 4.1 and (vi) to (xii) of Article 4.2 except as specifically directed by RLDA till further instruction of RLDA.

#### 4.5 Withdrawals upon Termination

Upon Termination of the Lease Agreement, all amounts standing to the credit of the Escrow Accounts shall, notwithstanding anything in the Lease Agreement, be appropriated and dealt with solely by the written instruction of RLDA in the following order:



- (a) outstanding amounts payable to RLDA;
- (b) all taxes due and payable by the Lessee in relation to this Project;
- (c) all payments and damages certified by RLDA as due and payable to it by the Lessee pursuant to the Lease Agreement, including any claims or demands in connection with or arising out of termination of the Lease Agreement;
- (d) incurred or accrued Operation & Maintenance Expenses on the Assets and Project Utilities;
- (e) any other payments required to be made under the Lease Agreement;
- (f) outstanding debt service including the balance of Debt Due;
- (g) outstanding Subordinated Debt; and
- (h) balance, if any, in accordance with the instructions of the Lessee.

Provided that the provisions of this Article IV and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in this Clause 4.5 have been fully discharged.

#### 4.6 Application of insufficient funds

Funds in the Escrow Accounts shall be applied in the serial order of priority set forth in Clauses 4.1, 4.2, and 4.5 as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until the complete exhaustion thereof.

#### 4.7 Application of insurance proceeds

Notwithstanding anything in this Escrow Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Assets, Project Utilities, Redevelopment Assets and Redevelopment Land the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### 4.8 Withdrawals for Pre-payment of Lease Premium

It is expressly agreed by and between the Parties that the amount lying in the Sub-Account for payment towards Lease Premium specifically due to direct crediting of the 75% (seventy five percent) of all amounts received by the Lessee from the Project Revenues and other revenues during the Term shall be withdrawn and appropriated every month by RLDA from the Escrow Account towards pre-payment of subsequent instalments of Lease Premium till all the payments against such subsequent instalments are fully paid to RLDA.

### ARTICLE V

#### OBLIGATIONS OF THE ESCROW BANK

##### 5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Escrow Agreement shall, until used or applied in accordance with this Escrow Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

##### 5.2 Notification of balance

7 (seven) business days prior to each payment date (and for this purpose, the Escrow Bank shall be entitled to rely on an affirmation by RLDA and/or the Lessee and/or the Lenders' Representative as to the relevant payment dates), the Escrow Bank shall notify the Lenders' Representative and RLDA of the balances, in aggregate, in the Escrow Account and Sub Accounts as at the close of business on the immediately preceding Business Day.

##### 5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank.



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JGM (LAW)

Signature of Private Limited  
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- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Lessee upon a certificate signed by or on behalf of the Lessee;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to RLDA and the Lenders' Representative of any notice or document or communication received by it in its capacity as the Escrow Bank from the Lessee or any other person in terms of the Lease Agreement or in connection herewith; and,
- (d) shall, within 5 (five) Business Days after, receipt, deliver a copy to the Lessee of any notice or document or communication received by it from RLDA and the Lenders' Representative in connection herewith.

#### 5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Accounts. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Accounts shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

#### 5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Accounts and shall comply with all Applicable Law in this regard. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

### ARTICLE VI

#### ESCROW DEFAULT

#### 6.1 Escrow Default

6.1.1 The following events shall constitute an event of default of by the Lessee (an "Escrow Default") unless such event of default has occurred as a result of a Force Majeure Event or any act or omission of RLDA or the Lenders' Representative:

- (a) the Lessee commits breach of this Escrow Agreement by failing to deposit any receipts into the Escrow Accounts as provided herein and fails to cure such breach by depositing the same into the Escrow Accounts within a Cure Period of 5 (five) Business Days;
- (b) the Lessee causes the Escrow Bank to transfer funds to any account of the Lessee in breach of the terms of this Escrow Agreement and the Lease Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Accounts or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) Business Days; or,
- (c) the Lessee commits or causes any other breach of the provisions of this Escrow Agreement and fails to cure the same within a Cure Period of 5 (five) Business Days.

6.1.2 An Escrow Default shall be considered as the Lessee's Event of Default and the consequences thereof shall be dealt with under and in accordance with the provisions of the Lease Agreement

Shalimar Skyline Private Limited

Authorised Signatory



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**ARTICLE VII****TERMINATION OF ESCROW AGREEMENT****7.1 Duration of the Escrow Agreement**

This Escrow Agreement shall remain in full force and effect till the occurrence of the last of the following events:

- (a) termination of the Lease Agreement or the amount available in the Escrow Account has been fully paid in accordance with this Escrow Agreement or till all the obligations of the Lessee to RLDA has been fully discharged pursuant to the Lease Agreement;
- (b) any sum remains to be advanced or is outstanding from the Lessee in respect of the debt, guarantee or financial assistance received by it from the Lender's;
- (c) the entire outstanding amount against the installments of Lease Premium plus interest has either been paid by the Lessee to RLDA or has been recovered by RLDA from the Escrow Account in terms of the Escrow Agreement;

unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Escrow Agreement.

- 7.2** The Lessee may, by not less than 45 (forty five) days prior notice to the Escrow Bank, RLDA and the Lenders' Representative, terminate this Escrow Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to RLDA and the Lenders' Representative and arrangements are made satisfactory to RLDA and the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Escrow Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

**7.3 Closure of Escrow Account**

The Escrow Bank shall, at the request of RLDA, the Lessee and the Lenders' Representative made on or after the payment by the Lessee of all outstanding amounts of Lease Premium under the Lease Agreement and the Financing Agreements including the payments specified in this Escrow Agreement, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts' and pay any amount standing to the credit thereof to the Lessee. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

**ARTICLE VIII****SUPPLEMENTARY ESCROW AGREEMENT**

- 8.1** The Lenders' Representative and the Lessee shall be entitled to enter into a supplementary escrow agreement ("**Supplementary Escrow Agreement**") with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts or the Escrow Account pursuant to Clause 4.1, 4.2 and 4.3 and for matters not covered under this Escrow Agreement such as the rights and obligations of Lenders investment of surplus funds, restrictions on withdrawals by the Lessee in the event of breach of this Escrow Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal there from, reporting requirements and any matters incidental thereto, provided that such Supplementary Escrow Agreement shall not contain any provision which is inconsistent with or contrary to the terms of this Escrow Agreement and in the event of any conflict or inconsistency between provisions of this Escrow Agreement and such Supplementary Escrow Agreement, the provisions of this Escrow Agreement shall prevail.

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(Amended on 26-03-2018)

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**ARTICLE IX**  
**INDEMNITY**

**9.1 General indemnity**

- 9.1.1 The Lessee hereby indemnifies and agrees and undertakes that it shall, at all times, defend and hold RLDA, the Escrow Bank and the Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense arising out of any breach by the Lessee of any of its obligations under this Escrow Agreement or on account of failure of the Lessee to comply with Applicable Laws and Applicable Permits.
- 9.1.2 RLDA hereby indemnifies and agrees and undertakes that it shall, at all times, defend and hold the Lessee harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of RLDA to fulfill any of its obligations under this Escrow Agreement materially and adversely affecting the performance of the Lessee's obligations under the Lease Agreement or this Agreement other than any loss, damage, cost and expenses, arising out of acts done in discharge of their lawful functions by RLDA, its officers, servants and agents.
- 9.1.3 The Escrow Bank hereby indemnifies and agrees and undertakes that it shall, at all times, defend and hold RLDA/ the Lessee harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfill its obligations under this Escrow Agreement including the failure materially and adversely affecting the performance of RLDA/ the Lessee's obligations under the Lease Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

**9.2 Notice and contest of claims/ demands**

In the event that any Party hereto receives claims or demands from a third party in respect of which it is entitled to the benefit of an indemnity under Article 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and/or shall not settle or pay the claim/ demand without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and at its (Indemnifying Party's) risk, costs and expense. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

**ARTICLE X**  
**DISPUTE RESOLUTION**

**10.1 Disputes - Amicable Settlement**

The Parties shall use their respective reasonable endeavours to settle any dispute amicably. If a dispute is not resolved within sixty (60) days after written notice of a Dispute by one Party to the other Party then the provisions of Article 10.2 shall apply.

