



यू पी इलेक्ट्रॉनिक्स कारपोरेशन लिमिटेड
U.P. Electronics Corporation Limited

(A UP GOVT. UNDERTAKING)

Development of Information Technology City - Special Economic Zone
(IT City) on Design, Build, Finance, Operate and Transfer (DBFOT)
basis at Chack Gajaria Farms, Sultanpur Road, Lucknow, in the State of
Uttar Pradesh

Schedules to Concession Agreement

between

UP Electronics Corporation Limited

10, Ashok Marg,
Lucknow- 226001.

and

Name of the SPV

Address of the SPV

VOLUME – III

Updated on 29 October 2013

Tender No: UPLC/ITCITY/LKO/2013/01

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SCHEDULES

SCHEDULE – A

SITE OF THE PROJECT (Refer Article 2.1 & Article 10.1)

1. The Site

- 1.1. The Site shall mean the land measuring 100 (one hundred) acres located at Chack Gajaria Farm at Sultanpur Road in Lucknow, Uttar Pradesh as delineated in the map below. The Project Site is located about 13 km from Chaudhary Charan Singh International Airport at Capital City of Lucknow. The project area is about 15 km from Railway Station and about 10 Km from city centre directly connected with shaheed path.
- 1.2. The Site is currently un-inhabited with gentle slope.

2. Site for Project Infrastructure

The allocation of Site to be used for Project Infrastructure and Project Facilities shall be as under:

Particulars	Acres
Total Site Area (“Usable Area”)	100
Project Infrastructure	
- Core Zone	Not less than 60 % of the Usable Area
- Non Core Zone	Not more than 40% of the Usable Area

The Concessionaire shall provide the details of segregation of the land usage in the Master Plan drawings submitted as part of the Detailed Project Report (DPR).

SITE PLAN -1

<< to be provided by the Authority >>

SCHEDULE – B

DETAIL PROJECT REPORT

(Refer Article 2.1)

The Detail Project Report (DPR) shall include, but not limited to the following:

1. Site evaluation and analysis
2. Overall **Master Plan** for the entire Site i.e. 100 (one hundred) acres
3. Zoning and allocation of the areas for different usages such as IT units, skill development centre, infrastructure, administrative blocks, commercial, residential, hostels, common infrastructure facilities, green areas, common areas etc.
4. Design configuration and conceptual planning & architectural layouts for Suggested Project Infrastructure and Suggested Project Facilities
5. Architectural plans and drawings incorporating the local architectural aesthetics.
6. Structural engineering and designing keeping in view the land topography and seismic risk
7. Methods & technique for erection, testing and commissioning of the various project components, civil, structural, electrical, fire safety, etc.
8. Usage of design attractiveness, innovation, environmental friendliness, aesthetics, green concept, technology etc.
9. Detail plan for internal roads/pathways as well as connectivity to the external access road
10. Detail plan for water supply
11. Detail plan for drainage, sewerage, sewerage treatment plant, wastewater management, recycling, solid waste management etc.
12. Detail plan for electricity supply including power backup and electric sub-station
13. Provision for telecommunication, internet connectivity and other related services
14. Detail plan for heating, ventilation and air-conditioning work (HVAC)
15. Detail plan for open spaces, landscape and green area
16. Detail plan for rain water harvesting, pollution & noise control measures
17. Detail plan for fire protection mechanism
18. Detail plan for Green area and landscaping
19. Ensuring energy efficient buildings/ infrastructure and energy management
20. Graphic signage
21. Provision of social infrastructure such as Medical centres, Ambulance Centre and infrastructure required to promote other social initiatives of GoUP
22. Adequacy and effectiveness of resource allocations, plant & machinery and manpower
23. Adequacy and appropriateness of chosen technology
24. Testimonials on safety & time adherence
25. Technology management & know how transfer arrangements

26. Overall conformance to stipulated technical requirements
27. Environment Impact Assessment (EIA) and Social Impact Assessment (SIA)
28. Detail cost estimates
29. Project completion schedule
30. Sequencing and time phasing of activities
31. Financial stake (equity percentage) and financing arrangements (percentage of debt and the extent of tie-up)
32. Marketing and promotion plan for the IT City, clearly identifying potential markets, marketing and promotional strategies, execution strategies and time frames for the plans
33. May indicate suitable tenants who would occupy built up area meant for Core and Non-Core areas
34. Contingency plans and Disaster management plans
35. Extent of compliance stipulated in Bidding Documents
36. Constructive justification behind deviations, if any

SCHEDULE – C 1

PROJECT INFRASTRUCTURE

(Refer Article 2.1)

The IT City would be designed as a world-class facility and embodies futuristic concepts. The overall development must be futuristic; service oriented and should be able to project a global image for Lucknow. It needs to have a vision and spaces that are conducive to global/reputed industries/ institutions and in accordance with the local architectural guidelines. The IT City will be conceived as a Green City with all development activities or facilities to be non-polluting keeping with the emphasis on preserving and enhancing the environment. The project envisages that the:

- a. Development activities or facilities will lead to the branding of Lucknow as a preferred destination for IT/ITES;
- b. Development activities or facilities to attract reputed and high quality IT/ITES industries;
- c. Development activities or facilities incorporating all round Green development, environment friendly and non polluting environment; and
- d. Development activities or facilities leading to economic activity leading and employment generation in Lucknow, however this shall be limited to and in accordance to the Concession Agreement.

