

**Public Private
Partnership for
Operation,
Maintenance &
Transfer (OMT) of
Telecom Tower
Assets of BSNL**

**REQUEST FOR
PROPOSAL**

*Volume II: Draft Concession
Agreement*



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**PART I - PRELIMINARY
RECITALS**

CONCESSION AGREEMENT

This CONCESSION AGREEMENT is entered into on this the [●] day of [●], 20[●], by and between

1. **BHARAT SANCHAR NIGAM LIMITED**, a 100% Government of India owned central public sector undertaking under the Department of Telecommunications, Government of India, represented by its Chairman and having its principal offices at Bharat Sanchar Bhawan Janpath New Delhi 110 001 (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors, and assigns) of ONE PART; **and**
2. [●] **LIMITED**, a new company incorporated by the Selected Bidder under the provisions of the Companies Act, 2013 bearing Corporate Identity number [●] and having its registered office at [●], (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes) of the SECOND PART.

WHEREAS:

- A. The Authority is a Miniratna central public sector enterprise and engaged in the business of providing integrated telecom services to users across India.
- B. The Authority is operating, maintaining, and managing [10,014] Towers and allied assets, the details of which are set out under Schedule A of this Concession Agreement (the “**Tower Assets**”).
- C. The Authority intends to engage a private operator for undertaking operation, maintenance, and management of the Tower Assets, subject to and in accordance with the terms hereof.
- D. The Authority had invited Bids through a single-stage Request for Proposal dated [●] bearing ref no. [●], as amended/modified from time to time (the “**RFP**”) for selection of a private operator to manage the Tower Assets on an operate, maintain, manage and transfer (“**OMT**”) mode (hereinafter referred to as “**Project**”).
- E. After evaluation of the Bids received and pursuant to fulfillment by the Selected Bidder of the stipulated eligibility and qualification criteria as set forth in the RFP, the Authority had accepted the Bid of the Selected Bidder and issued its letter of acceptance No. [●] dated [●] (the “**LOA**”) to the Selected Bidder requiring, *inter alia*, execution of this Concession Agreement within 30 (thirty) days of the date of issue thereof and the following:

Incorporate a special purpose vehicle (**SPV**) under [Indian] Companies Act 2013 (and rules framed thereunder) as the Concessionaire to execute the Concession Agreement.

- F.** The Selected Bidder has fulfilled the conditions prescribed under the LOA along with the aforesaid precondition(s) subject to and in accordance with the terms of the LOA, and has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- G.** The Authority has the requisite right of access and right of way for all the Tower Assets and the Tower Sites comprising the Project as described in *Schedule A* of this Agreement.
- H.** By its letter dated [●], the Concessionaire has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.
- I.** The Authority has agreed to the said request of the Selected Bidder and the Concessionaire and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project, subject to and on the terms and conditions set forth hereinafter.

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

Article 1. Definitions and Interpretation

1.1. Definitions

- 1.1.1. The words and expressions beginning with capital letters and defined in this Agreement (including those in *Article 36*) shall, unless the context otherwise requires, have the meaning ascribed thereto herein and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2. Interpretation

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

- a. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b. references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c. references to a **“person”** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words **“include”** and **“including”** are to be construed, without limitation and shall be deemed to be followed by **“without limitation”** or **“but not limited to”** whether or not they are followed by such phrases;
- f. references to **“development”** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and **“develop”** shall be construed accordingly;
- g. any reference to any period of time shall mean a reference to that according to Indian Standard Time;

- h.** any reference to a day shall mean a reference to a calendar day;
- i.** references to a **“business day”** shall be construed as a reference to a day (other than a second and fourth Saturday and a Sunday or a public holiday notified under the Negotiable Instruments Act, 1881) on which banks in Delhi are generally open for business;
- j.** any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- k.** references to any date, period shall mean and include such date, period as may be extended pursuant to this Agreement;
- l.** any reference to any period commencing **“from”** a specified day or date and **“till”** or **“until”** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- m.** the words importing singular shall include plural and vice-versa.
- n.** references to any gender shall include the other and the neutral gender;
- o.** **“indebtedness”** shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- p.** references to the **“winding-up”, “dissolution”, “insolvency”,** or **“reorganisation”** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- q.** save and except as otherwise provided in this Agreement, any reference at any time to any agreement, deed, instrument, license or Document of any description shall be construed as reference to that agreement, deed, instrument, license or other Document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- r. any agreement, consent, approval, authorisation, notice, communication, information, or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;
- s. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- t. references to Recitals, Articles, Clauses, Sub-clauses, or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- u. in the event of any disagreement or dispute between the Authority and the Concessionaire regarding the materiality or reasonableness of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorization, proceeding, act, omission, claims, breach, default or otherwise, the opinion of the Authority as to the materiality or reasonableness of any of the foregoing shall be final and binding;
- v. the damages payable by either Party to the other of them as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- w. time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

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

1.3. Measurements and arithmetic conventions

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

1.4. Priority of agreements, clauses, and schedules

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

- a.** this Agreement;
- b.** letter of award issued under the RFP (LOA);
- c.** RFP and all other agreements and Documents forming part hereof or referred to herein;

It is hereby clarified that the Agreement at (a) above shall prevail over the agreements and Documents at (b) and (c) above. In case of (b) and (c) above, (b) shall prevail over (c) above.

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

- a.** between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b.** between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c.** between any two Schedules, the Schedule relevant to the issue shall prevail; and
- d.** between any value written in numerals and that in words, the latter shall prevail.

PART II

THE CONCESSION

Article 2. Scope of the Project

2.1. Scope of the Project

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

- 2.1.1.** during the Concession Period, operation, maintenance, and management of the Project and to demand, charge, collect and appropriate Rentals and Fees, including through contracts with Tenants, subject to, and in accordance with, the provisions of this Agreement; and
- 2.1.2.** performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement; and
- 2.1.3.** transfer back of the Tower Assets (as defined in *Schedule A* and *Schedule B* of this Agreement), handed over to the Concessionaire by the Authority, on the earlier termination or expiry of the Concession Period in accordance with this Agreement and in a good operable working condition to the satisfaction of the Authority.

Article 3. Grant of Concession

3.1. The Concession

- 3.1.1.** Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to operate, manage and maintain the Project (the “**Concession**”) and to demand, charge, collect and appropriate Rentals & Fees, subject to and in accordance with terms hereof, for a period of 20 (twenty) years commencing from the Appointed Date (the “**Concession Period**”) and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

Notwithstanding anything to the contrary in this Agreement, the Parties expressly agree that the Concession Period shall not be reduced by more than 5 (five) years, or shall not be increased by more than 10 (ten) years on any account or for any reason whatsoever.

- 3.1.2.** Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- a.** the right of access and license to use the Tower Assets handed over by the Authority for the purpose of and to the extent conferred by the provisions of this Agreement and other Project Agreements;
 - b.** manage, operate, maintain, and upgrade the Tower Assets and regulate the use thereof by third parties in accordance with terms hereof;
 - c.** perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
 - d.** enter into contracts, allowing use of Tower Assets handed over by the Authority, with Tenants in accordance with this Agreement;
 - e.** demand, collect and appropriate Rentals & Fees, including through contracts with Tenants, in accordance with this Agreement; and
 - f.** bear and pay all costs, expenses, and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
 - g.** neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the

Tower Assets or Tower Sites nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.

Article 4. Conditions Precedent

4.1. Conditions Precedent

4.1.1. Save and except as expressly provided in *Articles 4, 9, 10.2.1, 23, 25, 34*, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions, precedent specified in this *Clause 4.1* (the “**Conditions Precedent**”).

4.1.2. Conditions Precedent for the Authority

The Concessionaire may, upon providing the Performance Security to the Authority in accordance with *Article 9*, by notice require the Authority to satisfy the Conditions Precedent set forth in this Clause. The Conditions Precedent required to be satisfied by the Authority within, unless specifically stated, a period of 180 (One Hundred and Eighty) days from the date of this Agreement or within any extended date agreed by the Authority, and in any case prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have: .

- a.** prepaid or repaid, as the case may be, all financial indebtedness and discharged all Encumbrances against which the Tower Assets or any of the right of the Authority under the Project Agreements or the cashflows of the Tower Assets have been secured;
- b.** updated information on Tower Assets (captured under *Schedule A* of this Agreement) and after making corrections, if and where necessary, including based on observations in writing, received from the Concessionaire and provided encumbrance-free access to Tower Assets to Concessionaire;
- c.** reviewed Concessionaire’s proposed Asset Takeover Plan and finalise the same in consultation with the Concessionaire;
- d.** handover all the Tower Assets under the Project on an ‘*as-is-where-is basis*’, prior to the Appointed Date in adherence with the Asset Takeover Plan and in accordance with the terms prescribed under *Part A of Schedule B Section I Handover of Assets to Concessionaire*, including consummation of the assignment or novation, to the extent required, of **(i)** the existing commercial agreements with Tenants or third parties relating to the Tower Assets handed over to the Concessionaire (including the Master Service Agreements and such agreements as provided under *Schedule A* of this Agreement) and **(ii)** the Lease Agreements (in relation to the Non-Shared Sites), and;

- e. reviewed and provided comments on financing agreements between Lenders and the Concessionaire and execute the Escrow Agreement and Substitution Agreement with the Concessionaire and the Lenders.

4.1.3. Conditions Precedent for the Concessionaire

The Conditions Precedent required to be satisfied by the Concessionaire within, unless specifically stated, a period of 180 (one hundred and eighty) days from the date of this Agreement or within any extended date agreed by the Authority, and in any case prior to the Appointed Date (as defined in *Clause 12.1*) shall be deemed to have been fulfilled when the Concessionaire shall have:

- a. provided Performance Security to the Authority within the timelines and in terms of *Clause 9.1* herein below;
- b. delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- c. executed and procured execution of the Substitution Agreement with the Authority and the Lenders (if any) financing the Debt component of the Concession Fee;
- d. executed and procured execution of the Escrow Agreement;
- e. executed the Financing Agreements with Lenders, fulfilled the preconditions set out therein, and achieved Financial Closure and delivered to the Authority true copies each of the Financial Agreements, Financial Package, and the Financial Model acceptable to Lenders in respect of financing of the Debt, duly attested by a Director of the Concessionaire;
- f. paid the Concession Fee to the Authority, within a maximum period of 180 (one hundred and eighty) days from the date of this Agreement or such other extended date agreeable to the Authority provided the same is prior to the Appointed Date, an aggregate amount equivalent to Rs. [●] (Rupees [●]) by way of a demand draft drawn on a Bank in India in favour of the Authority, and payable at New Delhi. Upon expiry of 7 (seven) days from the date of payment of the Concession Fee by the Concessionaire, the Bid Security shall be returned by the Authority to the Concessionaire;
- g. submitted a draft Asset Takeover Plan to the Authority and finalise the same with the Authority;
- h. provided to the Authority in writing any observations on information on Assets, as shared in *Schedule A* of this Agreement and confirm the acceptance

of the same, after any changes done by the Authority either on its own or based on observations of Concessionaire; and

- i. executed the assignment and novation of all retrospective agreements and entered into all Project Agreements, as required by the Authority, for implementation of the Project.

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

4.2. Damages for delay

4.2.1. In the event the Concessionaire fails to provide a Performance Security within the timelines prescribed under *Clause 9.1* of this Agreement, the Authority shall have the irrevocable and unconditional right to encash the Bid Security.

Without prejudice to the other rights of the Authority herein or under Applicable Laws, in the event of Concessionaire's failure in payment of the Concession Fee beyond a period of 30 (thirty) days from the date of the Concession Fee becoming due and payable, the Authority shall have the unconditional and irrevocable right to forfeit the Bid Security, and in the event the Performance Security is submitted, in such case, be entitled to additionally forfeit the Performance Security.

4.2.2. Without prejudice to the terms of clause 4.2.1 above in respect of either failure to provide the Performance Security or delay in payment of the Concession Fees, in the event that (i) Concessionaire delays or does not procure fulfilment of any of the other Conditions Precedent set forth in *Clause 4.1* within the period specified in respect thereof (or as extended by the Authority at its sole discretion), and (ii) such delay/failure has not occurred as a result of breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security, provided further that such damages for delay in fulfilment of the Conditions Precedent by the Concessionaire shall be payable within 15 (fifteen) days of achievement of fulfilment of Conditions Precedent. For sake of clarity, the Authority shall be entitled to forfeit the amount of Damages computed under this Clause 4.2.2, from the Bid Security or the Performance Security, as the case may be.

4.2.3. In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in *Clause 4.1* within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by

the Concessionaire, or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.3. Deemed Termination upon Delay

- 4.3.1.** Without prejudice to the provisions of *Clauses 4.1 and 4.2*, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the expiry of 1 (one) year from the date of this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. *Provided, however, that* in the event the non-occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Authority shall irrevocably and unconditionally be entitled to forfeit the Bid Security and/or the Performance Security (if furnished), as the case may be.
- 4.3.2.** Upon termination of this Agreement prior to the Appointed Date for reasons attributable to the Authority and pursuant to the terms of this *Clause 4.3.2*, the Authority shall, within 30 (thirty) days, refund the Concession Fee to the Concessionaire, if deposited by the Concessionaire, without interest.
- 4.3.3.** If the Authority has handed over any of the Tower Assets and/or transferred any of the Project Agreement to the Concessionaire prior to the termination of this Agreement pursuant to this *Article 4.3*, the Parties shall promptly take necessary actions to reverse such transfer/ handover within 30 (thirty) days from termination of this Agreement, in the manner as directed by the Authority.

Article 5. Obligations of the Concessionaire

5.1. Obligations of the Concessionaire

- 5.1.1.** Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the obligations in respect of development, operation, maintenance, and management of the Project, including in accordance with *Part-B of Schedule B* of this Agreement, and to observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2.** The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3.** Subject to the provisions of *Clauses 5.1.1 and 5.1.2*, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice, Applicable Laws and Applicable Permits, and as a reasonable and prudent person.
- 5.1.4.** The Concessionaire shall at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a.** furnish to the Authority, atleast 3 (three) months prior to expiry of the validity of the Performance Security, the renewed Performance Security with a minimum validity as prescribed under *Article 9* hereto and in accordance with terms hereof;
 - b.** ensure compliance of the Applicable Permits, Applicable Laws and the terms of this Agreements by the O&M Contractor engaged by the Concessionaire (if any) during the Concession Period. The Concessionaire agrees and acknowledges that any breach of the terms of this Agreement by such O&M Contractor shall be deemed to be the breach of the Concessionaire under this Agreement;
 - c.** undertake the O&M obligations in terms of *Clause 14.1*, and support, cooperate with and facilitate the Authority in the monitoring of operation and maintenance of the Project in accordance with the provisions of this Agreement; fulfil service level obligations as per this Agreement and as provided for in *Part-B of Schedule B* of this Agreement;
 - d.** maintain all the Tower Assets in good operational condition including but not limited to replacement, upgradation, and repair of the Passive Infrastructure of the Tower Assets, to meet O&M obligations and service level obligations of the Master Service Agreements and in accordance with the terms of this Agreement;

- e.** maintain, and update an Asset Register that clearly identifies all the Tower Assets managed by the Concessionaire as part of this Project;
- f.** invoice and recover Rentals & Fees from Tenants in line with the terms of the Master Service Agreement and this Agreement (as defined in *Part IV Financial Covenants* of this Agreement);
- g.** undertake to allow the Authority to install and operate its Active Infrastructure in the Reserved Spot in the terms and conditions as prescribed under *Part-C of Schedule B*, free of cost in adherence to this Agreement and any other agreement executed with the Authority in this regard;
- h.** pay rentals to Landowners of Non-Shared Sites as per the terms outlined in *Part B of Schedule B* of this Agreement and pay rentals to Authority for the land in Shared Rented Sites which are on leasehold basis, where applicable and as defined in *Schedule A* of this Agreement;
- i.** pay the applicable Taxes, stamp duty and registration fees with respect to execution of this Agreement and in adherence with the terms of this Agreement;
- j.** make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- k.** procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- l.** make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by the Concessionaire or the O&M Contractors in connection with the performance of the Concessionaire's obligations under this Agreement;
- m.** ensure that the O&M Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- n.** not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

- o.** transfer/assign/novate the Project Agreements (including but not limited to the Master Service Agreements executed with the Tenants) in accordance with *Clause 5.2* of this Agreement read with *Part D of Schedule B* of this Agreement, and transfer the possession of Tower Assets (including the related licenses, agreements, permits, etc.) to the Authority in good operational condition as per Good Industry Practice, upon Termination of this Agreement or expiry of the Concession Period, in accordance with the provisions thereof and as per terms outlined in *Part D of Schedule B* of this Agreement.

5.2. Obligations relating to Project Agreements

- 5.2.1.** It is expressly agreed that the Concessionaire shall at all times be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements, and no default under any Project Agreements shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2.** The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. If the Authority does not provide its comments on the draft Project Agreements (submitted by the Concessionaire for the review by the Authority) within 15 (fifteen) days from receiving the draft Project Agreement, the Authority shall be deemed to have approved the draft Project Agreements. However, no review/observation from the Authority and/or its failure to review or convey its observations on the Project Agreements, shall relieve the Concessionaire from its obligations and liabilities under this Agreement not shall the Authority be liable for the same in any manner.
- 5.2.3.** The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority (or its nominee, as the case may be) to step into such agreement, in substitution of the Concessionaire in the event of Termination (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 180 (One hundred and eighty days) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and

undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority upon Termination of this Agreement or expiry of the Concession.

- 5.2.4.** Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of any Contractor (including O&M Contractor, if any) that will be given access to the Project Assets and execution of the contract with such Contractor (including O&M Contractor, if any) shall be subject to the prior intimation of the Authority to be issued by the Concessionaire at least 30 (thirty) days in advance of execution of the contracts with such Contractor, and the Authority shall have the right to reject the selection of any Contractor from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire. For the avoidance of doubt, it is expressly agreed that rejection by the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3. Obligations relating to Change in Ownership

- 5.3.1.** The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that the obligation under this *Clause 5.3.1* and the representation in *Clause 7.1.1 k* shall apply to the Concessionaire in the event the aggregate shareholding of the Selected Bidder together with its/their Associates, in the issued, subscribed and paid-up equity share capital of the Concessionaire declines below 51% (fifty one per cent) till the 2nd (second) anniversary of the Appointed Date.
- 5.3.2.** Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- a.** all acquisitions of equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any equity, in aggregate of not less than 25% (twenty-five per cent) of the total equity of the Concessionaire, or
 - b.** acquisition of any control directly or indirectly of the Board of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive, and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of equity or control of the Board of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision within a period of 60 days from the date of receipt of such request. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement. For the avoidance of doubt, it is expressly agreed that merger of the Concessionaire with its parent company and/or the Selected Bidder and/or any of the constituents thereof shall also constitute Change in Ownership.