**10.2 Dispute resolution**

- 10.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Escrow Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 10.3.
- 10.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Escrow Agreement promptly, equitably and in good faith, and further agree to provide



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each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### 10.3 Conciliation

In the event of any Dispute between the Parties, the Lessee and/or the Lenders' Representative and/or the Escrow Bank may call upon Vice-Chairman of RLDA, and RLDA shall call upon the Lessee, the Lenders' Representative and the Escrow Bank for amicable settlement, and upon such reference the Vice-Chairman, RLDA shall refer the Dispute to the Conciliation Committee of RLDA, which Conciliation Committee shall be fully empowered to deal with all aspects of such reference including withdrawal, compromise or settlement of such Dispute or any part thereof. Upon such reference, the representatives of the Lessee and members of RLDA's Conciliation Committee shall meet in not later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Article 10.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 10.4.

### 10.4 Arbitration

- 10.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Article 10.3, shall be finally decided by reference to arbitration by arbitrator(s) to be appointed by Vice Chairman, RLDA in accordance with the arbitration rules specified in the Lease Agreement and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The governing law of the arbitration shall be the laws of India. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 10.4.2 A notice of the intent ("**Notice of Intent**") to refer the dispute to arbitration may be given by one or more Parties (the "**Claimant(s)**") to one or all Parties (the "**Respondent(s)**"). There shall be a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board.
- 10.4.3 The arbitrator(s) shall make a reasoned award (the "**Award**"). Any such Award made in any arbitration held pursuant to this Article X shall be final and binding on the Parties as from the date it is made, and the Parties hereto agree and undertake to obey and implement such Award without delay.
- 10.4.4 The Parties hereto agree that an Award may be enforced against any of the Parties hereto, as the case may be, and their respective assets wherever situated.
- 10.4.5 This Escrow Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder, except for any obligation of RLDA, which shall automatically cease and come to an end upon the expiry or Termination of the Lease Agreement or this Escrow Agreement.
- 10.4.6 This Article X shall survive the termination or expiry of this Escrow Agreement.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

#### 11.1 Governing law and jurisdiction

This Escrow Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to this Article XI and Article X, the Courts at Delhi alone shall have exclusive jurisdiction over all matters arising out of or relating to this Escrow Agreement.

#### 11.2 Waiver of Sovereign Immunity

RLDA unconditionally and irrevocably:

Part - B - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)



DGM (P-I)

JGM (F)

JGM (LAW)

Authorised Signatory

Authorised Signatory

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

### 11.3 Priority of agreements

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

### 11.4 Alteration of terms

All additions, amendments, modifications and variations to this Escrow Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

### 11.5 Waiver

#### 11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Escrow Agreement:

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

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Escrow Agreement or any obligation there under nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### 11.6 No third party beneficiaries

This Escrow Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

### 11.7 Survival

#### 11.7.1 Termination of this Escrow Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and,
- (b) except as otherwise provided in any provision of this Escrow 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.



Part - II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26/05/2017)

DGM (P-I)

JGM (F)

JGM (LAW)

Shri. Jayashree Private Limited  
Authorised Signatory

**11.8 Severability**

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

**11.9 Successors and assigns**

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

**11.10 Notices**

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

- (i) In the case of RLDA, to: Attention: [ ]

Add:

E mail: [ ]

Facsimile: [ ]

**NOTE: RLDA to please fill in.**

- (ii) In the case of notices to Lessee, to: Attention: [ ]

Add:

E mail: [ ]

Facsimile: [ ]

**NOTE: RLDA to please fill in.**

- (iii) In the case of Lenders' Representative, to: Attention: [ ]

Add:

E mail: [ ]

Facsimile: [ ]

**NOTE: RLDA to please fill in.**

- (iv) In the case of Escrow Bank, to: Attention: [ ]

Add:

E mail: [ ]

Facsimile: [ ]

**NOTE: RLDA to please fill in.**

or at such other address as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified the Party giving the same in the manner provided in this Clause 11.10, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Clause 11.10 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

- (i) Sent by registered post, 3 (Three) Business Days after posting it; and



Part II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

Chalimar Skyline Private Limited

Authorised Signatory

DGM (P-I)

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JGM (LAW)

(ii) Sent by facsimile or e-mail, on the next Business Day, when confirmation of its transmission has been recorded by the sender's facsimile machine or e-mail account.

11.11 Language

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

11.12 Authorized Representative

Each of the Parties shall, by notice in writing, designate their respective authorized representatives through whom only all communications will be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

11.13 Original Document

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

IN WITNESS WHEREOF this Escrow Agreement has been executed by the duly authorized representatives of the Parties hereto at the place and date first above written.

For and on behalf of Rail Land Development Authority

BY: \_\_\_\_\_  
Name:  
Designation  
Address  
Fax No.

For and on behalf of [insert name of the Lessee]

BY: \_\_\_\_\_  
Name:  
Designation  
Address  
Fax No.

For and on behalf of [insert name of the Escrow Bank]

BY: \_\_\_\_\_  
Name:  
Designation  
Address  
Fax No.

For and on behalf of [insert name of the Lenders' Representative]



Shalimar Skyline Private Limited  
Authorised Signatory



DGM (P-1)

JGM (F)

JGM (LAW)

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

Name:

Designation

Address

Fax No.

1. Witness

2. Witness

Shalimar Skyline Private Limited

Authorized Signatory



Part-II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

DGM (P-I)

JGM (F)

JGM (LAW)

**Annexure - B****SUBSTITUTION AGREEMENT**

This Substitution Agreement (hereinafter referred to as "Substitution Agreement") is entered into on this the [ ] day of [ ], 2011

**AMONGST**

1. Rail Land Development Authority, a statutory authority constituted under the Railways (Amendment) Act, 2005 (No 47 of 2005) and having its principal office at \_\_\_\_\_ (hereinafter referred to as "RLDA", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and assigns) of the **FIRST PART**; and,
2. [insert], a company incorporated under the Companies Act, 1956 as a Special Purpose Company for implementing the Project and having its registered office at [insert] (hereinafter referred to as "Lessee", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors, liquidators and permitted assigns) of the **SECOND PART**; and,
3. [insert name and particulars of Lenders' Representative] [description about incorporation] and having its registered office at [insert], acting for and on behalf of the Lenders listed in Schedule 1 hereto as their duly authorised agent with regard to matters arising out of or in relation to the Substitution Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and substitutes) of the **THIRD PART**.


**WHEREAS:**

- (A) RLDA has entered into a Lease Agreement dated [ ] with the Lessee (the "**Lease Agreement**"), whereby RLDA has granted the Lessee in terms of the Lease Agreement the right to undertake the Project upon the Site (and the Redevelopment Land, if any) as defined in the Lease Agreement annexed hereto, as **Schedule I**.
- (B) As per the provisions of the Lease Agreement, it is agreed by and between RLDA and the Lessee that RLDA shall grant leasehold rights of the Site to the Lessee in accordance with the Lease Agreement. The Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the respective Financing Agreements.
- (C) The Lenders have requested RLDA to enter into the Substitution Agreement for securing their interests through assignment, transfer of the lease rights ('Grant') and substitution of the Lessee by a Nominated Company in accordance with the provisions of the Substitution Agreement and the Lease Agreement.
- (D) In order to enable implementation of the Project including its financing and construction, RLDA has agreed and undertaken to transfer and assign the Grant to a Nominated Company in accordance with the terms and conditions set forth in the Substitution Agreement and the Lease Agreement.
- (E) As a condition to making any disbursement pursuant to the financing documents the Lenders have required the execution of this Substitution Agreement and it is deemed necessary and expedient to record the terms and condition of the above Substitution Agreement between the Parties.