5.3.3. For the purposes of the *Clause 5.3.2 above*:

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

5.4. **Employment of foreign nationals**

- 5.4.1.** The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same, in accordance with Applicable Law, shall and will always

be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals, in accordance with Applicable Law, by the Concessionaire or any of its Contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.5. Employment of trained personnel

- 5.5.1.** The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.6. Branding of Project

- 5.6.1.** The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name and contact details at a spot where other public notices are displayed for the Tenants. The Concessionaire hereby indemnifies and agrees to keep the Authority indemnified against any losses, claims, demands of any nature whatsoever on the Authority as a result of a breach of this *Clause 5.6* of the Agreement by the Concessionaire or any service provider/Contractors engaged by the Concessionaire for this Project.

Article 6. Obligations of the Authority

6.1. Obligations of the Authority

- 6.1.1.** The Authority shall, at its own cost and expense undertake, comply with, and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2.** The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- a.** handover the Tower Assets to the Concessionaire prior to the Appointed Date, free of all Encumbrances, as per the terms of this Agreement and as per provisions of *Part A of Schedule B* of this Agreement.
 - b.** subject to and in accordance with the Applicable Laws, and as per terms/provisions stated here in the Agreement grant to the Concessionaire the authority to enter into Project Agreements in relation to the Project, in adherence with *Clause 5.2* of this Agreement and also assign existing Project Agreements of the Authority to the Concessionaire;
 - c.** upon written request from the Concessionaire and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project subject to and in accordance with terms hereof;
 - d.** not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - e.** support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - f.** keep Tower Assets free of lien/charge during the entire period of the Concession Agreement.;
 - g.** manage Authority's Active Infrastructure adhering to Good Industry Practices and coordinating with the Concessionaire, including for work relating to maintenance, active side upgrade and loading;
 - h.** reimburse to Concessionaire electricity charges and expenditure on fuel for genset incurred, in adherence of this Agreement;

- i. assist the Concessionaire in procuring police assistance for removal of trespassers on or at the Tower Sites;
- j. monitor performance obligations under this Agreement (including monitoring upkeep of Tower Assets, governance processes and review of reports submitted by Concessionaire);
- k. pay Property taxes applicable as per local jurisdiction on the Shared Sites owned by the Authority; and
- l. approve refinancing requests from Concessionaire in accordance with *Clause 6.3* of this Agreement.

6.2. Maintenance obligations prior to Appointed Date

Prior to the Appointed Date, the maintenance of the Tower Assets (to be handed over to the Concessionaire on the Handover Date) shall at the cost and expense of the Authority. On and from the Appointed Date, all operations and maintenance obligations relation to the Tower Assets and the Tower Sites shall be the exclusive obligation of the Concessionaire in terms this Agreement at no additional cost to the Authority.

6.3. Obligations relating to refinancing

- 6.3.1.** Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld.
- 6.3.2.** The Authority shall, within a period of 30 (thirty) days, issue its response or seek additional Documents and information in relation to the proposed refinancing request from the Concessionaire with respect to the Project. Provided that if the Authority does not issue any approval or observations on such refinancing request from the Concessionaire within 30 (thirty) days from receiving all the necessary documents in relation thereof, the Authority shall be deemed to have accepted the terms of such refinancing.

Article 7. Representations and Warranties

7.1. Representations and warranties of the Concessionaire

7.1.1. The Concessionaire represents and warrants to the Authority that:

- a.** it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b.** it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c.** it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- d.** this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof and the obligations of the Concessionaire under this Agreement will be legally valid, binding and enforceable obligations against the Concessionaire in accordance with the terms hereof;
- e.** it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- f.** the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- g.** the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of the Concessionaire's Charter Documents{or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- h.** there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- i.** it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Concessionaire's ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- j.** it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- k.** it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of *Clause 5.3* and that the aggregate holding of the Selected Bidder together with its Associates, in the issued, subscribed and paid-up equity share capital of the Concessionaire shall not decline below 51% (fifty one per cent) thereof till the 2nd (second) anniversary) of the Appointed Date; and that each member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the RFP shall hold at least 26% (twenty six per cent) of such issued, subscribed and paid-up equity share capital of the Concessionaire till the 2nd (second) anniversary of the Appointed Date, along with its Associates; Provided further that any such request made under this *Clause 7.1.1 k*, at the option of the Authority, shall be required to be accompanied by a suitable no objection letter from the Senior Lenders;
- l.** the Selected Bidder and its Associates have the financial standing and resources to fund the required equity and to raise the Debt necessary to undertake and implement the Project in accordance with this Agreement;
- m.** the Selected Bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the LOA, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- n.** all rights and interests of the Concessionaire in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on the part of the Concessionaire or the Authority, and that none of the Tower Assets shall be acquired by the Concessionaire subject to any agreement under which a security

- interest or other lien or Encumbrances is retained by any person save and except as expressly provided in this Agreement;
- o.** no representation or warranty by the Concessionaire contained herein or in any other Document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
 - p.** no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
 - q.** all information provided by the Selected Bidder in response to the RFP or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2. Representations and warranties of the Authority

7.2.1. The Authority represents and warrants to the Concessionaire that:

- a.** it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b.** it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- c.** it has the capacity to perform its obligations under this Agreement;
- d.** this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e.** it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- f.** it has complied with Applicable Laws in all material respects;
- g.** it has the right, power, and authority to manage and operate the Project up to the Appointed Date; and

- h.** it has good and valid right to the Shared Site owned by the Authority and has power and authority to grant a license in respect thereto to the Concessionaire.

7.3. Disclosure

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

Article 8. Disclaimer

8.1. Disclaimer

- 8.1.1.** The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the RFP, Scope of the Project, and its obligations under this Agreement including but not limited to the obligations prescribed under *Part B of Schedule B* of this Agreement, the Tower Assets, and all information provided by the Authority or obtained, procured or gathered otherwise and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit, or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2.** The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake, or error in or relating to any of the matters set forth in *Clause 8.1.1* above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire or any person claiming through or under it.
- 8.1.3.** The Parties agree that any mistake or error in or relating to any of the matters set forth in *Clause 8.1.1* above shall not vitiate this Agreement or render it voidable.
- 8.1.4.** In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in *Clause 8.1.1* above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this *Clause 8.1.4* shall not prejudice the disclaimer of the Authority contained in *Clause 8.1.1* and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5.** Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

PART III

MANAGEMENT AND OPERATIONS

Article 9. Performance Security

9.1. Performance Security

- 9.1.1.** The Concessionaire shall, for the due performance of its obligations hereunder during the respective relevant Accounting Year of the Concession Period, provide to the Authority no later than *15 (fifteen)* days from the date of this Agreement, an irrevocable and unconditional guarantee from a scheduled bank in India with a minimum validity of 12 (twelve) months at a time for a sum equivalent to Rs. 150 Crore (Rupees one Hundred and Fifty Crore only) escalating at Price Index annually from first anniversary of Appointed Date, in the form set forth in *Schedule C* (the “**Performance Security**”).

The Concessionaire may, at its option, instead of furnishing an irrevocable and unconditional guarantee from a scheduled bank in India, consider creating and maintain a reserve account under the Escrow Account of an amount equivalent to the Performance Security lien marked solely and exclusively in favour of the Authority and to the absolute exclusion of the Senior Lenders or any other third party (the “**Deemed Performance Security**”). The Deemed Performance Security shall have the validity and has to be maintained in the Escrow Account until expiry of 2 (two) months after the end of Defects Liability Period. Also, all provisions with respect to the Performance Security under this Article 9 and/or this Agreement shall *mutatis mutandis* apply to such Deemed Performance Security.

Upon achievement of the Appointed Date in accordance with *Clause 12.1*, the value of the Performance Security required to be maintained pursuant to the terms of this Agreement shall be Rs. 150 Crore (Rupees One Hundred and Fifty Crore only).

- 9.1.2** The Performance Security shall be rolled over periodically and shall be renewed 3 (three) months prior to its expiry with a minimum validity of 12 (twelve) months, so as to keep it valid and subsisting with full force and effect until issue of Vesting Certificate by Authority and thereafter until expiry of two months from end of the Defects Liability Period.
- 9.1.3** In the event the Concessionaire failing to renew and furnish the Performance Security in terms hereof and by the time period specified herein, the existing Performance Security shall become liable for forfeiture and the same shall be deemed to be Concessionaire Default, in which case the Authority shall be entitled to terminate the Agreement in terms hereof.
- 9.1.4** Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and the Authority shall release the Bid Security to the Concessionaire upon expiry of 7 (seven) days from the date of payment of the Concession Fees by the Concessionaire to

the Authority, subject to the submission of the Performance Security by the Concessionaire in terms hereof.

9.2. Appropriation of Performance Security

9.2.1. Without specific instances under this Agreement which give the Authority the right to invoke and encash, either in full or part, the Performance Security, the Authority shall also be entitled to encash whole or part of the Performance Security on account of, inter alia, any of the following:

- (a) upon occurrence of any of the Concessionaire Default in accordance with the terms of this Agreement;
- (b) any breach or non-observance of O&M Obligations set out herein, prompt repair and rehabilitation of Tower Assets as per Good Industry Practice, and complying with reporting obligations, in accordance with terms hereof;
- (c) the Concessionaire abandons or manifests intention to abandon the O&M obligations or any other obligations towards implementation of the Project;
- (d) the Concessionaire is in breach of any O&M requirements by the Authority or does not comply with remedy of defect/deficiency instructions of the Authority;
- (e) the Concessionaire does not renew and furnish Performance Security in accordance with terms hereof;
- (f) the Concessionaire creates any Encumbrances in breach of this Agreement;
- (g) Change in ownership has occurred in breach of the Agreement the concessionaire is adjudged bankrupt or insolvent or in the process of being liquidated, dissolved, wound up or provisional liquidator or receiver is appointed pursuant to order of a competent court;
- (h) The Concessionaire fails to undertake the implementation of the Project as per Good Industry Practices [i.e. such skills, diligence, service levels, efficiency, innovation, as prevailing in the relevant Industry and changes from time to time];
- (i) Failure to meet any condition precedent within time specified; or
- (j) The Concessionaire has committed any other Concessionaire Default which has been specified in this Agreement as ground for termination.

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level, the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with

Article 26. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with *Article 26*.

9.3. Release of Performance Security

The Performance Security shall remain in force and effect for the Concession Period and thereafter until expiry of 2 (two) months after the end of Defects Liability Period.

Article 10. Right of Use

10.1. The Project

- 10.1.1.** The Tower Assets under the Project shall be as described in *Schedule-A* of this agreement and in respect of which the Right of Use shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the “**Tower Assets**”).

10.2. Licence, Access, and Right of Use

- 10.2.1.** The Authority hereby grants to the Concessionaire access to the Tower Assets for carrying out any surveys, investigations, and tests that the Concessionaire may deem necessary prior to Appointed Date, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Tower Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2.** In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date the license to use and operate the Tower Assets.
- 10.2.3.** The Authority also accords to the Concessionaire, leave and license rights in respect of the Shared Sites which is described, and delineated in *Schedule-A* hereto (the “**Licensed Premises**”), on an “as-is where-is” basis, to operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement.
- 10.2.4.** The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing Right of Use and the Concessionaire shall perform its obligations in a manner that Project is operational at all times during the Concession Period.
- 10.2.5.** It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Tower Site by the Concessionaire or its sub-licensees, the licence in respect of the Tower Assets shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

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

- 10.2.6.** It is expressly agreed that trees on the Tower Sites, which are owned by the Authority or the respective Landowners, are property of the Authority and the respective Landowners, as the case may be, except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.3. Process of Handover of the Tower Assets

- 10.3.1.** The Authority's Representative, and the Concessionaire shall, over a mutually agreed period, prior to the Appointed Date, and as defined in *Clause 12.1 and Part A of Schedule B*, inspect the Tower Assets as required, and prepare a memorandum containing an inventory of Tower Assets, including tower structures, and any other immovable property on or attached to such portion of Tower Assets thus handed over. Signing of the aforesaid respective memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of *Clause 10.2.2*, be deemed to constitute a valid license and Right of Use to the Concessionaire for free and unrestricted use of the vacant and unencumbered Tower Assets, during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.
- 10.3.2.** On and after the Handover Date or signing the memorandum(s) referred to in *Clause 10.3.1*, whichever is earlier, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Tower Assets and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses. The Concessionaire besides using manpower, shall use appropriate technology for the purpose of maintaining round-the-clock vigil over the Tower Site.
- 10.3.3.** The Concessionaire may procure at its cost and expense other assets that may be required by it for Additional Facilities and the Authority shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seek prior consent of the Authority to add any Additional Facilities to the Project and such consent shall not be unreasonably withheld.

10.4. Tower Assets to be free from Encumbrances

- 10.4.1.** Subject to the provisions of *Clause 10.3*, the Tower Assets shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and

occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the use of the Tower Assets for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Tower Asset.

10.5. Protection of Tower Assets from encroachments

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

10.6. Special/temporary Right of Use

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

10.7. Access to the Authority

10.7.1. The licence, and Right of Use to the Tower Assets granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8. Geological and archaeological finds

10.8.1. It is expressly agreed that mining, geological, or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement.

Article 11. Utilities, Allied Assets, and Trees

11.1. Utilities and allied assets belonging to other Parties

- 11.1.1.** Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the other assets, utilities and right of way to the same, under or above the Tower Asset are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the Authority of the controlling body of that asset, right of way or utility. The Authority shall, upon written request from the Concessionaire, Initiate and undertake at the Authority's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2. Shifting of obstructing utilities

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

11.3. New Utilities

- 11.3.1.** The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Tower Sites for laying telephone lines, water pipes, electric cables or such other utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Tower Sites to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Tower Sites under this Clause 11.2.1 shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.
- 11.3.2.** In case the Authority requires some works to be undertaken in any of the Tower Sites where the Tower Assets are located, it shall issue to the Concessionaire a notice specifying in reasonable detail the works required thereunder and notwithstanding anything to the contrary contained in this *Article 11*, the provisions of *Article 18* shall apply to such request of the Authority. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder as per Good Industry Practice. The works undertaken in accordance with this *Clause 11.2.2* shall be carried out in a manner that minimizes the disruption in operation of the Project. For the avoidance of doubt and in case the works required

under this Clause 11.2.1 are undertaken by the Concessionaire, the construction and maintenance thereof shall be at the Authority's cost.

11.4. Felling of Trees

- 11.4.1.** The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the operation or maintenance of the Project. The cost of such felling shall be borne by the Authority. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

Article 12. Commencement of Concession Period

12.1. Appointed Date

- 12.1.1.** The rights, privileges, liberties, and obligations of the Concessionaire, particularly the Concession shall commence from the date on which all Conditions Precedent have been satisfied in accordance with *Article 4* and a notice has been issued by the Authority confirming the completion of the Conditions Precedent by the Concessionaire (the “**Appointed Date**”), and determination of the Appointed Date by the Authority shall be final, conclusive, and binding on the Concessionaire.
- 12.1.2.** The Project shall for the purposes of this Agreement enter into commercial service on the Appointed Date whereupon the Concessionaire shall be entitled to demand and collect Rentals & Fee, responsible for incurring costs and making payments in accordance with the provisions of this Agreement and perform its operations and management obligations subject to and in accordance with the provisions of this Agreement including the terms specifically provided for handover of Tower Assets prior to the Appointed Date and Extended Appointed Date in *Clause 12.1 and Part A of Schedule B* of this Agreement.

Article 13. Handover of Additional Tower Assets

13.1. Handover of Additional Tower Assets

During the Concession Period, the Authority may, at its sole discretion, decide to hand over additional towers and allied assets (“**Additional Towers**”). The Concessionaire would be provided Right of First Refusal (ROFR) to match the most favourable offer discovered from the bid process for these Additional Towers, and be awarded these Additional Towers, subject to the most favourable offer for Additional Towers being within 10% of the offer made by the Concessionaire.

Article 14. Management and Operations

14.1. O&M obligations of the Concessionaire

14.1.1. With effect from the Appointed Date and thereafter during the remaining Concession Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, or through the its O&M Contractors and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice including service level obligations listed in Master Service Agreements read along with *Part B of Schedule B*. The obligations of the Concessionaire hereunder shall include:

- a.** operate and maintain the Tower Assets and the Project in accordance with the service level requirements prescribed under *Part B of Schedule B* of this Agreement and the service level obligations prescribed under the respective Master Service Agreements. For avoidance of doubt, in case of conflict between the service level requirements under *Part B of Schedule B* of this Agreement and the service level obligations prescribed under the respective Master Service Agreements, the service level requirements which are stricter towards ensuring the O&M obligations of the Concessionaire shall be applicable and binding.
- b.** permitting safe, smooth, and uninterrupted operations of the Tower Assets under the Project during normal operating conditions;
- c.** collecting and appropriating the Rentals & Fees;
- d.** minimising disruption to operations in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- e.** carrying out periodic preventive maintenance, routine maintenance, and major maintenance of the Project;
- f.** preventing, with the assistance of concerned law enforcement agencies, any unauthorised use and encroachments of the Project;
- g.** protection of the environment and provision of equipment and materials therefore;
- h.** operation and maintenance of all communication, control, and administrative systems necessary for the efficient operation of the Project; and
- i.** maintaining a public relations unit to interface with and attend to suggestions from the Tenants, government agencies, media, and other agencies.

14.1.2. The Concessionaire shall keep the Project in a clean, tidy, and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

14.1.3. The Concessionaire shall maintain, in conformity with Good Industry Practice, all Tower Assets or structures situated on the premises handed over.

14.2. Safety

14.2.1. The Concessionaire shall ensure safe conditions for the Tenants, and in the event of unsafe conditions, and accidents, it shall follow the relevant operating procedures without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice

14.3. De-commissioning due to Emergency

14.3.1. If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure to the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

14.3.2. The Concessionaire shall recommission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project and shall notify the Authority of the same without any delay.

14.3.3. Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

14.4. Tower Site closure

14.4.1. The Concessionaire shall ensure that the Tower Asset are operational at all times other than for planned maintenance and repair works in accordance with the Project Agreements and without causing any major of disruption of services to the Authority, Tenants and/or the public at general.

14.4.2. In the event, the Tower Assets are non-operational in terms of the levels prescribed under the Master Service Agreement, save for reasons attributable to the Authority or a Force Majeure Event, the same shall constitute a Concessionaire Default and the Authority shall, without prejudice to its other rights under this Agreement including the right of Termination, have right to claim Damages calculated at the rate of 0.1%

(zero point one per cent) of the Performance Security for each day of delay in making such Tower Assets operational to the levels prescribed under the Master Service Agreement, on a pro-rata basis, and in the event of non-payment of such delinquent amount forthwith and in any case within 7 (seven) days of issue of written notice by Authority, the same shall be recovered by encashment of the Performance Security in which case the provisions of *Clause 9* hereof shall apply.

14.5. Damages for breach of maintenance obligations

14.5.1. In the event that the Concessionaire fails to repair or rectify any defect or deficiency in atleast [2% (two per cent)] of Towers Assets within reasonable period of time or is in breach of the obligations Specifications and Standards prescribed by the Authority under this Agreement or service level requirements as set out under the Master Service Agreements, the Concessionaire shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) [•]% ([•] per cent) [•] of Performance Security, and (b) [•]% ([•] per cent) of the cost of such repair or rectification as estimated by the Authority. The recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof, and in the event of non –payment by Concessionaire of such delinquent amount forthwith and in any case within seven days of issue of written notice by Authority, the same shall be recovered by encashment of Performance Security in which case the provisions of *Article 9* hereof shall apply.

14.6. Authority's right to take Remedial Measures

14.6.1. In the event the Concessionaire does not maintain and/or repair the Project or any part thereof and fails to commence remedial works within 15 (fifteen) days of receipt of the notice in this behalf from the Authority, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover 1.2 (one point two) times of the actual cost incurred by the Authority, **directly** from the Concessionaire.

14.6.2. In the event of non –payment by Concessionaire of such delinquent amount forthwith and in any case within seven days of issue of written notice by Authority, the Authority shall have the right and the Concessionaire hereby expressly grants to the Authority the right to recover the costs and Damages specified in *Clause 14.6.1* directly from the Escrow Account, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this *Clause 14.6.2*.

14.7. Overriding powers of the Authority

14.7.1. If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement or the Project Agreements and, in particular,

the service level requirements under the Master Service Agreement, and such breach is causing or likely to cause material hardship to the Tenants, Authority and/or public at general the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

14.7.2. In the event that the Concessionaire, upon notice under *Clause 14.7.1*, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this *Clause 14.7.2* and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be recovered from the Concessionaire in accordance with the provisions of *Clause 14.6* along with the Damages specified therein.

14.7.3. In the event of a national emergency, civil commotion or any other act specified in *Clause 22.3*, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding powers by the Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of *Article 23*. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this *Clause 14.7*, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

14.8. Restoration of loss or damage to Project

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

14.9. Modifications to the Project

14.9.1. The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards, service level requirements under Master Service Agreements, Good Industry Practice and Applicable Laws.

14.10. Excuse from performance of obligations

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

- a.** an event of Force Majeure;
- b.** measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- c.** compliance with a request from the Authority or the directions of any Government Instrumentality the effect of which is to close all or any part of the Project.

14.10.2. Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project operational provided they can be operated safely.

14.11. Advertising on the Tower Sites

14.11.1. Commercial advertising, display or hoarding at any place on the Tower Sites is permitted in the Project and shall conform to Good Industry Practice. Provided that such advertisements, display and/or hoardings is not of any company providing telecommunication services or services similar to that of the Authority. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time.

14.11.2. The Concessionaire agrees and acknowledges to issue prior intimation to the Authority for displaying any advertisements display and/or hoardings at any of the Tower Sites. The Concessionaire shall share the copies of the agreements executed with advertisement agencies/companies (for advertisement, display and/or hoardings at the Shared Sites and Non-Shared Sites) with the Authority for record purposes.

Article 15. Monitoring of Operation and Maintenance

15.1. Annual Status Reports

- 15.1.1.** During Concession Period, the Concessionaire shall, no later than 7 (seven) days after the close of each financial year, furnish to the Authority an Annual Status Report stating in reasonable detail the condition of the Tower Assets including its compliance or otherwise with the service level requirements under the Master Service Agreements and Specifications and Standards, and shall promptly give such other relevant information as may be required by the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

15.2. Inspection and testing

- 15.2.1.** The Authority shall (either through its own representatives or by engaging a third-party service provider) have the right to inspect select Tower Sites and the Tower Assets in the Project on a sample basis at least once a year. It shall make a report of such inspection (the **“O&M Inspection Report”**) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the service level requirements under the Master Service Agreements and Specifications and Standards and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection. The Concessionaire acknowledges and agrees that the Authority, either on its own or through any other third party or agencies appointed by it, have the right to monitor the Project and the compliance of the obligations of the Concessionaire to the terms of this Agreement and other Project Agreements and the Concessionaire hereby agrees to extend all reasonable assistance and cooperation towards the same.
- 15.2.2.** The Concessionaire shall ensure periodic inspection, tests and reporting of the Tower Assets in accordance with Good Industry Practices, and maintain record of such inspection, testing and reporting. The Concessionaire agrees and acknowledges to make available such records to the Authority as and when requested by the Authority in writing.

15.3. Remedial measures

- 15.3.1.** The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in *Clause 15.2* and furnish a report in respect thereof to the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 15.3.2.** In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to

recover Damages from the Concessionaire under and in accordance with the provisions of *Clause 14.5*.

15.4. Quarterly Revenue Statement

15.4.1. During the Concession Period, the Concessionaire shall furnish to the Authority within 7 (seven) days of completion of each quarter, a statement of Rentals & Fee (the “**Quarterly Revenue Statement**”). The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions.

15.5. Reports of unusual occurrence

15.5.1. The Concessionaire shall, prior to the end of each month, send to the Authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Project. This report shall be sent within 3 (three) days of the closing of each month. For the purposes of this *Clause 15.5*, accidents and unusual occurrences on the Project shall include:

- a.** death or injury to any person;
- b.** damaged or dislodged Tower Assets;
- c.** any obstruction on the Project, which results in slow down of the services being provided by the Concessionaire;
- d.** disablement of any equipment during operation;
- e.** communication failure affecting the operation of Project;
- f.** smoke or fire at the Tower Site;
- g.** flooding of Tower Sites handed over as part of the Project; and
- h.** such other relevant information as may be required by the Authority.

Article 16. **Change of Scope**

16.1. Change of Scope

- 16.1.1.** The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Concessionaire to make alterations/ modifications in the Scope of the Project (the “**Change of Scope**”). The terms of such Change of Scope shall be mutually agreed between the Parties in accordance with the provisions of this *Article 16*.
- 16.1.2.** Any works or services done pursuant to Change of Scope of the Project in accordance with this *Article 16* shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.2. Procedure for Change of Scope

- 16.2.1.** In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder.
- 16.2.2.** If the Concessionaire determines at any time that a Change of Scope is necessary, it shall by notice in writing require the Authority to consider such Change of Scope (the “**Change of Scope Request**”). The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this *Article 16* or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope Request.
- 16.2.3.** The notice issued by the Authority under *Clause 16.2.1* or the acceptance by the Authority under *Clause 16.2.2*, as the case may be, shall be considered as the notice of Change of Scope (the “**Change of Scope Notice**”).
- 16.2.4.** Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with detailed Documentation in support of:
- a.** the impact, if any, which the Change of Scope is likely to have on the Project; and
 - b.** the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its Contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority on mutually agreed terms.

16.2.5. Upon receipt of information set forth in *Clause 16.2.4*, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof.

16.2.6. The Authority shall, on receipt of a Change of Scope Request from the Concessionaire, within 30 (thirty) days of receipt of such proposal require the Concessionaire to provide all such information within 15(fifteen) days as would be required by the Authority to finalize its decision with regard to the approval or rejection to the Change of Scope Request and upon consideration of the same, either accept such Change of Scope Request with modifications, if any, as deemed necessary by the Authority (the “**change of Scope Acceptance**”) or reject the Change of Scope Request and inform the Concessionaire of its decision. It is also agreed between the Parties that the Authority shall not be liable, in any manner whatsoever, on account of grant or rejection of such Change of Scope Request.

16.3. Payments for Change of Scope

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

16.4. Restrictions on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, if the cumulative costs relating to all the Change of Scope Orders exceed 5% (five per cent) of the Concession Fee in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceeds 25% (twenty five per cent) of the Concession Fee at any time during the Concession Period the provisions of Clause 16.5 shall apply and the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria either by itself where such work requires operation and maintenance, or through another company where such work requires construction on any part of the Tower Assets, subject to payment of 2% (two per cent) of the bid amount to the Authority, and thereupon securing the

award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if the Selected Bidder or the Concessionaire, as the case may be, has participated in the bidding process either individually or as a consortium or JV with another company and fulfils the eligibility criteria to undertake such work without compromising with its overall liability.

The Concessionaire may, in its sole discretion, accept or reject any Change of Scope Order, without assigning any reason whatsoever, such Change of Scope Order being within 5% (five per cent) of the Concession Fee in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs is within 25% (twenty five per cent) of the Concession Fee at any time during the Concession Period. Upon refusal by the Concessionaire hereto, the provisions of Clause 16.5 shall apply. However, in case the Concessionaire decides to take up the Change of Scope works, it shall proceed with the same within such timelines as agreed between the Parties and the provisions of Clause 16.3 shall apply thereto.

16.4.2 For the avoidance of doubt, the Parties agree that no Change of Scope shall be executed unless the Authority has issued the Change of Scope Order or a Change of Scope Acceptance, as the case may be, save and except any works necessary for meeting any emergency.

16.5. Power of Authority to undertake works

16.5.1. Notwithstanding anything to the contrary contained in *this Article 16*, the Authority may award any works or services, contemplated under *Clause 16.1.1*, to any person on the basis of open competitive bidding and the Concessionaire shall be entitled to take part in such competitive bidding. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder as per Good Industry Practice.

16.5.2. The works undertaken in accordance with this *Clause 16.3* shall be carried out in a manner that minimizes the disruption in operation of the Project.

PART IV

FINANCIAL COVENANTS

Article 17. Payments to be made by Concessionaire

17.1. Concession Fee

In consideration of the grant of Concession, the Concessionaire shall have paid to the Authority, in accordance with terms hereof and prior to the Appointed Date, the lump sum upfront and non-refundable concession fee, excluding applicable GST and other applicable taxes which shall be exclusively borne by the Selected Bidder/Concessionaire (“**Concession Fee**”) of an amount equivalent to Rs. [•] (*as per Selected Bidder’s quote of the Bid Concession Fees in its financial bid submitted pursuant to the RFP*), by way of RTGS to a designated account of the Authority, the details of which are provided hereunder or through a demand draft drawn on a Bank in India, in favour of Authority i.e., Bharat Sanchar Nigam Limited, payable at New Delhi, the receipt of which is hereby acknowledged by the Authority. The Concessionaire hereby expressly agrees that this constitutes essential condition of the Agreement, failing which the consequences set out under *Clause 4.2* shall apply. The details of the designated bank account of the Authority is as follows:

Bank:	[•]
Branch:	[•]
Account Number:	[•]
IFSC:	[•]

For avoidance of doubt it is hereby clarified that any and all payments towards the Concession Fee shall be excluding applicable Goods and Services Tax (GST) and other applicable Taxes which shall be exclusively borne by the Selected Bidder/Concessionaire.

17.2. Rentals to Landowners of Non-Shared Sites as per respective Lease Agreements

17.2.1. The Concessionaire shall be responsible to pay rentals to Landowners of Non-Shared Sites in adherence with respective Lease Agreements with Landowners, assigned or novated in favour of the Concessionaire or renewed by Concessionaire or entered in to by the Concessionaire with Landowners from the Appointed Date till the end of the Concession Period.

17.2.2. The Concessionaire is not required to pay any rents for Tower Assets in Shared Sites which are owned by the Authority.

17.3. Conversion of Shared Site to Non-Shared Sites

17.3.1. During the first 2 (two) years of the Concession Period, the Authority shall have the right to seek the conversion of any of the Shared Sites to Non-Shared Sites, upto a maximum of [•] Shared Sites, in which case the Authority shall issue a notice to the Concessionaire directing the Concessionaire to execute the appropriate Lease Agreement with the respective Landowners. Upon conversion of the Shared Site to

Non-Shared Site, the Concessionaire shall be responsible towards payment of rentals to the Landowners in accordance with *Clause 17.2* above.

Article 18. Rentals & Fees

18.1. Charge, invoice, recover and appropriate Rentals & Fees

- 18.1.1.** The Concessionaire is entitled to charge, invoice recover and appropriate Rentals & Fees as per the terms of the Master Service Agreement and other Project Agreements (as applicable) assigned by the Authority (including on account of their renewal from time to time) from the Appointed Date.
- 18.1.2.** The Concessionaire, subject to prior approval of the Authority, may enter into new Master Service Agreements with other Tenants seeking to use the Tower Assets for provision of Telecom and allied services, in adherence with Applicable Laws, Regulations, and Statutory requirements under Local, State and Central Laws.
- 18.1.3.** The Concessionaire, subject to prior approval of the Authority, may provide new and allied services in the excess land available in the Non-Shared Sites, in adherence with Applicable Laws, Regulations, and Statutory requirements under Local, State and Central Laws, and in adherence with the terms and conditions of Lease Agreements with Landowners.
- 18.1.4.** The Concessionaire is required to provide Reserved Spot (as defined in *Schedule B*) free of cost to the Authority. The Concessionaire will charge Rentals & Fees to the Authority for all Assets deployed by the Authority on the Project beyond this Reserved Spot. The rates for such Rentals & Fees for the Authority will be fixed based on benchmark Master Service Agreements entered into by the Concessionaire with other Tenants.

18.2. Reimbursement of electricity and fuel expenses from Authority for its Tenancy

- 18.2.1.** The Concessionaire will charge, invoice, recover and appropriate electricity and fuel expenditure from the Authority incurred on account of Authority's Tenancy of Active Infrastructure Assets. The charges for the same shall mirror the Master Service Agreements with other Tenants.

Article 19. Escrow Account

19.1. Opening an Escrow Account

- 19.1.1.** The Concessionaire shall, prior to Appointed Date, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.
- 19.1.2.** The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank the Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in *Schedule D*.
- 19.1.3.** The rights and obligations of the Authority in relation to the Escrow Account shall require the Authority to deposit all the payments in relation to the Project, including the Termination Payments, to the credit of the Escrow Account in terms of the Escrow Agreement.

19.2. Deposits into Escrow Account

- 19.2.1.** The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:
- a.** all funds constituting the Financial Package;
 - b.** all Rentals & Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
 - c.** all payments by the Authority including, if any, in relation to the change of scope in the Project.

19.3. Withdrawals during Concession Period

- 19.3.1.** The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:
- a.** all statutory dues & taxes due and payable by the Concessionaire for and in respect of the Project;
 - b.** O&M Expenses;

- c. O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- d. monthly proportionate provision of debt service payment due in an Accounting Year;
- e. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and
- f. balance, if any, in accordance with the instructions of the Concessionaire.

19.3.2. The Concessionaire shall not in any manner modify the order of payment specified in *Clause 19.3.1* except with the prior written approval of the Authority and the Lenders.

19.4. Withdrawals upon Termination

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

- a. all statutory dues & taxes due and payable by the Concessionaire for and in respect of the Project;
- b. payment due to Lenders including the Termination Payments;
- c. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- d. incurred or accrued O&M Expenses;
- e. any other payments required to be made under this Agreement; and
- f. balance, if any, in accordance with the instructions of the Concessionaire or the Lenders.

Provided that no appropriations shall be made under *Sub-clause (a) of this Clause 19.4.1* until a Vesting Certificate has been issued by the Authority under the provisions of *Article 27.4*.

19.4.2. The provisions of this *Clause 19.4* and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in *Clause 19.4.1* have been discharged.

Article 20. Insurance

20.1. Insurance during Concession Period

20.1.1. The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice to cover third party claims and Force Majeure Events including Non Political Event (the “**Insurance Cover**”).

20.1.2. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account.

20.2. Notice to the Authority

20.2.1. No later than 45 (forty-five) days prior to commencement of the Concession Period, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this *Article 20*.

20.2.2. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

20.3. Evidence of Insurance Cover

20.3.1. All insurances obtained by the Concessionaire in accordance with this *Article 20* shall be maintained with insurers on terms consistent with Good Industry Practice.

20.3.2. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

20.4. Remedy for failure to Insure

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

amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

20.5. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this *Article 20* shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

20.6. Concessionaire's waiver

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

20.7. Application of insurance proceeds

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

20.7.2. Any failure in aforesaid mandatory application shall be deemed to be Concessionaire Default entitling Authority to terminate the Agreement in terms hereof; provided however in case of such termination the insurance proceeds received from the insurer and not applied as aforesaid shall be set off from the Termination Payments, and the Concessionaire hereby expressly agrees and consents to the same.

Article 21. Accounts and Audit

21.1. Audited accounts

- 21.1.1.** The Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable Income and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, (including payments from the Escrow Account) assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts duly certified by the Statutory Auditors to be provided to the Authority for verification of basis of payments and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 21.1.2.** The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 21.1.3.** On or before the first day of August each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the tenancy for each Tower Asset under the Project, (b) Rentals & Fee charged and received, and revenues derived from the Project, and (c) such other information as the Authority may reasonably require.

21.2. Certification of claims by Statutory Auditors

Any claim or Document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. In the event of there being any difference or dispute in respect thereof, such Dispute shall be resolved by recourse to the Dispute Resolution Procedure.

21.3. Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 21.3 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

PART V
FORCE MAJEURE, CHANGE IN LAW, AND TERMINATION

Article 22. Force Majeure

22.1. Force Majeure

22.1.1. As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in *Clauses 22.2, 22.3 and 22.4* respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and each such Force Majeure Event shall necessarily satisfy each of the following conditions:

- (ii) is beyond the reasonable control of the Affected Party, and
- (iii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and
- (iv) has adversely impacted the operations of at least 10% (ten per cent) of the telecom towers operated by telecom service providers in India; and
- (v) has a Material Adverse Effect on the Affected Party; and
- (v) such Force Majeure Event subsist for a continuous uninterrupted period of at least 90 (ninety) days.

22.2. Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 22.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or

Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

22.3. Indirect Political Event

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

- a. an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b. industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- c. any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- d. any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- e. any Indirect Political Event that causes a Non-Political Event; or
- f. any event or circumstances of a nature analogous to any of the foregoing.

22.4. Political Event

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

- a. Change in Law, only if the consequences thereof cannot be dealt with under and in accordance with the provisions of Article 23;
- b. compulsory acquisition in national interest or expropriation of all Tower Assets or rights of the Concessionaire;
- c. unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any clearance, licence, permit, authorisation,

no objection certificate, consent, approval or exemption required by the Concessionaire to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- d. any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- e. any event or circumstance of a nature analogous to any of the foregoing.