**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Substitution Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties, with the intent to be legally bound, hereby agree as follows:-

Part - II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-0

  
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JGM (LAW)

  
Authorised Signatory

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

"**Lease Agreement**" shall have the meaning ascribed to the term in the foregoing Recitals;

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

"**Claimant**" shall have the meaning ascribed to the term in Section 8.4.2 hereof;

"**Financial Default**" means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Lessee for 3 (three) months consecutively;

"**Lenders**" means financial institutions, banks, multilateral funding agencies, and similar bodies undertaking lending business or their trustees/agents including their successors and assignees, who have agreed to guarantee or provide finance to the Lessee under any of the Financing Agreements for meeting the costs of the Lessee in relation to the design, development and construction of the Assets;

"**Lenders' Representative**" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"**Lenders' Substitution Notice**" shall have the meaning ascribed to the term in Section 3.2.3;

"**Lenders' Substitution Representation**" shall have the meaning ascribed to the term in Section 3.3.2;

"**Nominated Company**" means a company, incorporated under the provisions of the Companies Act, 1956, selected in accordance with the provisions hereof by RLDA or the Lenders' Representative, on behalf of the Lenders, and proposed to RLDA for assignment/transfer of the Grant as provided in the Substitution Agreement;

"**Notice of Financial Default**" shall have the meaning ascribed thereto in Section 3.2.1;

"**Notice of Intent**" shall have the meaning ascribed to the term in Section 8.4.2;

"**Novation**" shall mean the process or the act of replacing the Lessee in any agreement or sub-contract in respect of the Project by another party such that the contract transferred by the novation process transfers all rights, duties and obligations from the Lessee, original obligor, to the new obligor.

"**Parties**" means the parties to the Substitution Agreement collectively and "Party" shall mean any of the Parties to the Substitution Agreement individually.

"**Respondent**" shall have the meaning ascribed to the term in Section 8.4.2;

"**Substitution**" is the process of replacement of a Nominated Company in place of the Lessee by undertaking the following activities:

(a) Grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into sub-contracts), under and in accordance with the terms and conditions set forth in the Lease Agreement and upon the execution of the Lease Deed, in accordance thereof, for the remainder of the Term, by the Novation of the Lease Agreement in favour of the Nominated Company;

(b) Grant, to the Nominated Company, the license rights or leasehold interest (as the case may be) over the Site together with the Assets and Project Utilities, all or any singular rights, liberties, privileges, easements and appurtenances whatsoever to



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the Site, for the remainder of the Term, by the Novation of the Lease Agreement in the event of execution of the same in favour of the Nominated Company;

- (c) Novation of the contracts and any other agreement needed to be novated for the purpose of implementing and operating the Project in accordance with the terms and conditions set forth in the Lease Agreement in the event of execution of the same, in favour of the Nominated Company;
- (d) The execution of a new Substitution Agreement with the Nominated Company for the remainder of the Term on the same terms and conditions hereof;
- (e) Transfer by the Lessee all its rights and obligations as provided in the Lease Agreement Lessee including possession of all Assets and Project Utilities of the Project to the Nominated Company;
- (f) Grant by RLDA to the Nominated Company of all approvals, clearances and permissions within RLDA's power and necessary for implementing and operating the Project, provided duly completed application in accordance with Applicable Law is submitted to RLDA; and
- (g) Transfer by the Lessee all sub-contracts, Letter of Allotments and sub-lease deeds including its rights and obligations thereof to the Nominated Company.

## 1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of the Lenders.
- 1.2.2 References to Articles are, unless stated otherwise, references to Articles of the Substitution Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in the Substitution Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in the Substitution Agreement and not defined herein but defined in the Lease Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Lease Agreement.
- 1.2.4 The rules of interpretation stated in Article 1 B of the Lease Agreement shall apply, *mutatis mutandis*, to the Substitution Agreement.

## ARTICLE II ASSIGNMENT

### 2.1 Assignment of rights and title

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

## ARTICLE III SUBSTITUTION OF THE LESSEE


### 3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Section 2.1, the Lenders' Representative shall be entitled to substitute the Lessee by a Nominated Company under and in accordance with the provisions of the Substitution Agreement and the Lease Agreement.
- 3.1.2 RLDA hereby agrees to substitute the Lessee by assignment of the Lease Agreement in favour of the Nominated Company selected by the Lenders' Representative or RLDA, as the case may be, in accordance with the Substitution Agreement. In the event the Nominated




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JGM (LAW)

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Company is selected by the Lenders' Representative, The Lenders' Representative has to obtain RLDA's prior approval for such substitution. (For the avoidance of doubt, the Lenders or the Lenders' Representative either individually or collectively, shall not be entitled to operate as the Lessee.

### 3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Lessee (the "Notice of Financial Default") along with particulars thereof, and send a copy to RLDA for its information and record. A Notice of Financial Default under this Article III shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Lessee for the purposes of the Substitution Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under the Substitution Agreement or the Financing Agreements, substitute the Lessee by a Nominated Company in accordance with the provisions of the Substitution Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may make a representation to RLDA, stating that it intends to substitute the Lessee by a Nominated Company ("Lenders' Substitution Notice"). The Lenders' Representative shall be entitled to undertake and complete the substitution of the Lessee by a Nominated Company in accordance with the provisions of the Substitution Agreement and the Lease Agreement within a period of 180 (one hundred and eighty) days from the date of Lenders' Substitution Notice, and RLDA shall withhold Termination due to any Lessee Event of Default for the aforesaid period of 180 (one hundred and eighty) days, and the Lessee shall continue to discharge its obligations thereunder for such period. Lenders' Representative shall forthwith send a copy of the aforesaid Lenders' Substitution Notice to the Escrow Bank and to the Lessee.

### 3.3 Substitution upon occurrence of Lessee Event of Default

3.3.1 Upon occurrence of a Lessee Event of Default, RLDA shall, by sending a copy of the Notice of Intention to Terminate to the Lenders' Representative, inform of its intention to terminate the Lease Agreement and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating its intention to substitute the Lessee by a Nominated Company.

3.3.2 In the event that the Lenders' Representative make a representation to RLDA within the period of 15 (fifteen) days specified in Section 3.3.1, stating that it intends to substitute the Lessee by a Nominated Company ("Lenders' Substitution Representation"), the Lenders' Representative shall be entitled to undertake and complete the substitution of the Lessee by a Nominated Company in accordance with the provisions of the Substitution Agreement and the Lease Agreement within a period of 180 (one hundred and eighty) days from the date of issue of Lenders' Substitution Representation, RLDA shall withhold Termination for the aforesaid period of 180 (one hundred and eighty) days, and the Lessee shall continue to discharge its obligations thereunder for such period. Lenders' Representative shall forthwith send a copy of the Lenders' Substitution Representation to the Lessee and the Escrow Bank, if applicable.

### 3.4 Procedure for substitution

3.4.1 RLDA and the Lessee hereby agree that on or after the date of Lenders' Substitution Notice under Clause 3.2.3 and/or Lenders' Substitution Representation Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders under the Financing Agreements, invite, competitive bids from the prospective parties for the take over and transfer of the Grant to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Lessee towards RLDA under the Lease Agreement and towards the Lenders under the Financing Agreements, subject to such Nominated Company conforming to the qualification criteria prescribed by RLDA at the time of selection of the Lessee.

3.4.2 The criteria for selection of the Nominated Company shall be a lump sum Substitution Premium to be paid upfront to RLDA by the selected party as consideration prior to execution of any agreement for the Project. The Substitution Premium shall be in addition to the Nominated Company agreeing to bear all the liabilities of the Lessee in terms of the Lease Agreement, Financing Agreement, Letter of Allotment/Sub-Lease Deeds and contracts with the Sub-contractors which shall include but not be limited to overdue and future payments towards taxes to be paid to the Government, repayment or refunds to third parties, instalments of Lease Premium (and interests thereof) to be paid to RLDA, Annual Lease Premium to be paid to RLDA, liquidated damages to be paid to RLDA, payment to Sub-



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JGM (LAW)

contractors relating to the Project, expenses incurred and claims by RLDA on the Project due to the Lessee's default in terms of the Lease Agreement to be paid to RLDA, servicing of Debt Due to the Lenders. Moreover as part of the condition of the bidding, the Nominated Company shall be required to deposit an additional minimum amount in the Escrow Account, if applicable, within 30 days of its appointment as the Nominated Company to clear all overdue amounts in respect of payments specified hereabove. The lump sum Substitution Premium may be either negative or positive depending on the perception of the concerned party of the rights and obligations in terms of the Lease Agreement, Lease Deed and Financing Agreements.

- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request RLDA to:
- transfer the Grant to the Nominated Company, on the same terms and conditions, for the remainder of the Term of the Lease Agreement; and
  - enter into a new Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in the Substitution Agreement.

- 3.4.4 If RLDA has any objection to the transfer of Grant in favour of the Nominated Company in accordance with the Substitution Agreement, it shall within a period of 30 (thirty) days from the date of receipt of proposal made by the Lenders' Representative, give a reasoned decision as regards the acceptability (or objection, as the case may be) of the Nominated Company. In the event the Nominated Company is acceptable to RLDA, RLDA shall transfer the Grant within 15 (fifteen) days of its acceptance of the Nominated Company; provided that in the event of an objection by RLDA, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Section 3.4 shall be followed for substitution of such Nominated Company in place of the Lessee.

Provided that it is expressly agreed between the Parties hereto that in any event the process of Substitution of the Lessee shall be completed within a period of 180 (one hundred and eighty ) days from the date of Lenders' Substitution Notice or Lenders' Substitution Representation.

**3.5 Selection to be binding**

- 3.5.1 The decision of RLDA in selection of the Nominated Company or the approval of the Nominated Company selected by the Lenders' Representative shall be final and binding on the Lessee and shall be deemed to have been made with the concurrence of the Lessee. The Lessee irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or RLDA taken pursuant to the Substitution Agreement including the transfer/assignment of the Grant in favour of the Nominated Company. It is hereby acknowledged by the Parties that the rights of RLDA and the Lenders' Representative are irrevocable and the Lessee shall have no right or remedy to prevent, obstruct or restrain RLDA or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Grant as requested by the Lenders' Representative or as undertaken by RLDA. No consultation, concurrence or approval with or of the Lessee will be required for such substitution.

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

**3.6 Substitution by Nominated Company in other agreements**

The Lessee shall ensure and procure that each agreement or contract it enters with any third party in relation to the Grant contains provisions that entitle the Nominated Company to step into such agreement, in its discretion, in place and substitution of the Lessee in the event of such Nominated Company's assumption of the liabilities and obligations of the Lessee under the Lease Agreement. The Nominated Company shall assume the rights and obligations of the Lessee in all such agreements and contracts including Letter of Allotments and Sub-Lease Deeds pursuant to its receiving the Grant from RLDA.

**3.7 Substitution by the Nominated Company in Escrow Agreement**

Pursuant to the Substitution, the Nominated Company shall substitute the Lessee in the Escrow Agreement, if applicable, and the Lessee shall have no rights whatsoever in respect of the amount outstanding in the Escrow Account at the time of the Substitution except as provided in Article V here under.



Part C-II - General Conditions of Lease Agreement of RLDA LDHB

Shalimar Skyline Private Limited

Authorised Signatory

(Amended)

DGM (P-I)

JGM (F)

JGM (LAW)

## ARTICLE IV

### LENDER'S REPRESENTATIVE'S FAILURE TO SUBSTITUTE

- 4.1 In the event that no company is nominated by the Lenders' Representative or the company selected by the Lenders' Representative in terms of Section 3.5 within the period of 180 (one hundred and eighty) days from the Lenders' Substitution Notice under Section 3.2.3 or the Lenders' Substitution Representation under Section 3.3.2, is not acceptable to RLDA, it shall be entitled to Substitute the Lessee or terminate the Lease Agreement.
- 4.2 Provided that notwithstanding anything contained to the contrary herein it is expressly agreed between RLDA and the Lenders' Representative that in the event RLDA substitutes the Lessee by a Nominated Company after the failure of the Lenders' Representative to Substitute the Lessee, the Lenders shall have to forgo 15% of the debt due and the Lenders shall restructure the debt obligations of the Lessee pursuant to the Financing Agreements and such Nominated Company selected by RLDA shall only be liable for 85% (eighty five percent only) of the debt due.

## ARTICLE V

### COMPENSTATION TO THE LESSEE PURSUANT TO SUBSTITUTION

- 5.1 The Lessee acknowledges and agrees that subsequent to the Substitution the Lessee shall suffer financial losses. The Lessee hereby indemnifies the Nominated Company, the Lenders' Representative and RLDA from any such losses due to the Substitution. Based on the amount of Substitution Premium offered by the selected party in terms of the Section 3.4.2, the Lessee shall be entitled to the payment described in this Article V as compensation towards their Substitution only if the Nominated Company has paid a positive Substitution Premium and deposited the required minimum amount in the Escrow Account, if applicable, toward the overdue payment liabilities specified in Section 3.4.2 hereabove.
- 5.2 If the Substitution Premium paid by the Nominated Company is positive, the Lessee shall be entitled to the full amount of Substitution Premium subject to such payment not exceeding the 85% of the total amount of Equity and Subordinated debt due as on the date of the Termination Notice through the Escrow Account, if applicable. It is clarified that the Lessee shall not be entitled to any return on Equity.
- 5.3 If the Substitution Premium paid by the Nominated Company is more than the maximum entitlements of the Lessee in terms of the Lease Agreement, the remaining amount shall be paid to RLDA.
- 5.4 If the Substitution Premium paid by the Nominated Company is less than the maximum entitlement of the Lessee in terms of the Lease Agreement, the Lessee shall be entitled to only the Substitution Premium paid by the Nominated Company.
- 5.5 If the Substitution Premium offered by the Nominated Company is negative, the resulting cost shall be borne by the Lenders and RLDA in the following manner:
- (i) If the Substitution is done by the Lenders' Representative, the entire cost shall be borne by the Lenders;
  - (ii) If the Substitution is done by RLDA, the cost shall be borne in the following order:
    - (a) The Lenders shall bear the cost up to an amount equal to the Debt Due by way of forgoing it to the extent of the entire Debt Due to that extent;
    - (b) RLDA shall bear the remaining cost, if such cost is not fully met through the provisions of the Sections 5.5(ii) (a) hereinaabove.

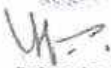
Provided the Nominated Company under the Substitution Agreement agrees to pay and makes the payment of all outstanding Installments of Lease Premium and that there is no shortfall in the payment to RLDA with respect to the terms and conditions of the Lease Agreement.

An Independent Auditor shall be appointed by RLDA or the Lender, as the case may be, for audit of the accounts of the Lessee for arriving at the payments due for refund




Part - II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 24-03-2014)

  
DGM (P-I)

  
JGM (F)

  
JGM (LAW)

to the Lessee as above. The cost of the independent auditor shall be deducted from the amount due for refund to the Lessee in terms of this Article V.

## ARTICLE VI

### DURATION OF THE AGREEMENT

#### 6.1 Duration of the Substitution Agreement

The Substitution Agreement shall come into force from the date hereof and shall expire with the Expiry of the Lease Agreement. However the rights and obligations of the Lenders shall cease to exist on the occurrence of the following events, whichever is earlier:

- (i) termination of the Financing Agreements; or
- (ii) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Agreements; or
- (iii) expiry of the Term of the Lease Agreement.

#### 6.2 Substitution by RLDA

RLDA's right of Substitution of the Lessee through the Substitution Agreement shall continue till the Expiry of the Lease Agreement even after Lenders cease to exist as Party to the Substitution Agreement in terms of the Section 6.1 hereabove.

## ARTICLE VII

### INDEMNITY

#### 7.1 General indemnity

7.1.1 The Lessee hereby indemnifies and agrees and undertakes to, at all times, indemnify, defend and hold RLDA and the Lenders' Representative harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Lessee of any of its obligations under the Substitution Agreement or the Lease Agreement on account of failure of the Lessee to comply with Applicable Laws and Applicable Permits.

7.1.2 RLDA hereby indemnifies and agrees and undertakes to, at all times, indemnify, defend and hold the Lenders' Representative harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense arising out of failure of RLDA to fulfil any of its material obligations under the Substitution Agreement, other than any loss, damage, cost and expense, arising out of lawful acts done in discharge of their functions by RLDA, its officers, servants and agents.

7.1.3 The Lenders' Representative hereby indemnifies and agrees and undertakes to, at all times, indemnify, defend and hold RLDA and the Lessee harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under the Substitution Agreement, materially and adversely affecting the performance of the Lessee's obligations or RLDA's obligation under the Lease Agreement or the Substitution Agreement, other than any loss, damage, cost and expense, arising out of lawful acts done in discharge of their functions by the Lenders' Representative, its officers, servants and agents.

#### 7.2 Notice and contest of claims

In the event that any Party hereto receives a claims or demands from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 6.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and/ or shall not settle or pay the claim/ demand without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and at its (Indemnifying Party's) risk, costs and expense. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.



Part-II - General Conditions of Lease Agreement of RLDA LDHIB

(Amended on 26-03-2014)

DGM (P-I)

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JGM (LAW)

## ARTICLE VIII

### DISPUTE RESOLUTION

#### 8.1 Disputes - Amicable Settlement

The Parties shall use their respective reasonable endeavours to settle any Dispute amicably. If a Dispute is not resolved within sixty (60) days after written notice of a Dispute by one Party to the other Party then the provisions of Clause 8.2 shall apply.

#### 8.2 Dispute Resolution

8.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to the Substitution Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Section 8.3.

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

#### 8.3 Conciliation

In the event of any Dispute between the Parties, the Lessee and/or the Lenders' Representative may call upon Vice-Chairman of RLDA and RLDA shall call upon the Lessee and the Lender's Representative for amicable settlement and upon such reference the Vice-Chairman, RLDA shall refer the Dispute to the conciliation committee of RLDA comprised of \_\_\_\_\_ and \_\_\_\_\_ ("Conciliation Committee") which committee shall be fully empowered to deal with all aspects of such reference including withdrawal, compromise or settlement of such Dispute or any part thereof. Upon such reference, the representatives of the Lessee, the Lenders' Representative and members of RLDA's Conciliation Committee, shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 8.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 8.4.

#### 8.4 Arbitration

8.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 8.3, shall be finally decided by reference to arbitration by arbitrator(s) to be appointed by Vice-Chairman, RLDA in accordance with the arbitration rules specified in the Lease Agreement and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The governing law of the arbitration shall be the laws of India. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

8.4.2 A notice of the intent ("Notice of Intent") to refer the dispute to arbitration may be given by one or more Parties (the "Claimant(s)") to the other Parties (the "Respondent(s)"). There shall be an Arbitral Tribunal consisting of three (3) arbitrators. Each Party shall be entitled to appoint one arbitrator to the Arbitral Tribunal.

8.4.3 The Arbitral Tribunal shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article VIII shall be final and binding on the Claimant(s) and Respondent(s) as from the date it is made, and the Lessee, Lenders' Representative and RLDA agree and undertake to obey and implement such Award without delay.

8.4.4 The Lessee, Lenders' Representative and RLDA agree that an Award may be enforced against the Lessee and/or Lenders' Representative and/or RLDA, as the case may be, and their respective assets wherever situated.

8.4.5 This Article VIII shall survive the termination or expiry of the Substitution Agreement.



Authorised Signatory

**8.5 Continued performance**

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

Notwithstanding anything contrary contained herein, all obligations of RLDA under this Substitution Agreement shall automatically come to an end upon the expiry or termination of the Lease Agreement and/or Substitution Agreement and RLDA shall not be obliged to perform such obligation during the pendency of any post-expiry or post-termination Dispute, whether referred to arbitration or not.

**ARTICLE IX****MISCELLANEOUS PROVISIONS****9.1 Governing law and jurisdiction**

The Substitution Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to Article IX and Article VIII, the Courts at Delhi alone shall have exclusive jurisdiction over all matters arising out of or relating to the Substitution Agreement.

**9.2 Priority of agreements**

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

**9.3 Alteration of terms**

All additions, amendments, modifications and variations to the Substitution Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

**9.4 Waiver****9.4.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under the Substitution Agreement:**

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

**9.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Substitution Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.****9.5 No third party beneficiaries**

The Substitution Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.


**9.6 Survival****9.6.1 Termination of the Substitution Agreement:**

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

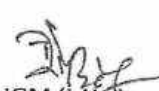
**9.7 Severability**

If for any reason whatever any provision of the Substitution Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other



  
DGM (P-I)

  
JGM (F)

  
JGM (LAW)

instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article VII of the Substitution Agreement or otherwise.

**9.8 Successors and assigns**

The Substitution Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

**9.9 Notices**

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

- (i) In the case of RLDA, to: Attention: [ ]

Add:

E mail: [ ]

Facsimile: [ ]

**NOTE: RLDA to please fill in.**

- (ii) In the case of notices to Lessee, to: Attention: [ ]

Add:

E mail: [ ]

Facsimile: [ ]

**NOTE: RLDA to please fill in.**

- (iii) In the case of notices to Lenders' Representative, to: Attention: [ ]

Add:

E mail: [ ]

Facsimile: [ ]

**NOTE: RLDA to please fill in.**

or at such other address as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified the Party giving the same in the manner provided in this Section, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Section 9.9 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

- (i) Sent by registered post, 3 (Three) Business Days after posting it; and  
 (ii) Sent by facsimile or e-mail, on the next Business Day, when confirmation of its transmission has been recorded by the sender's facsimile machine or e-mail account.

**9.10 Language**

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

**9.11 Authorised representatives**

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

**9.12 Original Document**

The Substitution Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of the Substitution Agreement.

IN WITNESS WHEREOF the Substitution Agreement has been executed by the duly authorized representatives of the Parties hereto at the place and on the date first above written.

SIGNED AND DELIVERED FOR AND ON BEHALF OF RAIL LAND DEVELOPMENT AUTHORITY

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

Name: \_\_\_\_\_



Authorised Signatory

DGM (P-I)

JGM (F)

JGM (LAW)

Title: \_\_\_\_\_

SIGNED AND DELIVERED FOR AND BEHALF OF *[insert name of Lessee]* DULY AUTHORISED  
VIDE RESOLUTION OF THE BOARD OF DIRECTORS

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SIGNED AND DELIVERED FOR AND ON BEHALF OF LENDERS' REPRESENTATIVE

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witnesses

1. Name: \_\_\_\_\_

Address: \_\_\_\_\_

2. Name: \_\_\_\_\_

Address: \_\_\_\_\_



Shalimar Skyline Private Limited

Authorized Signatory

Part - II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

*[Signature]*  
DGM (P-I)

*[Signature]*  
JGM (F)

*[Signature]*  
JGM (LAW)

Annexure – C

(FORM OF SUB LEASE DEED)



Shalimar Skyline Private Limited  
Authorised Signatory



Part 40 - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

DGM (P-I)

JGM (F)

JGM (LAW)

**SUB LEASE DEED**

**Between**

\_\_\_\_\_  
**(LESSEE")**

**AND**

\_\_\_\_\_  
**("SUB-LESSEE")**

Shalimar Skyline Private Limited

Authorized Signatory



Part - II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

DGM (P-I)

JGM (F)

JGM (LAW)

## SUB-LEASE DEED

This Sub-Lease Deed dated this [ ] day of [ ] 2011 is entered into at \_\_\_\_\_

BY AND BETWEEN:

1. [insert name of the Lessee], a company incorporated under the Companies Act, 1956 and having its registered office at [insert address] (hereinafter referred to as the "Lessee", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors, liquidators and permitted assigns) of the **FIRST PART**.
2. [insert name and particulars of Sub-Lessee], and having its registered office at [insert address] (hereinafter referred to as the "Sub-Lessee" which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and permitted assigns); of the **SECOND PART**

Lessee, Sub-Lessee shall hereinafter individually be referred to as "Party" and collectively as "Parties".