22.5. Duty to report Force Majeure Event

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

- a. a description of the Force Majeure Event that has occurred;
- b. the date of commencement of the Force Majeure Event and estimated cessation of such Force Majeure Event;
- c. the obligations affected and the manner in which the Force Majeure Event affect the Affected Party's obligations under this Agreement;
- d. the nature and extent of the Force Majeure Event;
- e. the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby;
- f. reasonable proof of the nature of such delay or failure and its anticipated effect upon the time for performance and the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
- g. any other relevant information concerning the Force Majeure Event and/or the rights and obligations of the Parties under this Agreement.
- h. the Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no

later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable Material Adverse Effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

22.5.2. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by *Clause 22.5.1*, and such other information as the other Party may reasonably request the Affected Party to provide.

22.6. Effect of Force Majeure Event on the Concession

22.6.1. Upon the occurrence of any Force Majeure Event prior to Appointed Date, the period set forth in *Clause 12.1* for achieving the Appointed Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

22.6.2. If any Force Majeure Event occurs after the Appointed Date, whereupon the Concessionaire is unable to collect Rentals & Fees despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Rentals & Fees on account thereof; provided that in the event of partial collection of Rentals & Fees where the daily collection is less than 90% (ninety per cent) of the Average Monthly Revenue, the Authority shall extend the Concession Period in proportion to the loss of Revenue on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Rentals & Fees, as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period.

22.7. Allocation of costs arising out of Force Majeure

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

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

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

extent Force Majeure Costs exceeds such Insurance Cover, one half of such costs shall be reimbursed by the Authority to the Concessionaire.

22.7.3. For the avoidance of doubt, Force Majeure Costs may include interest payments on Debt, capital and operational expenditure on the Tower Assets that were affected by the Force Majeure Event (including redeployment of equipment similar to the equipment installed at such Tower Site prior to the occurrence of the Force Majeure Event) and all other costs directly attributable to the Force Majeure Event but shall not include loss of Rentals & Fee revenues or Debt repayment obligations, and for determining such costs in respect of interest payment on Debt, information contained in the copy of certified Financing Agreement and financial package furnished by Concessionaire may be relied upon to the extent it is relevant.

22.7.4. Save and except as expressly provided in this *Article 22*, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands, and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

22.8. Termination Notice for Force Majeure Event

22.8.1. If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever save as provided in this *Article 23*, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

22.9. Termination Payment for Force Majeure Event

22.9.1 If Termination is on account of a Non-Political Event, the Authority shall, subject to terms of *Clause 26.3.4* hereof, make a Termination Payment to the Concessionaire in an amount equal to 60% (sixty per cent) of the Discounted Concession Fee less Insurance Cover.

22.9.2 If Termination is on account of an Indirect Political Event, the Authority shall, subject to terms of *Clause 26.3.4* hereof, make a Termination Payment to the Concessionaire in an amount equal to 70% (seventy per cent) of Discounted Concession Fee less Insurance Cover.

22.9.3 If Termination is on account of a Political Event, the Authority shall, subject to terms of Clause 26.3.4 hereof, shall make a Termination Payment to the Concessionaire in an amount that would be payable under *Clause 26.3.2* as if it were an Authority Default.

22.10. Dispute resolution

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

22.11. Excuse from performance of obligations

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

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

Article 23. Change in Law Event

23.1 Increase in costs or reduction in net after-tax return or other financial burden

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. [●] (Rupees [●] Crore) and 0.5% (zero point five per cent) of the Realisable Income in any Accounting Year, the Concessionaire may so notify the Authority within 45 (forty days of knowledge of applicability of such Change in Law and propose amendments to this Agreement so as to place the Concessionaire in no better and no worse financial condition had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

Provided that, if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 34.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

23.2 Reduction in costs or increase in net after-tax return or other financial gains

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. [●] Cr (Rupees [●] Crore) and 0.5% (zero point five per cent) of the Realisable Income in any Accounting Year, the Authority may so notify the Concessionaire within 45 (forty five) days of knowledge of applicability of such Change in Law and propose amendments to this Agreement so as to place the Concessionaire in no better and no worse financial condition had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice,

along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled In accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 23.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

23.3 Protection of NPV

Pursuant to the provisions of Clauses 23.1 and 23.2 and for the purposes of placing the Concessionaire in no better and no worse financial condition had there been no such Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the projections done by Authority including Initial Estimated Concession Value (IECV) of Authority to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. Authority may invite Lenders' representative in the meetings conducted, in this regard.

23.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 23 shall be restricted to the effect of Change in Law Event during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

23.5 No claim in the event of recovery from Third Parties

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from third parties that are contracted with the Concessionaire.

Article 24. Compensation for Breach of Agreement

24.1. Compensation for default

- 24.1.1.** Subject to the provisions of *Clause 24.4*, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this *Clause 24.1* for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.
- 24.1.2.** Subject to the provisions of *Clause 24.4*, in the event of the Authority being in material default or breach of this Agreement at any time after Appointed Date, the provisions under *Clause 24.2* shall apply.

24.2. Extension of Concession Period

- 24.2.1.** In the event that a material default or breach of this Agreement by the Authority set forth in *Clause 24.1.2* leads to suspension of or reduction in collection of Rentals & Fees, as the case may be, the Authority shall, extend the Concession Period, such extension being equal in duration to the period for which the collection of Rentals & Fee remained suspended on account thereof; and in the event of reduction in collection of Rentals & Fees where the daily collection is less than 90% (ninety per cent) of the average daily revenue, the Authority shall, in addition to payment of compensation hereunder (if any), extend the Concession Period in proportion to the loss of Fee on a daily basis.
- 24.2.2.** For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Rentals & Fee as compared to the average daily revenue for 4 (four) days shall entitle the Concessionaire to extension of one day in the Concession Period.

24.3. Compensation to be in addition

The compensation payable under this *Article 24* shall be in addition to, and not in substitution for, or derogation of Termination Payment, if any.

24.4. Mitigation of costs and damage

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

Article 25. Suspension of Concessionaire's Rights

25.1. Suspension upon Concessionaire Default

25.1.1. Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Rentals & Fees pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 120 (one hundred and twenty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders, the Authority shall extend the aforesaid period of 120 (one hundred and twenty) days by a further period not exceeding 90 (ninety) days.

25.2. Authority to act on behalf of Concessionaire

25.2.1. During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Rentals & Fees under and in accordance with this Agreement and pay the balance remaining after setting off the costs incurred by it for remedying and rectifying the cause of Suspension.

25.2.2. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period.

25.2.3. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under *Clause 25.1* to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project and its, operation, and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

25.3. Revocation of Suspension

25.3.1. In the event that the Authority shall have rectified or removed the cause of Suspension within the period not exceeding the notice period provided under *Clause 25.1* for Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

25.3.2. Upon the Concessionaire having cured the Concessionaire Default within the period not exceeding the notice period provided under *Clause 25.1* for Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

25.4. Substitution of Concessionaire

25.4.1. At any time during the period of Suspension, the Lenders shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement provided in *Schedule F* and upon receipt of notice thereunder from the Lenders', the Authority shall withhold Termination for a period not exceeding 120 (one hundred and twenty) days from the date of Suspension, and any extension thereof under *Clause 25.1*, for enabling the Lenders to exercise its rights of substitution

25.5. Termination

25.5.1. Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 120 (one hundred and twenty) days from the date of Suspension hereunder or within the extended period, if any, set forth in *Clause 25.1*, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

Article 26. Termination

26.1. Termination for Concessionaire Default

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

- a.** the Performance Security has been encashed and appropriated in accordance with *Article 9* and the Concessionaire fails to replenish or provide fresh performance security within a Cure Period of 15 (fifteen) days;
- b.** subsequent to the replenishment or furnishing of fresh Performance Security in accordance with *Clause 9.2*, the Concessionaire fails to cure, within a Cure Period of 60 (sixty) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- c.** the Concessionaire abandons or manifests intention to abandon the operation and maintenance of the Project without the prior written consent of the Authority;
- d.** the Concessionaire fails to roll over, renew and furnish new bank guarantee Performance Security subject to and in accordance with terms of *Article 9*, at least 3 (three) months prior to expiry of subsisting bank guarantee furnished in respect of the Performance Security;
- e.** the Concessionaire has failed to make any payment to the Authority within period specified in this Agreement;
- f.** upon occurrence of a Financial Default (as defined under the Substitution Agreement), the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- g.** a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- h.** the Concessionaire creates any Encumbrances in breach of this Agreement;

- i.** the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- j.** a Change in Ownership has occurred in breach of the provisions of *Clause 5.3*;
- k.** there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- l.** an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- m.** the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- n.** the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- o.** a resolution for winding up of the Concessionaire is passed or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

 - i.** the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - ii.** the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at Appointed Date; and
 - iii.** each of the Project Agreements remains in full force and effect;
- p.** any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading;

- q. the Concessionaire submits to the Authority any statement, notice or other Document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- r. the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- s. the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority;
- t. an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;

26.1.2. Termination Notice

Without prejudice to any other right or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to issue a notice of its intention to terminate this Agreement ("**Notice of Intention to Terminate**") with a copy thereof to the Lenders. Immediately upon the issue by Authority of the Notice of Intention to Terminate, the Lenders shall have the right to nominate an entity to replace the Concessionaire and perform the Concessionaire's obligations hereunder (the "**Substitute Entity**"). The Concessionaire shall procure that Lenders shall notify Authority about whether they are exercising their right of substitution within sixty (60) days of receipt of Notice of Intention to Terminate, or the Lenders' Notice of Default (as defined in the Substitution Agreement). Any such Substitute Entity shall have the legal, financial, and technical capability reasonably necessary to perform the obligations of the Concessionaire in accordance with the terms of this Agreement. Any such Substitute Entity shall be nominated in accordance with the procedure as set out in the Substitution Agreement.

26.1.3. In the event:

- a. Lenders have chosen not to exercise their right of substitution, or
- b. a Substitute Entity has not been nominated by the Lenders within time period set forth in the Substitution Agreement; or
- c. a nominated Substitute Entity/ alternate Substitute Entity has not been approved by Authority within the time period set forth in the Substitution Agreement; or

- d. a selected Substitute Entity has not been able to remedy the breach of the Concessionaire leading to the Notice of Intention to Terminate within time period set forth in the Substitution Agreement,
- then the Authority shall have the right but shall not be obligated to issue a notice to Concessionaire terminating this Agreement.

26.2. Termination for Authority Default

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

- a. the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- b. the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or

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

26.3. Termination Payments

26.3.1. Subject to terms herein below, upon Termination on account of a Concessionaire Default during the Concession Period, the Performance Security shall be forfeited, and the Concessionaire would continue to be liable towards any antecedent liability, all obligations accrued before the effective date of the termination and also for the obligations including Divestment Requirements that must be fulfilled in terms hereof after termination. In the event of Authority terminating the Agreement on account of Concessionaire Default and in addition to the Authority forfeiting the Performance Security, as stated above, the Authority shall pay to the credit of the Escrow Account 70% (seventy percent) of the Discounted Concession Fee less Insurance Cover, towards Termination Payments.

- 26.3.2.** Subject to terms herein below, upon Termination on account of an Authority Default, the Authority shall pay to the credit of the Escrow Account by way of Termination Payment an amount equal to 105% (one hundred and five percent) of the Discounted Concession Fee less Insurance Cover, towards Termination Payments.
- 26.3.3.** The Authority and the Concessionaire hereby acknowledge and agree that, notwithstanding anything to the contrary contained in this Agreement, and without prejudice to their any other respective right or remedy, the Concessionaire shall be entitled to receive Termination Payment only upon furnishing to the Authority No Objection Certificate (NOC) issued by the Senior Lenders/Lenders' Representative recording/effecting release, vacation/discharge of the charge on Project receivables (if any) created by Concessionaire for securing repayment of the Debt.
- 26.3.4.** Further, the Parties agree that in the event of failure of Concessionaire to procure vacation/discharge of such charge as evidenced by NOC, Authority shall be entitled to procure the same by paying the Termination Payment directly to Senior Lenders/Lenders Representative to the extent of outstanding Debt due, without any further reference to or consent of Concessionaire, and such payment by Authority shall be due discharge of payment obligations towards Concessionaire in terms herein; and for this purpose the Concessionaire hereby appoints, nominates and constitutes the Authority its duly constituted attorney to do all acts, things, deeds required for paying directly to Lenders , the Lenders Debt due , and procuring discharge of charge, pursuant to terms above.

In this regard it is hereby further agreed by Concessionaire that in case Termination Payment falls short of amount required to vacate the charge, Authority shall be entitled to encash and tap the Performance Security for the same, and balance if still outstanding shall be promptly paid by Concessionaire. The Termination Payment shall, subject to terms hereof, become due and payable to the Concessionaire within 15 (fifteen) days of furnishing NOC to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days.

For the avoidance of doubt, it is expressly agreed that Termination Payment to be paid subject to and in accordance with terms hereof shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder. For the purposes of this clause and the Agreement, the Lender's Debt due shall mean the outstanding principal amount and interest thereon, financial fees as due and payable as on Transfer Date, and for the determination of the same the Financing Documents may be relied upon by the Authority.

26.3.5. The Concessionaire expressly agrees that Termination Payment to be paid subject to terms under this Article 30 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

26.4. Other rights and obligations of the Authority

26.4.1. Upon Termination for any reason whatsoever, the Authority shall:

- a. be deemed to have taken possession and control of the Project forthwith;
- b. take possession and control of all materials, stores, implements, plants, and equipment on or about the Tower Site;
- c. be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Tower Site or any part of the Project;
- d. require the Concessionaire to comply with the Divestment Requirements set forth in *Clause 27.1*; and
- e. succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute Debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

26.5. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of *Clause 26.3.4*, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and

Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

Article 27. Divestment of Rights and Interests

27.1. Divestment Requirements

27.1.1. Upon Termination, the Concessionaire shall comply with and conform to the following (“**Divestment Requirements**”):

- a.** notify to the Authority forthwith the location and particulars of all Tower Assets;
- b.** deliver forthwith the actual or constructive possession of the Project free and clear of all Encumbrances;
- c.** cure all Tower Assets, of all defects and deficiencies so that the Project is compliant with the Specifications and Standards, and service level requirements as set out under Master Service Agreements;
- d.** deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its, operation and maintenance, including all programmes and manuals pertaining thereto, and complete ‘as built’ drawings in respect of maintenance works, if applicable, as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrances;
- e.** transfer and/ or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- f.** execute such deeds of conveyance, Documents and other writings as the Authority may reasonably require for conveying, divesting, and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers’ warranties in respect of any equipment forming part of the Tower Assets and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- g.** comply with all other requirements as may be prescribed under *Part D of Schedule B* of this Agreement or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

27.1.2. Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of

any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

27.1.3. In the event the Concessionaire would have received any advance payments/guarantees/other monies in form of advance payments or contingent liabilities in respect of any contracts pertaining to the operation and management of the Project/Project Assets, the same should be duly pay/handover/transfer such amounts and/or consideration to the Authority prior to the issuance of the Vesting Certificate in terms of this Agreement.

27.2. Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Authority shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Specifications and Standards, and service level requirements as set out under Master Service Agreements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Specifications and Standards, and service level requirements as set out under Master Service Agreements shall be cured by the Concessionaire at its cost and the provisions of *Article 29* shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this *Article 28*.

27.3. Cooperation and assistance on transfer of Project

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

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

27.3.3. The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any Encumbrances all or any part of equipment used in connection with the Project but which does not form part of the assets specified in

Clause 27.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

27.4. Vesting Certificate

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

27.5. Additional Facilities

Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Concessionaire upon and after Termination.

27.6. Divestment costs etc.

- 27.6.1.** The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Authority upon Termination save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 27.6.2.** In the event of any dispute relating to matters covered by and under this *Article 33*, the Dispute Resolution Procedure shall apply.

Article 28. Defects Liability after Termination

28.1. Liability for defects after Termination

- 28.1.1.** The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 60 (sixty) days from the date of issuance of Vesting Certificate, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Project during the aforesaid period (the “**Defects Liability Period**”).
- 28.1.2.** In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire’s risk and cost.
- 28.1.3.** All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Performance Security.

PART VI

OTHER PROVISIONS

Article 29. Assignment and charges

29.1. Restriction on assignment and charges

29.1.1. Subject to *Clauses 29.2 and 29.3*, this Agreement shall not be assigned by the Concessionaire to any person save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

29.1.2. Subject to the provisions of *Clause 29.2*, the Concessionaire shall not create nor permit to subsist any Encumbrances, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

29.2. Permitted assignment and charges

29.2.1. The restraints set forth in *Clause 29.1* shall not apply to:

- a. liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- b. mortgages or pledges or hypothecation of goods or assets other than Tower Assets and their related Documents of title arising or created in the ordinary course of business of the Project and as security only for indebtedness to the Lenders for financing the Debt component of the Concession Fee paid upfront by Concessionaire; and
- c. liens or Encumbrances required by any Applicable Law

This Agreement shall not be assigned by the Concessionaire; provided however that Lender may be given a right of substitution by execution of the Substitution Agreement. Provided further that at any given time, the Authority shall enter into only one (1) Substitution Agreement with one (1) Lender or Lenders' agent; such Lenders' agent being an agent for one consortium of Lenders. The Lenders shall be free to modify the composition of the consortium of Lenders. It is further expressly clarified that lenders that provide financing for purposes other than meeting Debt component of Concession Fee shall not be given any right of substitution.

Subject to Applicable Laws, the Concessionaire shall be entitled to create security over the Project receivables through by way of hypothecation or charge thereon, for the purposes of securing repayment of the financial assistance availed from Lenders, for the purposes of financing the Debt contributions towards meeting the payment obligations of upfront Concession Fee and, such security creation shall not require prior approval by the Authority. The Concessionaire hereby agrees to and shall procure and cause that the Lenders promptly submit to the Authority within seven days of every

month, monthly statement for last month in respect of the Debt service and occurrence of any breach under the Financing Agreement including Financial Default (as defined under Substitution Agreement). This constitutes an essential condition under this Agreement.

29.2.2. It is clarified that upon occurrence of an enforcement event under the relevant Financing Agreement between the Concessionaire and the lenders who have financed the Debt, the bank or financial institutions shall be allowed to undertake assignment or substitution of Concessionaire rights and obligations hereunder including Debt obligations, as per terms of Substitution Agreement; provided however in the Lenders or its agent shall not in any case be entitled or be permitted to exercise the assignment rights or operate the Project as the Concessionaire.