### WHEREAS

- A. RLDA has entered into a Lease Agreement dated [insert date] with the Lessee (the "Lease Agreement") for the conceptualizing, designing, financing, construction, marketing, Leasing/Licensing, operating and maintaining of [insert type of development] (hereinafter referred to as the "Project") at [insert location and town where site is situated] (hereinafter referred to as the "Site") a copy of which is annexed hereto and marked as Annexure-A to form part of this Sub-Lease Deed.
- B. The Lessee has completed the construction of the Project in terms of the Lease Agreement and has received Completion Certificate from the Nodal Officer of RLDA and has obtained all Applicable Permits for commencing occupation and use of the Assets and Project Utilities.
- C. The Lease Agreement permits the Lessee to market the Built Up Area in the Project Assets and sub-lease them to end users inter-alia, on the terms and conditions stated therein.
- D. The Sub-Lessee has perused all the documents pertaining to the Project and is aware of the Lessee's rights and obligations pursuant to the Lease Agreement.
- D. The Sub-Lessee has applied the Lessee expressing interest in taking Built Up Area in the Project Assets on sub-lease/rent/license and the Lessee has allotted provisionally such Built Up Area vide letter of allotment no. \_\_\_\_\_ dated \_\_\_\_\_ and/or agreed to sub-lease a Built Up Area measuring \_\_\_\_\_ Sq.m. more specifically described in Schedule 1 hereto (hereinafter referred to as the "Sub-Leased Area") (*strike whichever is not applicable*).

**NOW THEREFORE**, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Sub-Lease Deed and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties with the intent to be legally bound, hereby agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATIONS

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



Part - II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

DGM (P-I)

JGM (F)

JGM (LAW)

Shalmar Skyline Private Limited

Authorised Signatory

- i. "Sub-Leased Area" shall have the meaning ascribed to the term in Recital D.
  - ii. "Sub-Lease Effective Date" shall mean the date on which the last of the Parties hereto, executes this Sub-Lease Deed.
  - iii. "Sub-Lease Term" shall mean the duration of the sub-lease beginning from the Sub-Lease Effective Date until expiry of the sub-lease.
  - iv. "Party" or "Parties" shall have the meanings ascribed to the terms in the Recital to this Sub-Lease Deed.
- 1.2 The words and expressions beginning with or in capital letters used in this Sub-Lease Deed and not defined herein and defined in the Lease Agreement shall, unless repugnant to the context, have the meanings respectively assigned to them in Lease Agreement.
- 1.3 In this Sub-Lease Deed, unless the context otherwise requires, the rules of interpretation as specified in Clause 1.2 of the General Conditions of Lease Agreement shall apply. In case of any inconsistency between the provisions of this Sub-Lease Deed and the provisions of the Lease Agreement, the provision of Lease Agreement shall prevail.

**ARTICLE II**  
**GRANT OF SUB-LEASE**

- 2.1 As a part of and in consideration of entering into this Sub-Lease Deed, and the covenants and warranties on the part of the Sub-Lessee herein, the Lessee, in accordance with the terms and conditions set forth herein, hereby, offers the Sub-Leased Area, as described in Schedule 1, together with the common areas and inventory mentioned in Schedule 2, to the Sub-Lessee, commencing from the date hereof, on an "as is where is" basis, for the duration of the Sub-Lease Term for usage as are permitted under this Sub-Lease Deed.
- 2.2 The rights of the Sub-Lessee shall be only that of a user for the purposes specified in this Sub-Lease Deed and subject to terms and conditions as contained in the Lease Agreement.
- 2.3 The Sub-Lessee shall not have any right to make any structural changes in the Sub-Leased Area or to construct, erect, renovate, alter, or otherwise deal with the Sub-Leased Area except to carry out interior finishing works, partitions, furnishing and fittings to the extent necessary for its personal or business uses.
- 2.4 The Sub-Lessee shall at all times during the Sub-Lease Term keep the Sub-Leased Area in good and working condition and shall not damage or allow any damage by its visitors/customers/business clients either to the Sub-Leased Area or to the common areas in the Assets.

**ARTICLE III**

**USAGE**

- 3.0 The Sub Lessee hereby expressly covenants and agrees that, throughout the Sub-Lease Term, it shall use the Sub-Leased Area for the purpose of ..... only and for no other use and strictly in accordance with the terms and conditions of this Sub-Lease Deed and Lease Agreement.



Shalimar Skyline Homes Limited



Part - II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

*[Signature]*  
DGM (P-I)

*[Signature]*  
JGM (F)

*[Signature]*  
JGM (LAW)

**ARTICLE IV**  
**CONSIDERATION**

- 4.1 Grant of the sub-lease is subject to payment of an interest free and refundable security deposit equivalent to \_\_\_\_\_ months (specify number of months subject a maximum of 6 month sub-lease rent) prior to execution of this Sub-Lease Deed. The Sub-Lessee has already paid an amount of Rs. ....(Rupees .....only) vide \_\_\_\_\_ bank cheque no. \_\_\_\_\_ dated \_\_\_\_\_ to the Lessee. This security deposit shall be returned by the Lessee to the Sub-Lessee on expiry of the Sub-Lease Term or on termination of the Sub-Lease prior to the expiry, whichever is earlier, after return of physical possession of the vacant Sub-Leased Area by the Sub-Lessee to the Lessee, after making adjustments of all outstanding payments receivable by the Lessee from the Sub-Lessee.
- 4.2 In consideration for the grant of the sub-lease by the Lessee to the Sub-Lessee under this Sub-Lease Deed, the Sub-Lessee hereby agrees to pay to the Lessee a monthly sub-lease rent starting at Rs. .... (Rupees ..... only) in advance prior to the 7<sup>th</sup> day of every month throughout the Sub-Lease Term. The rent shall get increased by \_\_\_\_% (specify subject to minimum of 5) every calendar year on the 1<sup>st</sup> January.
- 4.3 The Sub lessee agrees to pay a monthly maintenance charge of Rs. ....(Rupees ....) towards the recurring expenditure in maintenance, security, utility services, lighting of common area etc. in respect of the Sub-Leased Area including the the Assets and Project Utilities. The monthly maintenance charges shall have to be paid by the Sub-Lessee in advance prior to the 7th day of every month. Based on the actual expenses in the previous year and likely increase in such expenses in the next year the Lessee shall determine in the month of November every year the monthly maintenance charge for the next calendar year beginning 1st January. The Sub-Lessee agrees to pay the increased monthly maintenance charges as may be determined by the Lessee, however it shall have right to examine the audited accounts of maintenance expenses of the Lessee to verify the reasonableness of such increase.
- 4.4 The Sub-Lessee has the option to pay upfront a maximum of \_\_\_\_% (specify percentage to comply with the requirements of the Lease Agreement) of the monthly rent specified at Article 4.2 above, for a part or full of the Sub-Lease Term by discounting future payments by 12% per year. Accordingly the Sub-Lessee has already paid Rs. ....(Rupees ....) as upfront rent for \_\_\_\_\_ months (specify number of months) vide \_\_\_\_\_ bank cheque no. \_\_\_\_\_ dated to the Lessee.
- 4.5 The Sub-Lessee agrees to pay through the Lessee a one-time non refundable fee at the rate of Rs. 100 per sq. m (the amount may be revised by RLDA every five year to account for inflation) of the Sub-Leased Area to RLDA. Accordingly the Sub-Lessee hereby submits a \_\_\_\_\_ bank cheque/demand draft no. \_\_\_\_\_ dated \_\_\_\_\_ payable in Delhi drawn in favour of "Rail Land Development Authority" towards information management costs. The Lessee shall collect this fee and deposit the same with RLDA along with a copy of the Sub-Lease Deed within 30 (thirty) days of the Sub-Lease Effective Date.
- 4.6 The payments specified in Articles 4.1 through 4.5 above shall collectively constitute consideration (the "Consideration") for the sub-lease and shall be paid through account payee cheque in the designated account no. \_\_\_\_\_ of \_\_\_\_\_ bank (the "Designated Account") of the Lessee, except the fee payable to RLDA in terms of Article 4.5. Any payment made in a way other than those specified herein shall not be acknowledged as part of the Consideration to the Sub-Lease Deed.



Shalimar Skyline Private Limited

Authorised Signatory


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JGM (F)

JGM (LAW)

**ARTICLE V****SUB LEASE TERM AND TRANSFERABILITY AND TERMINATION**


- 5.1 The sub-lease in pursuance to this Sub-Lease Deed shall be for a period of \_\_\_\_\_ [insert the period which is equivalent to or less than the remainder of the term of the Lease Agreement] years / months [strike out whichever is not applicable] from the Sub-Lease Effective Date (herein the "Sub-Lease Term").
- 5.2 Notwithstanding anything contained in this Sub-Lease Deed, this Sub-Lease Deed shall terminate automatically with the expiry or termination of the Lease Agreement, whichever is earlier, without requiring any act, deed or thing on part of any Party.
- 5.3 The Sub-Lessee shall not have any right to further sub-lease or transfer the Sub-Leased Area either partly or fully to any other party. However, on written request of the Sub-Lessee and subject to payment through the Lessee of a one-time non refundable fee at the rate of Rs. 100 per sq. m (the amount may be revised by RLDA every five year to account for inflation) of the Sub-Leased Area from such new party to RLDA in addition to payment of an equal amount to the Lessee through an account payee cheque/demand draft as transfer charges, the Lessee can transfer this Sub-Lease to another party. The Lessee shall collect such transfer charge and deposit the same with RLDA along with the details of the transferee within 30 (thirty) days of such transfer.
- 5.4 This Sub-Lease Deed may be terminated by the either Party any time without assigning any reason, by giving a notice of three months to the other Party. In the event of the Sub-Lessee committing default in performance of its obligations under this Sub-Lease Deed, the Lessee shall give a notice to the Sub-Lessee to make good the default within a period of 15 days and on the failure of the Sub-Lessee to do so, may terminate this Sub-Lease by giving a notice of one month to the Sub-Lessee.
- 5.5 In case the Sub-Lessee terminates this Sub-Lease Deed, it shall not be entitled to refund of any monthly sub-lease rent already paid in advance to the Lessee. Any monthly sub-lease rent paid in advance by the Sub-Lessee for the un-availed sub-lease period shall automatically stand forfeited upon such termination.
- 5.6 In case the Lessee terminates this Sub-Lease Deed or the Sub-Lease Deed gets automatically terminated on account of termination of the Lease Agreement, the Sub-Lessee shall be entitled to refund of monthly sub-lease rents (without any interest) already paid in advance by the Sub-Lessee in terms of this Sub-Lease Deed for the un-availed sub-lease period from the Lessee. The Lessee shall refund such amount to the Sub-Lessee within 10 days of the termination date.
- 5.7 In case of termination of the Lease Agreement prior to its expiry, RLDA at its sole discretion may decide to continue with the Sub-Lease Deed and thereby take over the rights and responsibilities of the Lessee in terms of this Sub-Lease Deed. In case RLDA decides not to continue with this Sub-Lease Deed, the Lessee shall refund the amount of sub-lease rents (without any interest) already paid in advance by the Sub-Lessee in terms of this Sub-Lease Deed for the un-availed sub-lease period together with the amount of security deposit to the Sub-Lessee. In case the Lessee fails to make such refunds, RLDA at its own discretion may make the refunds subject to the condition that the total amount of such refunds to all Sub-Lessee does not exceed the amount of Termination Payment payable to the Lessee under the Lease Agreement.
- 5.8 In the event of the Lessee being substituted by a Nominated Company in terms of the Lease



DGM (P-I)



JGM (F)



JGM (LAW)



Subline Private Limited  
Authorised Signatory

Agreement, all the Sub-Lease Deeds shall stand transferred and novated from the Lessee to the Nominated Company and the Nominated Company shall act as the Lessee thereafter

- 5.9 Prior to the expiry or within 15 days of termination of the Sub-Lease Deed the Sub-Lessee shall vacate the Sub-Leased Area and hand over its possession together with the inventory to the Lessee or RLDA, as the case may be, in good condition.

## ARTICLE VI

### CHARGES FOR UTILITIES, TAXES AND DUTIES

- 6.1 The Sub-Lessee shall be responsible for payment of charges for consuming electricity, water and availing other such facilities provided by either third parties or by the Lessee.
- 6.2 The Sub-Lessee shall, without any limitation, pay all taxes and other charges, duties, assessments or outgoings payable in respect of the Sub-Lease of the Sub-Leased Area which may be levied by any Governmental Authority, local authority or other persons from time to time.<sup>1</sup> Furthermore, any stamp duty, registration charges or other fees, taxes or charges of any kind whatsoever pertaining to this Sub-Lease Deed and execution thereof shall also be borne by the Sub-Lessee.
- 6.2 The Sub-Lessee hereby undertakes and confirms that it shall indemnify and keep indemnified the Lessee and/or RLDA from and against all actions, demands, claims, liabilities, losses, damages, costs, expenses and other liabilities whatsoever brought against, suffered or incurred by the Lessee and/or RLDA resulting from or by reason of breach, non-observance or non-performance by the Sub-Lessee of any of its obligations set out in this Sub-Lease Deed.

## ARTICLE VII

### MAINTENANCE OF ASSETS AND SUB-LEASED AREA

- 7.1 The Lessee shall be responsible for maintenance of the Assets and Project Utilities including security, services, lighting of common areas etc. either on its own or through a facility management agency.
- 7.2 The Sub-Lessee shall be responsible for maintenance of interior finishing works, partitions, furnishing and fittings installed by the Sub-Lessee within the Sub-Leased Area.

## ARTICLE VIII

### SUB LESSEE'S COVENANTS

- 8.1 The Sub-Lessee hereby represents, warrants, acknowledges and undertakes, to and for the benefit of the Lessee, that:
- i) Throughout the Sub-Lease Term, it shall use the Sub-Leased Area only for the objectives and purposes identified and agreed to by the Parties, and for any other purposes ancillary thereto, in accordance with the provisions of this Sub-Lease Deed.
  - ii) It shall obtain or cause to be obtained and shall maintain throughout the Sub-Lease Term all regulatory approvals, clearances, permits and consents, including any and all environmental approvals, clearances, permits or consents that may be required in order for the Sub-Lessee to carry on its business activities and to undertake its obligations in accordance with the terms of this Sub-Lease Deed.
  - iii) It shall not do or permit to be done on the Sub-Leased Area, any activity, which may be contrary to any Applicable Laws and Applicable Permits and it shall in enjoyment

<sup>1</sup> Please confirm.



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- of its rights hereunder and fulfillment of its obligations hereunder, always comply with the Applicable Laws and Applicable Permits.
- iv) It shall regularly pay the Sub-Lease Rent as provided hereinabove and shall observe, abide by and fulfill each of its obligations and covenants set forth herein.
  - v) It shall indemnify the Lessee and/or RLDA in respect of any applicable charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Sub-Lessee of water, electricity, telephone, communication facilities and other utilities and services.
  - vi) It shall (a) keep and maintain the Sub-Leased Area in good and habitable condition at all times and (b) shall ensure that the Sub-Leased Area will be free from encroachments at all times.
  - vii) It has conducted due diligence of the Sub-Leased Area, and confirms that the Sub-Leased Area along with the structures thereon are fit for its usage.
  - viii) The Sub-Lessee shall have only user interest in relation to the Sub-Leased Area and shall have no leasehold right or title to the Sub-Leased Area. The Sub-Lessee agrees and acknowledges that it has only user interest in the Sub-Leased Area and that the same shall be incapable of conversion into leasehold or freehold interest.
  - ix) The Sub-Lessee agrees, confirms and undertakes that it no right to sub-license, sub-lease, assign, underlet or sub-let or part with the possession of the Sub-Leased Area or any part thereof.
  - x) The Sub-Lessee acknowledges that it has perused all the documents pertaining to the Project and has been made aware of the Lessee's rights and obligations pursuant to the Lease Agreement.