29.2.3. It is hereby clarified and the Concessionaire expressly agree and understand and it shall procure that Lenders also fully understand and agree that aforesaid charge on Project receivables to be created as security for repayment of Debt cannot only be enforced by Lenders (as per mechanism under Applicable Laws), only in favour of Substitute Entity selected in accordance with terms of Substitution Agreement and such Substitute Entity shall compulsorily assumes to discharge liabilities and obligations of the Concessionaire towards the Authority under this Agreement

29.3. Assignment by the Authority

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

Article 30. Redressal of Public Grievances

30.1 Complaints Register

- 30.1.1** The Concessionaire shall maintain a public relations office at each of the Tower Sites where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each of the Tower Sites so as to bring it to the attention of general public (including Tenants, lessors etc).
- 30.1.2** The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 30.1.3** Without prejudice to the provisions of Clauses 30.1.1 and 30.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

30.2 Redressal of Complaints

- 30.2.1** The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 30.2.2** Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Third Party Auditor a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

Article 31. Liability and Indemnity

31.1. General indemnity

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

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

31.2. Indemnity by the Concessionaire

31.2.1. Without limiting the generality of *Clause 31.1*, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a.** failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- b.** any harm, injury, death, or damage caused to any person or property (whether tangible or intangible) on account of any Tower forming part of the Tower Assets and/or any Active Infrastructure installed at such Towers including but not limited to failure of the Concessionaire to comply with its O&M obligations under Article 14 of this Agreement.

- c. any legal suits/ case/ impositions/ penalties arising out of any such mishaps/ accidents/ harm/ injury/ damage arising from any of the Tower forming part of the Tower Assets and/or any Active Infrastructure during the entire Concession Period.
- d. payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's Contractors, suppliers, and representatives; or
- e. non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its Contractors.

31.2.2. Without limiting the generality of the provisions of this *Article 31*, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

31.3. Notice and contest of Claims

31.3.1. In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this *Article 31* (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to

contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

31.4. Defence of Claims

- 31.4.1.** The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this *Article 31*, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 31.4.2.** If the Indemnifying Party has exercised its rights under *Clause 31.3*, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 31.4.3.** If the Indemnifying Party exercises its rights under *Clause 31.3*, the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- a.** the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - b.** the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
 - c.** the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

- d. the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
- e. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
- f. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this *Clause 31.4.3* shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

31.5. No consequential Claims

31.5.1. Notwithstanding anything to the contrary contained in this *Article 31*, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect or consequential nature except as expressly provided in this Agreement.

31.6. Survival on Termination

31.6.1. The provisions of this *Article 31* shall survive Termination.

Article 32. Rights and Title over the Tower Assets

32.1. Licensee rights

- 32.1.1.** For the purpose of this Agreement, the Concessionaire shall have Right to Use of the Tower Site as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the sharing and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

32.2. Access rights of the Authority and others

- 32.2.1.** The Concessionaire shall allow free access to the Tower Site at all times for the authorised representatives and vehicles of the Authority, and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

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

32.3. Property taxes

- 32.3.1.** All property taxes on the Shared Site shall be payable by the Authority as owner of the Shared Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Tower Site shall not be reimbursed or payable by the Authority.

32.4. Restriction on sub-letting

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

Article 33. Dispute Resolution

33.1. Dispute Resolution

33.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in *Clause 33.2*.

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

33.2. Mediation and Conciliation

33.2.1. Mediation: In the event of any Dispute between the Parties, either Party may appoint a sole and independent conciliator in terms of the Arbitration and Conciliation Act, 1996 to mediate and assist the Parties in arriving at an amicable settlement thereof. If after expiry of 30 days of receipt of the Documents in relation to the Dispute or such extended period as the Parties may agree in writing, the Dispute remains unresolved, the Parties shall attempt to resolve the dispute through conciliation under the Arbitration and Conciliation Act, 1996, as per *Clause 33.2.2*.

33.2.2. Conciliation. The Parties shall attempt to select one of the experts from the list of empanelled arbitrators of the Society for Affordable Redressal of Disputes (“**SAROD**”) as the Conciliator to mediate and assist the Parties in arriving at an amicable settlement thereof. If the Parties fail to agree on nominating a conciliator within 15 (fifteen) days or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 60 (sixty) days of the notice in writing referred to in *Clause 33.1.1* 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 33.3*.

33.3. Arbitration

33.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in *Clause 33.2*, shall be finally settled by arbitration as set forth below:

- a.** The arbitration shall be conducted in accordance with the Indian Arbitration and Conciliation Act, 1996.
- b.** The seat and venue of arbitration shall be New Delhi, India.
- c.** The arbitral tribunal shall consist of 3 (Three) arbitrator(s). The claimant(s) shall designate 1 (One) arbitrator, the respondent(s) shall designate 1 (One) arbitrator. The 2 (Two) arbitrators thus appointed shall designate the third

arbitrator who shall be the presiding arbitrator. If within 10 (Ten) days of a request from the other Party to do so, a Party fails to appoint an arbitrator, or if the two arbitrators fail to appoint the third arbitrator within 5 (Five) days after the appointment of the second arbitrator, the appointment shall be made, upon request by either Party, in accordance with the Indian Arbitration and Conciliation Act, 1996. Each Party to the dispute shall co-operate in good faith to expedite (to the maximum extent practicable) the conduct of any arbitral proceedings commenced under this Agreement).

- d. The language used in the arbitral proceedings shall be English. All Documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.
- e. The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be borne by each party itself.

33.3.2. The arbitrators shall make a reasoned award (the “**Award**”).

33.3.3. The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

33.3.4. In the event the Party against whom the Award has been granted, challenges the Award for any reason in a court of law, the other Party, subject to the order of the Court, shall be entitled to seek an interim payment for an amount equal to 75% (seventy-five per cent) of the Award, pending final settlement of the Dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120 % (one hundred and twenty per cent) of the aforesaid amount. The Bank Guarantee shall be kept alive for the entire period till the Dispute is finally resolved. Upon final settlement of the Dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at Bank Rate plus 3% (three per cent) per annum from the date of interim payment to the date of final settlement of such balance.

33.4. Adjudication by Regulatory Commission or Authority

33.4.1. In the event of constitution of a statutory Regulatory Commission or Authority with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under *Clause 33.3*, be adjudicated upon by such Regulatory Commission or Authority in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case

may be, or no such appeal has been preferred within the time specified in the Applicable Law.

33.4.2. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending any proceedings hereunder. Further, the Parties unconditionally acknowledge and agree that notwithstanding any Dispute between them, each Party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.

Article 34. Disclosure

34.1. Disclosure of Specified Documents

34.1.1. The Concessionaire shall make available for inspection by the Government Instrumentalities, copies of this Concession Agreement, (collectively the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Tower Sites and Concessionaire’s Registered Office. The Concessionaire shall prominently display at each of the Tower Sites, public notices stating the availability of the Specified Documents for such inspection and shall provide copies of the same to any person upon payment of copying charges on a ‘no-profit no-loss’ basis.

34.2. Disclosure of Documents relating to safety

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

34.2.2. Notwithstanding the provisions of *Clauses 34.1 and 34.2*, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation: The expression Protected Documents shall mean such of the Specified Documents or Documents referred to in *Clauses 34.1 and 34.2*, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

Article 35. Miscellaneous

35.1. Governing Law and Jurisdiction

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

35.2. Waiver of Immunity

35.2.1. Each Party unconditionally and irrevocably:

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

35.3. Depreciation and Interest

35.3.1. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

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

35.4. Delayed Payments

35.4.1. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (three per cent)

above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

35.5. Waiver

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

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

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

35.6. Liability for review of Documents and Drawings

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

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

35.7. Exclusion of implied warranties etc.

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

35.8. Survival

35.8.1. The termination of this Agreement shall:

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

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

35.9. Entire Agreement

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

35.10. Severability

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

35.11. No Partnership

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

35.12. Third Parties

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

35.13. Successors and Assigns

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

35.14. Notices

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

- a. in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;
- b. in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Chairman of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Delhi it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- c. any notice or communication by a Party to the other Party given in accordance herewith shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery..

35.15. Language

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

35.16. Counterparts

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

Article 36. Definitions

36.1. Definitions

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

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|---|---|
| 1. Accounting Year | means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year. |
| 2. Active Infrastructure | means the elements or components on the active layer of a telecommunications network, including, but not limited to, antennas, switches, servers, databases, radio access nodes, and transmission equipment. |
| 3. Additional Facilities | means the facilities such as equipment/ infrastructure required for hosting EV charging units that Concessionaire may, in its discretion and subject to and in accordance with full compliance with Applicable Laws, provide or procure for the benefit of the Tenants. |
| 4. Additional Towers | shall have the meaning as set forth in Clause 13.1.1. |
| 5. Affected Party | shall have the meaning as set forth in Clause 22.1.1. |
| 6. Agreement or Concession Agreement | means this Concession Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement. |
| 7. Applicable Laws | means all laws, brought into force and effect by GOI, Governmental Instrumentalities or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement. |
| 8. Applicable Permits | means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions |

required to be obtained or maintained under Applicable Laws in connection with the operation and maintenance of the Tower Assets during the subsistence of this Agreement including but not limited to all such clearances, licenses, permits, authorisations, no objection certificates, consents, approvals and exemptions, in relation to the Project, which were obtained and maintained by the Authority prior to the Appointed Date.

- 9. Appointed Date** shall have the meaning set forth in Clause 12.1 and shall be deemed to be the date of commencement of the Concession Period.
- 10. Associate or Affiliate** means in relation to either Party{and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise).
- 11. Asset Register** means the details of the Tower Assets (including but not limited to the Passive Infrastructure installed at each Tower Site) and Project Agreements.
- 12. Asset Takeover Plan** Shall mean a plan submitted by the Concessionaire to the Authority to provide a sequential and systematic plan for takeover of Tower Assets prior to the Appointed Date.
- 13. Authority Default** shall have the meaning set forth in Clause 26.2.1.
- 14. Authority Indemnified Persons** shall have the meaning as set forth in Clause 31.1.1.
- 15. Authority Representative** means such person or persons as may be informed in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the

Authority under this Agreement.

- 16. Award** shall have the meaning as set forth in Clause 33.3.2.
- 17. Bank** means a scheduled commercial bank registered with RBI except any cooperative banks.
- 18. Bank Rate** means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.
- 19. Bid** means the Documents in their entirety comprised in the bid submitted by the {selected bidder/ Concessionaire} in response to the RFP in accordance with the provisions thereof.
- 20. Bid Security** means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. 50 (Fifty) Crore in accordance with the RFP and which is to remain in force until the expiry of 7 (seven) days from the date of payment of the Concession Fees by the Concessionaire to the Authority as per the terms hereof, subject to submission of Performance Security by the Concessionaire to the Authority in terms of Article 9 of this Agreement.
- 21. Board** means the board of Directors of the Concessionaire.
- 22. Charter Documents** means memorandum of association, articles of association, shareholder's agreement, by-laws of the company, as applicable.
- 23. Change in Law** means the occurrence of any of the following after the date of Bid:
- a) the enactment of any new Indian law;
 - b) the repeal, modification, or re-enactment of any existing Indian law;
 - c) the commencement of any Indian law which has not entered into effect until the date of Bid;
 - d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive, and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or

e) any change in the rates of any of the Taxes that have a direct effect on the Project.

- 24. Change in Ownership** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the selected bidder, together with {its/their} Associates, in the total equity share capital of the Concessionaire to decline below 51% (fifty one per cent) of the subscribed and paid -up equity share capital of the Concessionaire till the 2nd (second) anniversary of the Appointed Date; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the Selected Bidder/ any Consortium Member} to the total equity, if it occurs during the Concession Period, shall constitute Change in Ownership.
- 25. Change of Scope** shall have the meaning set forth in Article 16.
- 26. Change of Scope Acceptance** shall have the meaning as set forth in Clause 16.2.6
- 27. Change of Scope Request** shall have the meaning as set forth in Clause 16.2.2.
- 28. Change of Scope Notice** shall have the meaning as set forth in Clause 16.2.3.
- 29. Change of Scope Order** shall have the meaning as set forth in Clause 16.2.5.
- 30. Concession** shall have the meaning set forth in Clause 3.1.1.
- 31. Concession Period** shall have the meaning set forth in Clause 3.1.1.
- 32. Concessionaire** shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals.

- 33. Concession Fee** shall have the meaning set forth in Clause 17.1.1.
- 34. Concession Period** means the period starting on and from the Appointed Date and ending on the Transfer Date.
- 35. Concessionaire Default** shall have the meaning set forth in Clause 26.1.1.
- 36. Conditions Precedent** shall have the meaning set forth in Clause 4.1.1.
- 37. Contractor(s)** means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the O&M Contract, or any other material agreement or contract for, operation and/or maintenance of the Tower Assets or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire.
- 38. Covenant** shall have the meaning as set forth in Clause 5.2.3.
- 39. Cure Period** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:
- a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice,
 - b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
 - c) not in any way be extended by any period of Suspension under this Agreement,
- provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval.
- 40. Damages** shall have the meaning set forth in sub-clause (v.) of Clause 1.2.1.
- 41. Debt** shall mean the financial assistance provided by Lenders in terms of the Financial Agreement, relevant financial package, towards meeting the debt component of the Concession Fee amount that is paid by Concessionaire to the Authority in terms

hereof. For avoidance of doubt, it is hereby clarified that Concessionaire shall be entitled to undertake refinancing of Debt only with prior written permission of the Authority in terms of this Agreement.

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|---|---|
| 42. Defects Liability Period | shall have the meaning set forth in Clause 28.1.1. |
| 43. Directors | means the directors on the Board of the Concessionaire. |
| 44. Dispute | shall have the meaning set forth in Clause 33.1.1. |
| 45. Discounted Concession Fee | shall mean the Net Present Value of the unexpired cashflow less insurance cover. |
| 46. Dispute Resolution Procedure | means the procedure for resolution of Disputes set forth in Article 33. |
| 47. Divestment Requirements | means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 27.1.1. |
| 48. Document or Documentation | means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form. |
| 49. Emergency | means a condition or situation, as determined by the Authority in writing, that is likely to endanger the security of the individuals near the Tower Assets, or which poses an immediate threat of material damage to any of the Tower Assets. |
| 50. Encumbrances | means, in relation to the Tower Assets, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Tower Assets, where applicable herein but excluding utilities referred to in Clause 10.4 and charge on Project receivables only for purposes of securing Debt repayment and for no other purpose. |

- 51. Escrow Account** means an Account which the Concessionaire shall open and maintain with a Bank in which inflows and outflows of monies shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account.
- 52. Escrow Agreement** shall have the meaning set forth in Clause 19.1.2.
- 53. Escrow Bank** shall have the meaning set forth in Clause 19.1.1.
- 54. Force Majeure Cost** shall have the meaning as set forth in Clause 22.7.2.
- 55. Force Majeure or Force Majeure Event** shall have the meaning ascribed to it in Clause 22.1.
- 56. Financing Agreement** means the Documents executed by the Concessionaire with Lenders solely for financing (including refinancing) the Debt component of the Concession Fee.
- 57. Financial Closure** shall mean the fulfillment by Concessionaire of all condition precedents set out under the Financing Agreement, so that the financial assistance sought to be disbursed thereunder, are ready and available to be disbursed on demand.
- 58. Financial Model** means the financial model adopted by Lenders, setting forth the costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein.
- 59. Financial Package** means the financing package indicating the total Concession Fee and other costs related to the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes equity, all financial assistance specified in the Financing Agreements and subordinated debt, if any.
- 60. Government/GOI** means the Government of India.

- 61. Good Industry Practice** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner.
- 62. Government Instrumentality** means Telecom Regulatory Authority of India, Department of Telecommunication, Government of India and any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government or the State Government, as the case may be, and having jurisdiction over Tower Assets or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.
- 63. Handover Date** Means any date prior to the Appointed Date, with respect to each Tower, the date on which the Tower and related Passive Infrastructure has been handed over to the Concessionaire, and the related Lease Agreement (for the underlying land) has been assigned/novated in favour of the Concessionaire, if applicable for such Tower.
- 64. Indemnified Party** means the Party entitled to the benefit of an indemnity pursuant to Clause 31.3.1.
- 65. Indemnifying Party** means the Party obligated to indemnify the other Party pursuant to Clause 31.3.1.
- 66. Indirect Political Event** shall have the meaning set forth in Clause 22.3.
- 67. Insurance Cover** means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 20, and includes all insurances required to be taken out by the Concessionaire under Clause 20.1 but not actually taken, and when used in the context of any act or event, it shall mean the

aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event.

- 68. Intellectual Property** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world.
- 69. Landowners** means any person or entity which has rented out the space to set up the Tower Assets being handover as part of this Project.
- 70. Lease Agreements** means the agreements executed with the Landowners in relation to the Tower Assets and as detailed under Schedule A of this Agreement.
- 71. Lenders or Senior Lenders** means the financing institutions, banks, multilateral funding agencies and similar bodies undertaking lending business or their trustees/ agents including their successors and assignees, who have provided financial assistance to the Concessionaire under the Financing Agreement for meeting Debt component utilized by Concessionaire for part financing the Concession Fee as per the terms hereof.
- 72. LOA** shall have the meaning ascribed to it in Recital E.
- 73. Licensed Premises** shall have the meaning ascribed to it in Clause 10.2.3 and includes Non-Shared Licensed Premises and Shares Licensed Premises.
- 74. Master Service Agreement** means the agreements executed with the tenants of the Tower Assets as detailed under Schedule A of this Agreement.
- 75. Material Adverse Effect** means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a Material Financial Burden or Loss to either Party.

For the purpose of this definition, the ‘Material Financial Burden or Loss’ shall mean [inability of Concessionaire to operate and maintain at least [20% (twenty per cent)] of the Tower Assets and collect Rentals & Fees thereof.]

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| 76. | Net present value (NPV) | is defined as the sum of the present values (PVs) of incoming and outgoing cash flows over the Concession Period. Incoming and outgoing cash flows can also be described as rental revenues and other ancillary revenues and cost cash flows, respectively. |
| 77. | Non-Political Event | shall have the meaning set forth in Clause 22.2. |
| 78. | Non-Shared Sites | shall refer and include such Tower Sites where no other equipment has been installed by the Authority other than the Tower Assets forming part of the Tower Assets and includes Non-Shared Owned Sites and Non- Shared Rented Sites. |
| 79. | Non-Shared Owned Sites | shall refer and include such Non-Shared Sites which are located on the land owned by the Authority and in respect of which the rentals & other charges (including any escalation thereof) will be borne and paid by the Concessionaire and the contracts or agreements in respect thereof shall be assigned or novated in favour of the Concessionaire. |
| 80. | Non-Shared Rented Sites | shall refer and include such Non-Shared Sites which are located on the land leased by the respective Landowners and in respect of which the rentals & other charges (including any escalation thereof) will be borne and paid by the Concessionaire and the contracts or agreements in respect thereof shall be assigned or novated in favour of the Concessionaire. |
| 81. | Notice of Intention to Terminate | shall have the meaning ascribed in Clause 26.1.2. |
| 82. | OMT | shall have the meaning as set forth in Recital D. |
| 83. | O&M | means the operation, management and maintenance of the Tower Assets and includes all matters connected with or incidental to such operation and maintenance, provision of |

services and facilities, and collection of rentals subject to and in accordance with the provisions of this Agreement.

- 84. O&M Contractor(s)** means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire.
- 85. O&M Contract** means the agreement executed with the O&M Contractor.
- 86. O&M Expenses** means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, all repair, replacement, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract, or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement.
- 87. O&M Inspection Report** shall have the meaning set forth in Clause 15.2.1.
- 88. Passive Infrastructure** means all equipment installed at the Tower Site along with each Tower including but not limited to earmarked land, power connection, battery banks, power plants, electrical sub systems, transformer and leading in power cables, runways & cable trays, air conditioners, free cooling systems, aviation lamps, DC & AC earthing, shelter, security hut, cable ducts, generators, antenna mounts, lightening arrestor, fire alarms / extinguishers etc.
- 89. Parties** means the parties to this Agreement collectively and “Party” shall mean any of the parties to this Agreement individually.
- 90. Performance Security** shall have the meaning set forth in Clause 9.1.1.
- 91. Political Event** shall have the meaning set forth in Clause 22.4.
- 92. Project** means the operation, maintenance and transfer of the Tower

Assets and Tower Sites in accordance with the provisions of this Agreement and includes all works, services and equipment relating to or in respect of the Scope of the Project

- 93. Project Agreements** means this Agreement, O&M Contract, Master Service Agreements (MSAs), Site Agreements, Lease Agreements, shareholders' agreement (if any) and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project and/or the Concession, or any agreement for procurement of goods and services and includes the Financing Agreements.
- 94. Quarterly Revenue Statement** shall have the meaning as set forth in Clause 15.4.1.
- 95. Specified Documents** shall have the meaning as set forth in Clause 34.1.1.
- 96. Substitute Entity** shall have the meaning as set forth in Clause 26.1.2.
- 97. Rs. Or Rupees** means the lawful currency of the Republic of India.
- 98. Rentals & Fees** means all streams of revenue that the Concessionaire is entitled to invoice, charge, recovery and appropriate under this Agreement and as defined in Part IV Financial Covenants of this Agreement.
- 99. Realisable Income** means all the Income due and realizable under this Agreement but does not include fees that the Concessionaire has not been able to realise after due diligence and best efforts; For the avoidance of doubt, Realisable Income shall be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply.
- 100. Reserved Spot** means the spot reserved on all the Tower Assets for the Authority to install its own Active Infrastructure in accordance with the terms prescribed under Schedule B of this Agreement.

- 101. RFP** shall have the meaning ascribed to it in Recital D above.
- 102. Right of Use** means the constructive possession of the Tower Sites, together with all way leaves, easements, unrestricted access, and other rights of way, howsoever described, necessary for operation and maintenance of the Tower Assets in accordance with this Agreement and the Project Agreements.
- 103. SAROD** has the meaning ascribed to it in Clause 33.2.2.
- 104. Scope of the Project** shall have the meaning set forth in Article 2.
- 105. Selected Bidder** means the bidder that has been selected by Authority pursuant to the bidding process under the RFP.
- 106. Shared Site** include such Tower Sites over which the Authority has its own telecom equipment installed and are co-located with the Authority's other telecom & support facilities and equipments such as wire line exchanges, and other passive infrastructure (DG sets, battery banks, air conditioners etc), and includes Shared Owned Sites and Shared Rented Sites.
- 107. Shared Owned Sites** shall refer and include such Shared Sites which are located on the land owned by the Authority and in respect of which the rentals & other charges will be borne by the Authority and the same shall not be assigned or novated in favour of the Concessionaire.
- 108. Shared Rented Sites** shall refer and include such Shared Sites which are located on the land rented by the Authority and in respect of which the rentals & other charges will be borne by the Authority and the same shall not be assigned or novated in favour of the Concessionaire.
- 109. Site Agreement** means the agreement executed with the Tenants for each Tower pursuant to the Master Service Agreements.
- 110. Specifications and Standards** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Tower Assets as set forth in Schedule-B and any modifications thereof, or additions thereto as included in the operations, maintenance and other related obligations of the Concessionaire under this

Agreement.

- 111. Statutory Auditors** means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force.
- 112. Substitution Agreement** shall mean the agreement to be entered into between the Authority, the Concessionaire and the Lenders in the form set forth in Schedule H hereof.
- 113. Suspension** shall have the meaning set forth in Clause 25.1.
- 114. Taxes** means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Tower Assets charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income.
- 115. Tenants** means the Telecom Service Providers or Operators who have rented the space on the Tower Assets from the Concessionaire.
- 116. Termination** means the expiry or termination of this Agreement and the Concession hereunder.
- 117. Termination Notice** means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement.
- 118. Termination Payment(s)** means the amount payable by the Authority to the Concessionaire, in accordance with the provisions of this Agreement, upon Termination of this Agreement.
- 119. Tower** shall mean and refer to the telecommunication towers which may either be located on ground level or on the roof of the building and includes all Passive Infrastructure installed along with such telecommunication tower at each Tower Sites.

- 120. Tower Assets** shall mean and refer to all physical and other assets relating to and forming part of the Tower Sites including (a) rights over the Tower Sites in the form of licence; (b) tangible assets such as tower, pole, frame, diesel generator, battery bank, power plant, civil works and equipment including electrical systems, communication systems; (d) all rights of the Concessionaire under the Project Agreements; (security deposit insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Tower Assets and as defined in Schedule A.
- 121. Transfer Date** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice.
- 122. Tower Sites** shall, unless specifically stated otherwise under this Agreement, mean and refer to include the (i) Non-Shares Owned Site; (ii) Shared Owned Site; (iii) Non-Shared Rented Site; and (iii) Shared Rented Sites.
- 123. Vesting Certificate** shall have the meaning set forth in Clause 27.4.1.

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

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE AUTHORITY by:

(Signature)
(Name)
(Designation)

THE COMMON SEAL OF CONCESSIONAIRE
has been affixed pursuant to the resolution
passed by the Board of the Concessionaire at its
meeting held on the day of 20.....
hereunto affixed in the presence of
....., Director, who has signed these
presents in token thereof and,
company Secretary / Authorised Officer who
has countersigned the same in token thereof \$:

In the presence of:

1.

2.

^{\$} To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULES

SCHEDULE A

SCOPE OF THE PROJECT

I. Tower Assets handed to Concessionaire

1. The Tower Assets handed over by the Authority to Concessionaire under this Project is the Passive Infrastructure covering xx Telecom Towers along with allied infrastructure (including but not limited to earmarked land, power connection, battery banks, power plants, electrical sub systems, transformer and leading in power cables, runways & cable trays, air conditioners, free cooling systems, aviation Lamps, DC & AC earthing, shelter, security hut, cable ducts, generators, antenna mounts, lightening arrestor, fire alarms / extinguishers etc.) owned by the Authority, and collectively referred to as Tower Assets in this Agreement.
2. **Table A1** provides below circle-wise summary of the Towers covered under this Project.

Table A1 Tower-wise summary details

<i>Sl. No</i>	<i>BSNL Circle</i>	<i>No. of Towers</i>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		

<i>Sl. No</i>	<i>BSNL Circle</i>	<i>No. of Towers</i>
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
	TOTAL	

II. Type of Tower Assets

3. There are two types of Tower Assets being handed over under this Concession Agreement:

- a. **Shared Sites (xx nos.):** These are Tower Assets that are co-located with Authority's wire line exchanges, and share passive infrastructure (like land, DG, battery bank, air-conditioner etc.) with wire line business of Authority. (Refer definition of Shared Sites in table A2 below)
 - i. **Shared Sites – Owned (xx nos.):**
 - ii. **Shared Sites – Rented (xx nos.):**
- b. **Non-shared Sites (xx nos.):** These are Tower Assets that do not share any infrastructure with other facilities and operations of Authority. In most cases, Authority has leased the sites from third-party Landlords and installed requisite passive equipment (DG, battery bank, air-conditioner etc.) to set-up these sites. Refer definition of Non-Shared sites in table A2 below.

4. The key characteristics and additional details of Shared Sites and Non-Shared Sites are described in Table A2 below

Table A2 Characteristics and treatment of Shared Sites and Stand-alone Sites

	Shared Sites	Stand-alone Sites
Definition	At these sites, passive infrastructure including but not limited to the land / building, genset, Battery bank, Power plant, Air conditioning, access to sites, Electrical subsystems, and electrical/power connection are shared among other Authority installations including but not limited to Wired lines, Enterprise Business, BharatNet and Transmission equipment. In these premises, only the Tower and Allied infrastructure as defined in this Schedule forms part of Tower Assets handed to the Concessionaire.	These sites are rented by Authority from Third-party Landowners. At these Tower Sites, all infrastructure are part of Tower Assets handed over to the Concessionaire.
Number of Sites	<ul style="list-style-type: none"> xx Towers (of which xx towers are on Authority-owned premises and xx towers are on Rented premises) 	<ul style="list-style-type: none"> xx towers
Tower Assets and committed Land made available to	Within the Shared Sites, the Authority will hand over <ul style="list-style-type: none"> The Tower structure, including active and passive 	<ul style="list-style-type: none"> The entire site along with Tower to be handed over to Concessionaire. Details of Tower-wise land available are

	Shared Sites	Stand-alone Sites
Concessionaire	<p>infrastructure housed on the tower on an as-is where is basis.</p> <ul style="list-style-type: none"> • Minimum 120-150 sq. ft of open land adjoining Tower in case of outdoor sites and similar covered space for indoor sites. In the event of non-availability of adequate space at any Site, the Authority shall compensate for the same with extra space at other sites handed as part of Tower Assets based on Concessionaire's choice and subject to availability on a best-effort basis. • Additional land if required by Concessionaire, for provision of other services, and if available, shall be made available on a case-by-case negotiated commercial basis. 	shared in <i>Schedule A</i>
Allied Passive Infrastructure Facilities	<p>For Shared Sites where power consumption is > 400 Amp (including for facilities not handed over as part of Tower Assets), Concessionaire would be offered two options</p> <ul style="list-style-type: none"> • Option 1: Authority will provide seamless power services (with > 99.5% availability) from existing facilities (Genset, Battery and Power Plant) for a fee payable by Concessionaire • Option 2: Concessionaire is free to set up passive infra facilities for the tower business requirement on a dedicated basis at its own cost in the free space of 120-150 sq.ft. provided preferably adjoining the Tower. <p>For Shared Sites where power consumption is < 400 Amp (including for facilities not handed</p>	<p>All allied and passive infrastructure will be handed over to Concessionaire on an as-is basis.</p> <p>Details of Tower-wise infrastructure and facilities available is shared as part of <i>Schedule A</i></p>

	Shared Sites	Stand-alone Sites
	<p>over as part of Tower Assets), Concessionaire will have to necessarily set up its own passive infrastructure facilities</p> <p>Details of Tower-wise infrastructure and facilities available is shared as part of <i>Schedule A</i>.</p>	
Payment of Rent	<p>Concessionaire is not required to pay any rent to Authority for the 120-150 sq.ft. space provided separately for active and passive infra.</p>	<p>The Authority will assign to the Concessionaire existing Land Lease Agreements duly renewed and with rentals fully paid for, till the Appointed Date. The Concessionaire will have to fulfill the obligations under these assigned Land Lease Agreements with effect from the Appointed date till the expiry of the Agreement. Upon expiry of agreement, Concessionaire has the obligation to negotiate and renew the Land Lease Agreements in compliance with Applicable Laws.</p>
Conversion of Shared Rented Infra Sites to Stand alone Non Shared Infra sites	<p>There are some Shared Infra sites on rented premises, where Authority may shut down its non-tower active infra including Wired lines / Enterprise Business / BharatNet / Transmission equipment etc. during the currency of this Agreement rendering the site to become Standalone Non-Shared. In such an event, the Concessionaire shall take over these sites with all obligations as defined for Stand-alone Sites becoming applicable.</p> <p>A list of Shared Sites that will be converted to Stand-alone sites in this manner and the expected timeline for such conversion is enclosed in Schedule A</p>	<p>Once converted, all the obligations relating to Stand alone non shared infra would become applicable.</p>

III. Tower-wise composite datasheet of asset details

5. The Authority will also share with the Concessionaire, prior to the Appointed Date of this Agreement, a detailed Asset listing with Tower-wise datasheets that contain information pertaining to (i) Passive infrastructure, (ii) BTS tenants and infrastructure Assets, key terms of contract and contract references to rental agreements and (iii) for Towers erected on premises other than BSNL – Rental terms with land owners, reference to rental agreements and related information as per **Table A2** given below:

Table A2 Contents of Tower-wise information

Tower characteristics	
Code	
Owned / Rented	
Rural / Urban	
Within BSNL exchange	
Tower type 1:	
Tower type 2:	
Tower type 3:	
Tower height	
Land Area	
Year installed	
No. of TSPs served hosted on the tower	
Location and Area	
Latitude/Longitude	
State	
District	
City / Town / Village	
Pin code	
Allied Features	
Guard available	
Fenced	
Shelter (Nos)	
Shelter Area	
Space for additional BTS rack/unit available?	
Space available for additional BTS rack/unit that can be installed in shelter (in Sq. Ft.)	
Space for additional rack in shelter available?	
Space for additional racks (in sq. ft.)	
Antenna mounting equipment	

Grid Power available?
Sanctioned Load
Active inf-a – BSNL, TSP tenant(s) separately
No. of radio antenna
Height at which radio antenna is installed (mt)
No. of BTS rack/unit installed
No. of Racks installed
No. of microwave antenna
Height at which microwave antenna is installed (mt)
Size of microwave antenna (mt)
OFC laid on Site (Y/N)
OFC equipment on Site (Y/N)
Passive infra – Diesel Generator (Y/N)
Power rating of DG (KW)
Passive infra – Battery backup – (Y/N)
Rating for battery (AH)
Count of battery bank
Passive infra – Power Interface Unit (Y/N)
Passive infra installed (Y/-) – SMPS
Count of rectifiers
For Towers located in rented premises
Type of Rental Agreement – Location-specific / Covered in a Master Agreement / Not available
Is Rental Agreement / Master agreement registered with Local Authority
Date of Agreement
Duration of Agreement
Value of Rental per month
Annual escalation of Rental provided
Contractual arrangements (for each TPS separately)
Type of TPS Agreement – Location-specific / Covered in a Master Agreement
Is Agreement copy available – Yes / No.
Rental Agreement reference
Is Rental Agreement registered with local authority
Date of Agreement
Duration of Agreement
Value of Rental per month
Annual escalation of Rental provided
Date of renewal of Rental agreement

- IV. Tower-wise datasheet of Non-Shared Sites where payment of rental obligation will be transferred to Concessionaire including confirmation of availability of Rental Agreements duly renewed in accordance with Applicable Laws**
- V. Tower-wise datasheet of Shared Sites that will be converted to Non-Shared Site**

SCHEDULE B – O&M OBLIGATIONS OF CONCESSIONAIRE

PART A: HANDOVER OF ASSETS TO CONCESSIONAIRE

1. The Tower Assets handed over by the Authority to Concessionaire under this Project is the Towers and includes the Passive Infrastructure covering xx telecom towers along with allied infrastructure (including but not limited to earmarked land, power connection, battery banks, power plants, electrical sub systems, transformer and leading in power cables, runways & cable trays, air conditioners, free cooling systems, aviation lamps, DC & AC earthing, shelter, security hut, cable ducts, generators, antenna mounts, lightening arrestor, fire alarms / extinguishers etc.) owned by the Authority, and collectively referred to as ‘Tower Assets’ in this Agreement.
3. The Authority shall hand-over the Tower Sites to the Concessionaire on an “as-is, where-is” basis. Immediately upon the hand-over and during the Concession Period, the Concessionaire shall be responsible for all equipment replacements, additions, modifications, up-gradations of the Tower Assets in accordance with the service level obligations and other O&M obligations under this Agreement, and the Master Service Agreements executed with the Tenants and assigned/novated to the Concessionaire.
4. The Parties agree and acknowledge to undertake all reasonable efforts to complete the handover of the Tower Assets in accordance with this Part A of Schedule B and the Asset Takeover Plan agreed between the Parties. Provided that such handover will be deemed to have been completed if at least 90% (ninety per cent) of the Tower Assets have been handed over to the Concessionaire. To further clarify, upon completion of handover of the Tower Assets, the obligation of the Concessionaire under Clause 4.1.2I shall be deemed to have been completed for the purpose of the commencement of the Concession Period in accordance with Article 12 of this Agreement.
5. Upon commencement of the Concession Period (i.e., from the Appointed Date), the Parties shall continue to take reasonable endeavours to handover of the remaining Tower Assets within 120 days of the Appointed date hereinafter referred to as the ‘**Extended Appointed Date**’. Provided that if in case any of the remaining Tower Assets are not handed over within the Extended Appointed Date, such Tower Assets shall be deemed to have been removed from the scope of the Project (and shall be deemed to have been removed from the Schedule A of this Agreement) and the Authority shall refund the Concession Fee in proportionate to the Tower Assets not handed over to the Concessionaire.

6. For avoidance of doubt, the Concession Period for the remaining Tower Assets transferred after the Appointed Date, shall be 20 (twenty) years calculated from the Extended Appointed Date.