#### ARTICLE IX

##### LESSEE'S COVENANTS

- 9.1 The Lessee hereby represents, warrants and undertakes, to and for the benefit of the Sub-Lessee, that:
- i) The Lessee has valid leasehold rights to the Sub-Leased Area and the Lessee has power and authority to grant the Sub-Lease to the Sub-Lessee.
  - ii) The Lessee shall be solely responsible for the design, construction and maintenance of the Project including Assets and Project Utilities.
  - iii) Subject to the fulfilment of Sub-Lessee's obligations hereunder, the Sub-Lessee shall, at all times during the Sub-Lease Term, hold and enjoy the possession of the Sub-Leased Area and exercise the rights specified in this Sub-Lease Deed without any interruption or disturbance by (i) the Lessee or (ii) any person lawfully claiming through, under or in trust for the Lessee.
  - iv) The Lessee shall be solely responsible for the due performance of its obligations as specified in the Lease Agreement and this Sub-Lease Deed, and RLDA shall not be held liable for any claims pursuant to any loss and/or damages suffered by the Sub-Lessee or any third party on account of Lessee's performance or non performance of its obligations pursuant to the terms of this Sub-Lease Deed.

#### ARTICLE X

##### MISCELLANEOUS

#### 10.1 Notices

- 10.1.1 All notices, requests, demands or other communications required or permitted to be given under this Sub-Lease Deed and the provisions contained herein shall be written in English.

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and shall be deemed to be duly sent, if sent by registered post, or transmitted by facsimile transmission or email to the other Parties at the addresses indicated below:

- (i) In the case of the Lessee, to: Attention: [ ]  
Address:  
E mail: [ ]  
Facsimile: [ ]
- (ii) In the case of notices to the Sub-Lessee, to: Attention: [ ]  
Address:  
E mail: [ ]  
Facsimile: [ ]

or at such other address as the Party to whom such notices, requests, demands or other communications are to be given shall have last notified to the Party giving the same in the manner provided in this Article 10.1, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents.

Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Article 10.1 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

- (i) Sent by registered post, 3 (Three) Business Days after posting it; and
- (ii) Sent by facsimile or e-mail, on the next Business Day, when confirmation of its transmission has been recorded by the sender's facsimile machine or e-mail account.

## 10.2 Dispute resolution

### 10.2.1 Disputes - Amicable Settlement

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 to the other Party then the provisions of Article 10.2.2 shall apply.

### 10.2.2 Dispute resolution

10.2.2.1 Any Dispute which is not resolved amicably by the Parties, shall be finally decided by reference to Vice-Chairman of RLDA for arbitration by arbitrator(s) appointed by Vice-Chairman of RLDA in terms of the rules under the Lease Agreement and subject to the provisions of the Arbitration and Conciliation Act, 1996. The governing law of the arbitration shall be the laws of India. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

10.2.2.2 This Clause 10.2 shall survive the termination or expiry of the Sub-Lease Deed.

### 10.2.3 Continued performance

While any Dispute under this Sub-Lease Deed is pending, including the commencement and pendency of any Dispute referred to arbitration, the Sub-Lessee and the Lessee shall continue to perform all of its obligations under this Sub-Lease Deed without prejudice to the final determination in accordance with the provisions under this Article 10.2.2.

Notwithstanding anything contrary contained herein, all obligations of Lessee under this Sub-Lease Deed shall automatically come to an end upon the expiry or termination of this Sub-Lease Deed and the Lessee shall not be obliged to perform such obligations during the pendency of any post-expiry or post-termination Dispute, whether referred to arbitration or not.



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**10.3 Governing Law and jurisdiction**

This Sub-Lease Deed shall be construed and interpreted in accordance with and governed by the laws of India, and subject to this Article X, the Courts at New Delhi alone shall have exclusive jurisdiction over all matters arising out of or relating to this Sub-Lease Deed.

**10.4 Amendment**

No variation, waiver, amendment or modification of any of the terms of this Sub-Lease Deed shall be valid unless in writing and signed by both Parties.

**10.5 Waiver**

Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Sub-Lease Deed:

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

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

**10.6 Severability**

The invalidity or enforceability, for any reason, of any part of this Sub-Lease Deed shall not prejudice or affect the validity or enforceability of the remainder. For abundant caution, it is expressly clarified that if any provision of this Sub-Lease Deed is declared to be invalid, unenforceable or illegal by any competent arbitral tribunal or court, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Sub-Lease Deed, which shall continue in full force and effect.

**10.7 Language**

The language and all documents, notices, waivers and any other written communication or otherwise between the Parties, in connection with the Sub-Lease Deed shall be in English.

**10.8 Indemnity**

The Sub-Lessee hereby indemnifies and shall keep indemnified the Lessee and RLDA from and against all actions, demands, claims, liabilities, losses, damages, costs, expenses and other liabilities whatsoever brought against, suffered or incurred by the Lessee and RLDA resulting from or by reason of (i) any breach of any representation, warranty or covenant of the Sub-Lessee in this Sub-Lease Deed; and (ii) any breach, non-observance or non-performance by the Sub-Lessee of any of its obligations under this Sub-Lease Deed or those required in law in relation to the Sub-Leased Area. In the event that the Lessee and/or RLDA hereto receive any claims or demands from a third party in respect of which it/they is/are entitled to the benefit of an indemnity under Article 10.8 or in respect of which it/they is/are entitled to reimbursement (herein the "Indemnified Party"), it/they shall notify the Sub-Lessee of such claim hereunder (herein the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and/ or shall not settle or pay the claim/ demand without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and at its (Indemnifying Party's) risk, costs and expense. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

**10.9 Power to inspect**

10.9.1 The Sub-Lessee shall permit RLDA and the Lessee and their duly authorised representatives to enter upon the Sub-Leased Area to view and inspect the same and, if any defect is found



Part I General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

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and brought to the notice of the Sub-Lessee, without Lessee being obliged to do such inspection or to intimate such defect, the Sub-Lessee shall remedy or make good the defect within such reasonable time as may be specified by the Lessee.

10.9.2 No such inspection or communication of comments or non-communication of comments by Lessee shall amount to validation or approval or acceptance by Lessee of the internal finishing or furnishing works by the Sub-Lessee or its confirmation to the Applicable Law, Applicable Permits and the terms of this Sub-Lease Deed or waiver by Lessee of any breach by the Sub-Lessee.

10.10 Sub-Lessee not RLDA's or Lessee's Agent

Nothing in this Sub-Lease Deed, whether express or implied, constitutes the Sub-Lessee as the agent of the RLDA or Lessee in respect of any matter or action taken, or vice-versa.

IN WITNESS WHEREOF, the Parties hereto have executed this Sub-Lease Deed at the place and on the date first above written

Signed for and on behalf of the LESSEE

Signed for and on behalf of the SUB-LESSEE

Name: \_\_\_\_\_  
Designation: \_\_\_\_\_

Name: \_\_\_\_\_  
Designation: \_\_\_\_\_

Witnesses:

Witnesses:



Shalimar Skyline Private Limited



DGM (P-I)

JGM (F)

JGM (LAW)

SCHEDULE 1

DESCRIPTION OF SUB-LEASED AREA



Shalimar Skyline Private Limited

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Part - II - General Conditions of Lease Agreement of RLDA LDHB

(Amended on 26-03-2014)

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DGM (P-I)

Handwritten signature in black ink.  
JGM (F)

Handwritten signature in black ink.  
JGM (LAW)