PART- B: O&M OBLIGATIONS OF CONCESSIONAIRE

1. The Concessionaire is responsible for comprehensive O&M services including comprehensive O&M services including energy management, maintenance CAPEX and site up-gradation. The Concessionaire will have comprehensive responsibility for maintenance of all Passive Infrastructure and associated works like payment for electricity bills, rent, diesel, housekeeping and security including energy management, site manning, preventive and shut-down maintenance, annual maintenance and site status monitoring etc.
2. Apart from the Towers, the scope of Concessionaire will include operations and maintenance of battery, power plant, diesel generator set, air-conditioner, free cooling system, infra alarm panel, fire detection system, fire extinguisher, transformer & leading in cable, electrical connections and fittings, earthing, lightening arrestor, aviation lamp, AC controllers, shelter, grid supply / meters, alarms, tower etc., where such facilities have been handed over by the Authority to the Concessionaire.
3. For all the Tower Assets handed over, the Concessionaire will at its own cost, undertake replacement, and addition to assets and facilities, required to meet (i) service level obligations as per this Agreement, (ii) service level obligations as per other Master Service Agreement or any other applicable agreement with Tenant(s) that the Authority has entered into, and has assigned to the Concessionaire, (iii) service level obligations under any other agreements with Tenants (including the Authority) that the Concessionaire may enter into at various points in time.
4. The Authority is one of the Tenants of the Concessionaire. The Concessionaire is expected to fulfil all service level obligations with respect to the Authority's Tenancy (covering all Active Infrastructure of the Authority that are dependent on the Tower Assets handed to the Concessionaire) as mentioned in this Agreement. The obligations of Concessionaire towards the Authority's tenancies shall be the mirror of the service level obligations of the Concessionaire towards the terms of Master Service Agreement entered by Concessionaire with tenants other than the Authority and the ones renewed by the Concessionaire from time to time. There might exist a situation wherein the concessionaire, during the currency of the current Agreement may have entered into

different Master Service Agreements with Tenants other than the Authority for a particular Tower Site / or set of Tower Sites. In such a situation the Authority, as a Tenant would have the right to choose between the varying Master Service Agreements to be applicable and to be mirrored on it as a Tenant.

5. The Concessionaire will allow reasonable access to the Tower Site including requisite facilities, information, reports and allied support to the Authority for Tower Site visits, physical inspections, testing and for review of reports through the period of this Agreement.
6. The details of O&M activities are expected to be performed include the following and also include any other activities that may be needed to ensure upkeep of Tower Assets (including replacement, additions and upgrade made by Concessionaire) and to fulfil service level obligations under the various tenant agreements entered into by the Concessionaire.
 - a. **Tower Site manning / caretaking:** Manning of Tower Sites to ensure controlled access to Tower Site. Keeping a security guard is not mandatory. Use of technology is allowed as deemed appropriate by Concessionaire without compromising on security of Tower Assets.
 - b. Ensuring seamless power supply to Tenants as per the Master Service Agreements.
 - c. **Diesel filling:** Supply of diesel to the Tower Site depending upon schedule of consumption. This shall include activities such as purchase of diesel and transportation to Tower Site, loading/unloading and filling of diesel in DG sets.
 - d. **Payment of electricity bill:** collection and payment of electricity bill, coordination with the power distribution company to ensure continued power supply to the Tower Site.
 - e. **Preventive / shutdown maintenance:** Periodic testing and maintenance of various passive equipment at site including battery, air conditioners, alarms, power plant and DG set, AMF panel, LT panel, compound lighting, lightening conductors, fire alarms / extinguishers, aviation lamp, DC & AC earthing, transformers and leading-in power cables, cable ducts / trays, free cooling, electrical subsystems, CCTV, MCBs and sitches etc.
 - f. **Annual Maintenance, overhaul, and spares:** Annual maintenance of all passive equipment and maintenance of required inventory of spares.

Responsibility for all minor and major overhaul of equipment such as DG and AC basis the run hours of the equipment

- g. **Energy management:** Deployment of energy conservation equipment / processes at Tower Sites which may involve minor or major CAPEX or operating discipline. This exercise is not mandatory and shall be deployed as deemed appropriate by Concessionaire, to the extent that agreed SLAs are delivered by Concessionaire, as agreed herein.
- h. **Periodic Maintenance of towers** including Painting of Towers and cable/waveguide trays, removal of bee-hives, tightening nuts and bolts, checking for rusting and taking preventive and operative actions, Stability and Verticality of towers etc. in line with Good Industry Practices.
- i. **Periodic maintenance of earthling** for ensuring the prescribed value.
- j. **Coordination:** Coordination with Landowners for smooth operation of the Tower Sites which will include obtaining required consent from the Landowners for addition / removal of tenancies and assisting in renewal of Site Agreements with Authority (paperwork, rent negotiation, local authority clearances wherever applicable, etc.)
- k. **Maintenance of Tower Site status alarms:** The Concessionaire will maintain the alarm panel and wiring of the Tower Site status.
- l. **Set-up of Web-enabled Remote Monitoring System (WRMS) for all Tower Sites:** The Concessionaire will set-up, maintain, and manage a WRMS within 6 months from date of execution of this Concession Agreement for real-time monitoring of the status of all Tower Sites
- m. **House Keeping:** Watch and ward for proper upkeep and hygiene of the Tower Site including periodic jungle cutting.
- n. **Maintenance of Tower Aviation light/shelter/lightening arrestor**
- o. Any other activity not listed above but required to be done to maintain the Tower Site in good working condition and meeting the required service level obligations under Rent Agreements assigned to and entered into by the Concessionaire.

I. Concessionaire obligations relating to Information, Compliance and Coordination

- 7. Within 180 days of the Appointed Date, the Concessionaire will demonstrate to the Authority its **Asset and Operational Information Management System** that covers digital and physical record keeping covering the following aspects listed under

point a) to e) below. The Concessionaire will reasonably incorporate any additional functional improvements as required by the Authority, will ensure upkeep of this System throughout the period of the Concession Agreement and shall transfer the same including all physical and digital records along with associate software systems created to the Authority at the end of the Concession Period.

- a. Creation, maintaining, updating a web-enabled **Asset database** portal that captures physical, operational and financial details for **Passive Infrastructure** of each Tower Asset handed over, including but not limited to (i) Assets handed over by the Authority, and (ii) Additions, replacements, and upgradation done by the Concessionaire from time to time. The Concessionaire will tag all existing passive equipment and maintain records of the status of each of these equipment. Any movement / transfer / replacement of the passive equipment will be recorded and updated in the portal. Also, any new equipment installed on the Tower Sites will be duly tagged, and their particulars will be updated on the Assets Register portal. Such record will be made available to the Authority at all times. A complete updated Asset Registers incorporating all the movement / transfer / replacement of the passive equipment during the period shall be provided to each BSNL Circle / Nodal Agency appointed by Authority every year for the period ending 31st March. Authority may on its own accord or appoint a third party audit cum verification agency to cross verify / validate such yearly Asset Register.
- b. Creation, maintaining, updating **information on Active Infrastructure** of various Tenants of the Project including that of the Authority.
- c. Capture physical and digital records of all **Project Agreements** (including with Tenants, and Landowners) throughout the duration of the Agreement.
- d. **Fault registration and resolution:** The Concessionaire will also be responsible for maintaining an online complaint / fault registration and resolution portal for use of Authority to allow for recording, escalation and retrieving of the information. The Concessionaire will also generate a fault analysis report on a monthly basis to assist in the resolution and reconciliation of outage penalties, if any. Such reports will be made accessible on this portal.
- e. **Financial & Accounting system** to track, monitor, audit, report and disclose financial performance of the Concessionaire.

- 8.** The Concessionaire will allow free access to the Authority of all the information covered under points 7 a) to e) above of this Schedule during the period of this Agreement. The system should enable generation of reports and allow authorized representatives of the Authority access (at least one in each SSA and 5 in Circle and Corporate Office)
- 9.** After the Appointed date, the obligations of the Authority towards its Tenants covered under the current Master Service Agreements or other agreements signed between the Authority and its Tenants shall stand transferred to the Concessionaire. From the Appointed date, the entire responsibility in relation to the obligations under these Agreements stands transferred to the Concessionaire. Any penal action on account of the non-adherence of the Master Service Agreements, subsequent to the Appointed Date shall be the sole responsibility of the concessionaire.
- 10.** The Concessionaire will be responsive to the Authority for requests for meetings related to its operations maintenance and management obligations under this Agreement.
- 11.** The Concessionaire will also coordinate with all local authorities and stakeholders at the Tower Site including landlords, neighbors, electricity distribution companies, Authority's local officials to ensure proper functioning of the Tower Sites and meeting required SLAs.
- 12.** The Concessionaire shall be responsible for arranging / obtaining all licenses / approvals / permissions for affecting the transition of Tower Sites from Authority to the Concessionaire's scope of work.
- 13.** The Authority shall be solely and exclusively responsible for the redeployment or demobilization of its existing employees/ workmen/staff/contract labour employed and/or deputed at the Tower Sites or in respect of the Project and the Concessionaire shall be responsible for deployment of necessary resources, equipment, its own employees/ workmen/staff/contract labour and facilities etc. and ensure that its obligations under this Agreement are delivered, through its permanent employees and other authorized representatives, consultants, agents. Further, the Concessionaire shall comply with all applicable statutes, including but not limited to the provisions of the Provident Fund and Miscellaneous Provisions Act, Employees State Insurance Act 1948, Minimum Wages Act, Payments of Wages Act, 1936, Indian Stamp Act, 1899 etc. as applicable. The Authority shall not be liable in any manner whatsoever for any non-compliance on part of the Concessionaire of the applicable laws and in the event of any

adverse claim of whatsoever nature arising thereof, the entire burden shall be strictly borne by the Concessionaire and the Concessionaire shall not be responsible or cast any obligation for hiring/absorption or retention of any of the Authority's existing employees/ workmen/staff/contract labour employed or deputed at the Tower Sites and/or in respect of the Project.

14. For the purpose of clarity, it is stated that the responsibility for compliances related to Active Infrastructure on the respective Tower Sites will rest with the respective Tenants. In addition to the obligations and responsibilities of the Concessionaire under this Agreement, its obligations under the various MSOs it has entered into with Tenants will also respectively apply. As mentioned in point 8 above, with respect to the Authority's Active Infrastructure Assets and position as a Tenant, the Concessionaire's SLAs and obligations, Authority as a tenant would have the right to choose between the varying Master Service Agreements to be applicable/mirrored on it as a tenant.
15. The concessionaire shall extend Passive infra alarms like all phase available, DG ON, DG output available, low voltage alarm to power supply, low battery, high room temperature, power plant failure, fire alarm, low fuel alarm, no fuel, DG battery low, door open. In addition, the Concessionaire shall keep provision for 6 (six) additional alarms for future use at each Tower Site in its scope. The minimum list of alarms to be made available for each mobile site is as above. However, Concessionaire may deploy additional alarms like diesel level, SMS to his staff for proactive/ preventive site O&M, etc. for efficient O&M of Tower Site as per the requirement and to meet the required SLAs. There shall be facility for configuring these alarms by Authority (and other customers, if any), as required from time to time as per required escalation matrix.

II. Concessionaire's rights & obligations on land, and Project Agreements

16. Renewing and entering into Project Agreements with Active Infrastructure

Tenants and others: The Authority will assign / transfer existing Project Agreements with Tenants to the Concessionaire during the Conditions Precedent period. The Concessionaire is authorized to negotiate, renegotiate, renew such Agreements and is also allowed to enter into such Project Agreements with other potential Tenants during the currency of the Concession Period for periods uptill the Concession period.

17. Entering into and renewing Rental Agreements for Stand-alone Tower

Sites: The Authority will assign / transfer existing Project Agreements with Landowners to the Concessionaire during the Conditions Precedent period. The Authority will also ensure that rents due to Landowners till the Appointment Date

shall be settled in full by the Authority. From the Appointed Date, the Rentals & Fee for **Standalone Tower Sites** will be payable by Concessionaire. The Concessionaire is authorized to negotiate, renegotiate, renew such Agreements and is also allowed to enter into with Landowners during the course of the Concession Period in compliance with Applicable Laws (including that of local governments in terms of registration, payment of registration fees and stamp duty etc.). The risk of renegotiation in terms of rental escalation or termination is with the Concessionaire. In case of termination of Rental Agreement for any Towers, Concessionaire would be allowed to identify a replacement site within 250 m radial distance and shift the passive infra including Tower Asset at the new location on its own cost. If this is not feasible, the Concessionaire can approach the Authority for a suitable replacement proposal. The Authority will attempt to, on a best efforts basis, provide a replacement Tower to the Concessionaire in lieu of the Tower Site where the Site Agreement has been terminated, but does not hold a mandatory obligation to do so. The MSO clauses on Concessionaire-Tenant for such situations will also apply. Authority will not compensate for any loss of Tower Site to the Concessionaire in such situations.

18. Treatment of shared facilities on Authority Tower Sites: In case of Authority Tower Sites, where passive power related infra like genset, battery, power plant etc. infrastructure are shared, and where the composite power requirement of the Tower Site, including that of the tower related business power requirement, is higher than the 400 A, the Concessionaire shall be provided two options to choose from

- a. **Option1:** Authority will provide seamless power services (with > 99.5% availability) from existing facilities (Genset, Battery and Power Plant) for a Rentals & Fee payable by Concessionaire. The Rentals & Fee, payable by the Concessionaire, in lieu of the seamless power provided by the Authority shall be equivalent to the Rentals & Fee payable by the Authority as a Tenant to the Concessionaire for a similar category of Tower Site.
- b. **Option 2:** Concessionaire is free to set up passive infra facilities for the Tower business requirement on a dedicated basis at its own cost in the free space of 120-150 fts provided preferably adjoining the Towers. The Concessionaire shall have the right to apply for a new Electric connection or may take it from the Authority on chargeable basis by way of installing a sub-meter.

19. There are some Shared Infra sites on rented premises, where Authority may shut down its non-tower active infra including Wired lines / Enterprise Business / BharatNet /

Transmission equipment etc. during the currency of agreement rendering the Tower Site to become Standalone Non-Shared. In such an event, the Concessionaire shall take over these Tower Sites with all obligations as defined for Stand-alone Non shared infra sites becoming applicable.

- 20. Electricity connections:** In line with the change of name from Authority to the Concessionaire in the third-party Site Agreements, the concessionaire shall have to apply for change of electricity connection at its own cost in its own name after the Site Agreements has been transferred in the name of the Concessionaire.
- 21. Movement and transfer of Tower Assets:** To enable better management and utilization of the passive infrastructure assets, the Concessionaire will be authorized to move / transfer movable passive infrastructure / equipment from one Tower Sites to the other, at its own sole discretion and cost, provided that the SLAs defined under this Agreement are not compromised. But this move / transfer of the Assets will be done in synchronization with the ERP system of Authority in vogue. The Concessionaire will keep detailed record of such movement / transfer in the Assets Register, which will be shared with Authority, in order that all assets and their respective Tower Sites can be tracked at any time. However, as for the Tower Assets infrastructure and associated civil infrastructure too, the concessionaire shall be allowed to move/relocate in the specific situation as detailed at *point 23 below*.
- 22. Replacement of assets:** To facilitate the replacement of old / obsolete, burnt or damaged equipment, the Concessionaire will be authorized to replace any of the existing equipment of Authority with new equipment at its own cost, provided that the SLAs defined under this Agreement are not compromised. The Concessionaire will keep detailed record of such replacement in the Assets Register which will be shared with Authority, in order that all assets and their respective status can be tracked at any time. As and when the existing equipment, which are a property of Authority, and are replaced by the Concessionaire, the Concessionaire will inform Authority about such activity in writing. The responsibility of discarding old equipment will rest with the Concessionaire and proceeds from such disposal will accrue to the Concessionaire. For the purpose of clarification, it is stated that the Concessionaire will have a full authority to install any new equipment / technologies at the Tower sites to make the Tower Site more energy-efficient (including green technologies), provided that all SLAs as per this Agreement are met and the arrangement continues to be governed by the same commercial terms and conditions where no such technologies are deployed.

- 23.** During the course of the Concession Period, the Concessionaire shall have to fulfill all the obligations of the Authority towards these Tower Assets including all the directives from the Regulator / Licensor / Central and State Authorities. In the event of any new laws / regulations/ directives being passed by these Authorities requiring discontinuation of one or more passive infra elements of tower and or replacing it with alternate suggested technology, it would be the responsibility of the Concessionaire to comply to it at its own cost.

PART C: AUTHORITY'S RIGHTS

- 1. Retaining / installing one Active Infrastructure Spot without payment of rentals as a Tenant:** The Authority will have the rights to retain or install new or replace existing or upgrade existing of its Active Infrastructure in the Reserved Spot without payment of rentals as a Tenant. The Reserved Spot of the Authority for this clause is defined below:

- a. A single 'Reserved Spot' or one 'Reserved Spot' would comprise of one third of the total RF usable tower real estate available on the Tower. For the current purpose of RF usable tower real estate, the top 50 % (fifty per cent) of the total tower height would be assumed as the RF usable tower real estate. For example, a 40 m telecom tower shall have 20 m, starting from top of the tower as the RF usable tower real estate and Authority shall have a right to use to one third of it free of cost. In future, in line with the then prevailing industry usage standards, if the RF usable tower real estate changes to further down below the prescribed top 50%, BSNL shall have the right to claim its one third share of the this delta increase in the total RF usable tower real estate.
- b. The Authority is already having its RF Active Infrastructure on these Towers. The position/location of the existing radiating RF Infrastructure of the Authority on the Tower would coincide with the Spot location deemed reserved for the authority. In cases where some of the existing radiating RF infrastructure on the tower does not fall within Reserved Spot space reserved for the Authority, as defined above, then Authority will have an option of either to shift those radiating RF infrastructure lying outside the assigned spot space within 6 months from the appointed date or to pay to the concessionaire on commercial basis in line with the applicable Master Service Agreements in case of continuing at a space other than the Reserved Spot.

- c. Authority reserves the right to deploy/install any number of radiating RF Infrastructure comprising of antennae/array of antennae, RRHs, O-RAN related equipment, cpri cables/rf cables/back-haul microwave radios/antennae/ air fibre radios/antennae etc. irrespective of technology/technologies within its Reserved Spot space on the Towers.
- d. Authority reserves the right to retain the existing radio remote head (RRH) installed on the non usable RF tower estate (i.e lower 50 % of the tower length) free of cost. Similarly, in future, the Authority reserves the right to install RRH or similar functionality equipment that are tower mounted but not radiating in the non usable RF tower estate (lower 50 % of the tower length) free of cost
However, at no point of time, the total RF non usable tower estate being used by the Authority shall exceed one third of the total non usable RF tower space available.
- e. Similarly, reserves the right to corresponding space on ground for installing Transmission equipment and BBU/O-RAN related active equipment's etc., right of way and duct / free earth trenching for OF cable (in cases of Fiberized site), access to uninterrupted power.
- f. Notwithstanding anything defined above in the definition of one 'Reserved Spot', in the event of future technologies provisioning for different types of Tower and land equipment, Authority shall have the right to claim extra Spot/space on the tower on commercial basis in line with the applicable Master Service Agreements. In such cases, the Concessionaire shall accord relative priority to the Authority's equipment in case of competing requirements of multiple Tenants.

- 2. Access to Tower Sites:** At all times during the Concession Period, the Authority and its authorized representatives will have the right to access any of the Tower Sites handed over. The Concessionaire will cooperate and coordinate with Authority to provide access to the Tower Sites as and when requested.
- 3. Discontinuation of the Tower Sites:** In the event of discontinuation of Tower Site by the Concessionaire, no compensation would be paid by the Authority. In addition, it shall be the responsibility of the Concessionaire to pack/load/transport/unload the Passive Infrastructure of the discontinued Tower Site to Authority's stores.
- 4. Change in Tower Site location:** Authority, at its sole discretion, will have the right to re-locate its any of its Tower Site at any point during the term of this Concession Agreement. The discontinuation of the Tower Site will not affect the services of the Concessionaire, who will continue to provide its services at the new location. In case of

relocation of Tower Sites, all financial and commercial implications towards external tenancies, and the relocation expenses will be borne by Authority. Authority will have no obligation towards the Concessionaire for such relocation of Tower Sites. However, the Concessionaire will cooperate and coordinate with Authority to facilitate the relocation process.

III. Other obligations and responsibilities of Authority

- 1. Clearing of dues:** Before hand-over of the Tower Sites to the Concessionaire, all dues payable by Authority related to Tower Assets (including electricity and rentals) will be paid and cleared of by Authority.
- 2. Communication to stakeholders:** Authority will communicate to all stake-holders about the Concessionaire and the relationship with the Concessionaire, and inform them about the duties and authorizations of the Concessionaire in order to facilitate the transition of services to the Concessionaire.
- 3. Assignment of Master Service Agreements and Lease Agreements with Tenants:** Authority will assign / transfer all its existing Site Agreements with Tenants prior to Appointed Date.
- 4. Assignment of Land Lease Agreements with Landowners:** Authority will assign / transfer all its existing Site Agreements with Landowners of Non-Shared Sites, prior to Appointed Date.
- 5. Termination of on-going service contracts:** The Authority will terminate ongoing O&M and any other annual maintenance contracts (not terminated) and pay to such contractors any pending payments and dues, prior to the Appointed Date. The Concessionaire will need to make arrangements to ensure fulfilment of service level obligations from the Appointed Date and will plan for the same during the Conditions Precedent period.
- 6. Payment of Rentals beyond one spot of Active Infrastructure Unit:** The Authority will pay Rentals & Fee for all facilities and infrastructure on the Tower Assets, beyond the Reserved Spot which will be allowed free of cost. The rental terms for such facilities of the Authority beyond the Reserved Spot of Active Infrastructure shall be in accordance with the best terms from among the other Master Service Agreements entered into and offered to other Tenants.

PART D: Transfer of Assets to Authority at the end of the Concession

1. In addition to the Divestment Requirements under this Agreement, the transfer of the Project by the Concessionaire to the Authority (or its nominee), at the end of the Concession Period or earlier termination thereof, shall be undertaken in the adherence to the following principles:
 - a. The Project shall be transferred free of Encumbrances and the Authority shall have good title over the Tower Assets.
 - b. There shall be no encroachments by any third party at the Tower Sites.
 - c. The Project Agreements shall not have any provisions which is detrimental to the interest of the Authority.
 - d. All rights and obligations of the Concessionaire in relation to the Project shall be capable to be transferred to the Authority.
 - e. The Concessionaire shall make available all records/Documents/reports in relation to the Project to the Authority for carrying out the due diligence.
 - f. In relation to the Project Agreements, the Authority shall have the right to review the terms and conditions therein and may choose to seek the transfer/assignment of Project Agreements in favour of the Authority. If in case, any of the Project Agreements are not transfer/assigned in favour of the Authority, the Concessionaire shall terminate such Project Agreements prior to such transfer and, in the event thereafter, then after the review and approval of the Authority.
 - g. The Concessionaire shall adequately indemnify the Authority for any action or omission of the Concessionaire prior to the Transfer Date, and the Concessionaire shall execute necessary agreements/Documentation, to the satisfaction of the Authority, to give effect to such indemnification obligations of Concessionaire.
2. The Concessionaire will be authorized to replace any of the existing equipment of Authority with new equipment at its own cost, provided that the O&M obligations and service level obligations under this Agreement and Master Service Agreements are not compromised.
3. The Concessionaire will keep detailed record of such replacement in the Assets Register which will be shared with Authority on periodic basis as defined in this Agreement, in order that all assets and their respective status can be tracked at any time. As and when the existing equipment, which are a property of Authority, and are replaced by the Concessionaire, the Concessionaire will inform Authority about such activity in writing.

4. During the Concession period, Concessionaire will have a full authority to install any new equipment / technologies at its own cost at the Tower Site to make the Tower Site more energy-efficient (including green technologies), provided that all SLAs as per this Agreement are met and the arrangement continues to be governed by the same commercial terms and conditions where no such technologies are deployed.
5. Nine months prior to the end of the Concession Period, the Authority shall appoint a nodal agency / nodal officer to reconcile the assets at each Tower Site physically as per the Asset Register submitted by the Concessionaire periodically.
6. At the end of the Concession period, the Concessionaire shall have to make over all the Tower Assets physically available in good working condition and in line with Asset Register on 'as is where is' basis at each Tower Site.
7. It shall be the responsibility of the Concessionaire that the Project present at each Tower Site at the end of concession period should be able to continue delivering the mandated O&M obligations under this Agreement.

SCHEDULE C

PERFORMANCE SECURITY

(See Clause 9.1)

(PROFORMA OF BANK GUARANTEE)

THIS DEED OF GUARANTEE executed on this the ---- day of ----- at ----- by -----
----- (Name of the Bank) having its Head/Registered office at -----
--- (hereinafter referred to as the “**Bank**”), which expression shall unless it be repugnant
to the subject or context thereof include successors and assigns;

In favour of

BHARAT SANCHAR NIGAM LIMITED, a 100% Government of India (GOI) owned telecommunications service provider, managed under GOI’s Department of Telecommunications (DoT), incorporated on 15th September 2000 and is headquartered in New Delhi (hereinafter referred to as the “**Authority**”), which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. The Authority has entered into an agreement dated ----- with -----, a company incorporated under the Companies Act, 2013, with CIN..... having its registered office at ----- (the “**Concessionaire**”) for the operation, maintenance and transfer of certain Tower assets as identified in the agreement (the “**Concession Agreement**”).
- B. In terms of Article 9.1 of the Concession Agreement, the Company is required to furnish to the Authority, an unconditional and irrevocable bank guarantee for an amount of [Rs.] as security for due and punctual performance/discharge of its obligations under the Concession Agreement (the “**Guarantee Amount**”).

- C. At the request of the Company, the Bank has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Company of its obligations under the Concession Agreement.

NOW, THEREFORE, the Bank hereby affirms as follows:

1. Capitalized terms used herein but not defined shall have the meaning assigned to them in the Concession Agreement.
2. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations under and in accordance with the Concession Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
3. A letter from the Authority, under the hand of an Officer not below the rank of General Manager in the Authority, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Concession Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations under the Concession Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
4. In order to give effect to this Bank Guarantee, the Authority shall be entitled to act as if the Bank was the principal debt or and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Bank Guarantee.

5. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Bank Guarantee.
6. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Bank Guarantee, to vary at any time, the terms and conditions of the Concession Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Concession Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Concession Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Bank Guarantee and the Bank hereby waives all of its rights under any such law.
7. This Bank Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Concession Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Concession Agreement.
8. The Bank undertakes not to revoke this Bank Guarantee during its currency, except with the previous express consent of the Authority in writing and declares and warrants that it has the power to issue this Bank Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at the [] office of the Bank, which shall be deemed to have

been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

- 10.** This Bank Guarantee shall come into force with immediate effect and shall remain in force and effect until 2 (two) months from the end of the Defect Liability Period or until it is released earlier by the Authority pursuant to the provisions of the Concession Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE D

ESCROW ACCOUNT

(See Clause 21)

THIS ESCROW AGREEMENT is entered into on this the day of 20.....

AMONGST

1. LIMITED, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “Concessionaire”, which expression shall unless repugnant to the context or meaning thereof include its successors, assigns and permitted substitutes);
2.name and particulars of the Escrow Bank and having its registered office at (hereinafter referred to as the “**Escrow Bank**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes); and
3.name and particulars of Lenders’ Representative and having its registered office at acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
4. Bharat Sanchar Nigam Limited, a 100% Government of India (GOI) owned telecommunications service provider, managed under GOI’s Department of Telecommunications (DoT), incorporated on 15th September 2000 and is headquartered in New Delhi (hereinafter referred to as the “**Authority**”, which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns).

WHEREAS:

(A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for operation and maintenance of the certain Telecom Towers as identified in the Concession Agreement on Operation, Maintenance and Transfer (OMT) basis and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1. **DEFINITIONS AND INTERPRETATION**

1.1. **Definition**

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

- a. **“Agreement”** means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;
- b. **“Concession Agreement”** means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;
- c. **“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority to the Concessionaire asking the latter to cure the breach or default specified in such notice;
- d. **“Escrow Account”** means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;
- e. **“Escrow Default”** shall have the meaning ascribed thereto in Clause 6.1;
- f. **“Parties”** means the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually;
- g. **“Payment Date”** means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and
- h. **“Sub-Accounts”** means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub-Accounts and paid out therefrom on the Payment Date(s).

1.2. **Interpretation**

1.2.1. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and

expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

- 1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. ESCROW ACCOUNT

2.1. Escrow Bank to act as trustee

- 2.1.1. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2. The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2. Acceptance of Escrow Bank

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

2.3. Establishment and operation of Escrow Account

- 2.3.1. Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2. The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3. The Escrow Bank and the Concessionaire shall agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions or procedures, this Agreement shall prevail.

2.4. Escrow Bank's fee

- 2.4.1. The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5. Rights of the parties

- 2.5.1. The rights of the Authority and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

The rights and obligations of the Authority under this Agreement and in relation to the Escrow Account shall be limited to the obligation of the Authority to deposit the Termination Payments to the credit of the Escrow Account in terms of the Concession Agreement.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Concessionaire

- 3.1.1. The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:
- a.** all funds constituting the Financial Package;

- b.** all Fee and any other revenues from or in respect of the Tower Assets, including the proceeds of any rentals, deposits, capital receipts or insurance claims.

3.1.2. The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2. Deposits by the Authority

3.2.1. The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- a.** all payments by the Authority including, if any, in relation to the change of scope in the Project; and
- b.** the Termination Payments.

3.3. Interest on deposits

3.3.1. The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1. Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- a.** all taxes due and payable by the Concessionaire for and in respect of the Telecom Towers;
- b.** O&M Expenses, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

- c. O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- d. monthly proportionate provision of Debt service payment due in an Accounting Year;
- e. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and
- f. balance, if any, in accordance with the instructions of the Concessionaire.

4.1.1. No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Authority, if fresh information received during the course of the year makes such modification necessary.

4.2. Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- a. all taxes due and payable by the Concessionaire for and in respect of the Telecom Towers;
- b. payment due to Lenders;
- c. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- d. retention and payments relating to the liability for defects and deficiencies set forth in Article 28;
- e. incurred or accrued O&M Expenses;
- f. any other payments required to be made under this Agreement; and
- g. balance, if any, in accordance with the instructions of the Concessionaire.

Provided that the disbursements specified in Sub-clause (g) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3. Application of insufficient funds

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

4.4. Application of insurance proceeds

- 4.4.1. Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions of this Agreement.

4.5. Withdrawals during Suspension

- 4.5.1. Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 25 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1. Segregation of funds

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

5.2. Notification of balances

- 5.2.1. 7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire as to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the

balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3. Communications and notices

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

- a. may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- b. may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or Document believed by it to be authentic;
- c. shall, within 5 (five) business days after receipt, deliver a copy to the Authority of any notice or Document received by the Escrow Bank in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- d. shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or Document received by the Escrow Bank from the Authority in connection herewith.

5.4. No set off

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

5.5. Regulatory approvals

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

6. ESCROW DEFAULT

6.1. Escrow Default

6.1.1. Following events shall constitute an event of default by the Concessionaire (an “Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

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

6.1.2. Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1. Duration of the Escrow Agreement

7.1.1. This Agreement shall remain in full force and effect so long as any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2. Substitution of Escrow Bank

7.2.1. The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank and the Authority, terminate this Agreement and appoint a new Escrow Bank, provided that arrangements are made satisfactory to the Authority for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3. Closure of Escrow Account

7.3.1. The Escrow Bank shall, at the request of the Concessionaire made on or after the payment by the Concessionaire of all outstanding amounts under the Concession

Agreement including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1. Supplementary escrow agreement

- 8.1.1. Any lender providing financial assistance for the Project and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and Documentation matters not covered under this Agreement such as the rights and obligations of lenders, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1. General indemnity

- 9.1.1. The Concessionaire will indemnify, defend and hold the Authority and Escrow Bank harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2. The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

- 9.1.3. The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2. Notice and contest of claims

- 9.2.1. In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the **"Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (the **"Indemnifying Party"**) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and Documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1. Dispute resolution

- 10.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the **"Rules"**) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1. Governing law and jurisdiction

- 11.1.1. This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2. Waiver of sovereign immunity

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

11.3. Priority of agreements

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

11.4. Alteration of terms

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

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 Agreement:
- a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
 - b. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
 - c. shall not affect the validity or enforceability of this Agreement in any manner.
- 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 Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6. No third party beneficiaries

- 11.6.1. This 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 Agreement:
- a. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
 - b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.
- 11.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8. Severability

- 11.8.1. If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal

provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9. Successors and assigns

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

11.10. Notices

- 11.10.1. All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof save that where it is received after 5.30 (five thirty) p.m. on a business day or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11. Language

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

11.12. Authorised representatives

- 11.12.1. 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.

11.13. Original Document

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

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

SCHEDULE E VESTING CERTIFICATE

(See Clause 28.4)

1. The Chairman and Managing Director, Bharat Sanchar Nigam Limited (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for operation and maintenance of 10,802 telecom towers and allied assets (the “**Tower Assets**”) on Operations & maintenance, Management and Transfer (“**OMT**”) basis.
5. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 28.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Tower Assets shall be deemed to have vested unto the Authority, free from any Encumbrances, charges and liens whatsoever.
6. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this.....day of....., 20.....at Delhi.

AGREED, ACCEPTED AND SIGNED	SIGNED, SEALED AND DELIVERED
For and on behalf of	For and on behalf of
CONCESSIONAIRE	AUTHORITY
by:	by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)
In the presence of:	

SCHEDULE F SUBSTITUTION AGREEMENT

(See Clause 26.4)

THIS SUBSTITUTION AGREEMENT is entered into on this the day of 20.....

AMONGST

- 1. BHARAT SANCHAR NIGAM LIMITED**, a 100% Government of India (GOI) owned telecommunications service provider, managed under GOI's Department of Telecommunications (DoT) incorporated on 15th September 2000, represented by its Chairman and Managing Director headquartered in New Delhi (hereinafter referred to as the "**Authority**") which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2. LIMITED**, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the "**Concessionaire**") which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes); and
- 3.** name and particulars of Lenders' Representative and having its registered office at, acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the "**Concession Agreement**") for operation, maintenance and transfer of certain Tower Assets as identified in the Concession 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 Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

- a. “Agreement”** means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;
- b. “Financial Default”** means occurrence of a material breach of the terms and conditions of the Financing Agreements.
- c. “Lenders’ Representative”** means the person referred to as the Lenders’ Representative in the foregoing Recitals;
- d. “Nominated Company”** means a company, incorporated under the provisions of the Companies Act, 2013, selected by the Lenders’ Representative, on behalf of the Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;
- e. “Notice of Financial Default”** shall have the meaning ascribed thereto in Clause 3.2.1; and
- f. “Parties”** means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.

1.2. Interpretation

- 1.2.1. References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Lenders.
- 1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

- 1.2.4. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ASSIGNMENT

2.1. Assignment of rights and title

- 2.1.1. The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1. Rights of substitution

- 3.1.1. Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2. The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2. Substitution upon occurrence of Financial Default

- 3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Tower Assets

in accordance with the provisions of Article 25 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 120 (one hundred and twenty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 120 (one hundred and twenty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3. Substitution upon occurrence of Concessionaire Default

- 3.3.1. Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 60 (sixty) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of 60 (sixty) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 120 (one hundred and twenty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 120 (one hundred and twenty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 120 (one hundred and twenty) days by a period not exceeding 90 (ninety) days.

3.4. Procedure for substitution

- 3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under

Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Tower Assets including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Lenders under the Financing Agreements.

3.4.2. To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

- a) accede to transfer to the Nominated Company the right to operate and maintain the Tower Assets in accordance with the provisions of the Concession Agreement;
- b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4. If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen days) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen days) of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5. Selection to be binding

- 3.5.1. The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1. Substitution of Nominated Company in Project Agreements

- 4.1.1. The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1. Termination upon occurrence of Financial Default

- 5.1.1. At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 26 of the Concession Agreement.

5.2. Termination when no Nominated Company is selected

- 5.2.1. Where the Lenders' Representative communicates in writing that (i) the Lender does not intend to seek substitution of the Concessionaire, or (b) a Nominated Company has not been nominated by the Lenders within time period herein, or (c) that the Authority has declined to accept the Nominated Company proposed by the Lender, or (iv) the Nominated Company has not been able to remedy the breach of

the Concessionaire leading to the Notice of Intention to Terminate within time period herein, the Authority shall proceed to terminate the Concession Agreement and to make Termination Payment, in accordance with the provisions of the Concession Agreement.

6. DURATION OF THE AGREEMENT

6.1. Duration of the Agreement

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

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum, is outstanding to the Lenders, under the Financing Agreements.

7. INDEMNITY

7.1. General indemnity

7.1.1. The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2. The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3. The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2. Notice and contest of claims

- 7.2.1. In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the “**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and Documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1. Dispute resolution

- 8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders’ Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1. Governing law and jurisdiction

- 9.1.1. This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2. Waiver of sovereign immunity

- 9.2.1. The Authority unconditionally and irrevocably:

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

9.3. Priority of agreements

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

9.4. Alteration of terms

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

9.5. Waiver

- 9.5.1. Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:
 - a.** shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
 - b.** shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
 - c.** shall not affect the validity or enforceability of this Agreement in any manner.
- 9.5.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation

thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6. No third party beneficiaries

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

9.7. Survival

- 9.7.1. Termination of this Agreement:

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

- 9.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8. Severability

- 9.8.1. If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9. Successors and assigns

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

9.10. Notices

9.10.1. All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11. Language

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

9.12. Authorised representatives

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

9.13. Original Document

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

CONCESSIONAIRE by:

SIGNED, SEALED AND DELIVERED

For and on behalf of

Bharat Sanchar Nigam Limited by:

(Signature)

(Name)

(Designation)

(Signature)

(Name)

(Designation)

(Address)
(Fax No.)

(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of
LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)

In the presence of:

1.

2.