The activities in Core Area compliant with the aforesaid vision may include Computer Hardware & Peripheral Units, Software Development Units, Middleware Units, BPO/KPO/ Consulting Units, ICT/ EDI Units, Incubation Centres and Skill Development Centre, but this shall be limited to the provisions of the Concession Agreement.

The following facilities shall be ensured, namely:—

- (a) twenty-four hours uninterrupted power supply at stable frequency in the Zone;
- (b) reliable connectivity for uninterrupted and secure data transmission;
- (c) provision for central air-conditioning system; and
- (d) a ready to use, furnished plug and pay facility for end users.

The details of the suggested core and non-core project infrastructure are detailed below:

A. Core Zone

The prime usage of the Core Zone shall be for IT/ITES purpose only, consisting of.

- (a) Site development

- (b) Construction of boundary walls
- (c) Construction of roads
- (d) Installation of water supply and sanitation and sewage systems
- (e) Power distribution system
- (f) Telecom facilities
- (g) Construction of factory buildings and warehouses
- (h) Skill Development Centre, consisting of
 - Academic block
 - Classrooms
 - Workshops/Labs
 - Any other services required for imparting requisite skills to the students
- (i) Any other activity which may be required in the processing area
- (j) Any, other infrastructure as proposed by the Authority and/or the Concessionaire

B. Non Core Zone

The prime usage of the Non Core Zone shall be for all supporting activities to IT/ITES development only, consisting of.

- (a) Residential
- (b) Commercial complex
- (c) Recreation facilities
- (d) Social amenities like hospital, school, public parks etc.
- (e) Any, other infrastructure as proposed by the Authority and/or the Concessionaire

SCHEDULE – C 2

PROJECT FACILITIES

(Refer Article 2.1)

1. Internal roads of varying widths to accommodate the following facilities within the Right of Way:
 - a. Provision of pipes for water distribution
 - b. Provision of pipes for sewerage collection
 - c. Provision for cable ducts for Telecommunication & TV cables
 - d. Provision of ducts for power (both High Voltage & Low Voltage power cables)
 - e. Footpath
 - f. Bicycle lane
 - g. Easement Area between the plot boundary and footpath for the service lines
 - h. Internal street lighting
2. Safe drinking water supply, Water treatment plant and Water distribution system including pumping stations
3. Sewerage/Drainage collection system and Sewerage treatment plant
4. Solid waste management system
5. Power distribution system including back-up, sub-stations, electricity connections to the grid and street lighting
6. Gas and Petroleum Natural Gas Distribution Network including necessary sub-stations of appropriate capacity, pipeline network etc.
7. Telecommunication distribution system including optical fibre connectivity and other related services
8. Building heating systems / arrangements / Air Conditioning management & control
9. Water saving & rain water harvesting system
10. Fire hydrants and control measures
11. IT City Management System (ICMS) - The ICMS shall be implemented for effective management, monitoring and integration of various facilities in the IT City. The ICMS shall perform the following general functions such as City Management & Control, Data Collection & archival, Alarm Event & Management, Trending, Reports & MIS Generation, Maintenance & Complaint Management, Network Integration etc.
12. Housekeeping facilities
13. Energy management
14. Safety & Security Systems Integration such as Fire Alarm System and Access Control & Surveillance System. The safety and security should be one of the top priorities at the IT City and there should be a 24-hour security system, backed by state-of-the-art surveillance systems and a reliable and committed security force and protocols.
15. Signage
16. Land development in the form of roads, pavements, fencing, walkways etc.
17. Landscaping and maintenance of Green area

SCHEDULE – D

SPECIFICATIONS AND STANDARDS

(Refer Article 2.1)

The following guidelines are issued as the minimum Specification and Standards for reference. However, the Concessionaire shall come up with proposal of complying with other National/ International standards and formulate the following byelaws in consultations with the Authority during the DPR preparation stage, which shall include:

- a) Development Control Regulations for IT City; and
- b) Operator and City Management Services Regulations for IT City

The Concessionaire shall comply with the Specifications and Standards set forth in this Schedule for construction of the Project Infrastructure and Project Facilities and shall always adhere to Good Industry Practice.

1 Specifications and Standards to apply

The Project shall conform to the provisions, principles and guidelines laid down under:

- a) The regulations of the Authority and /or any other regulating authority;
- b) Regulations and approvals under the Environmental Protection Laws;
- c) Existing Building Byelaws issued by development authority, as applicable for the project and/or latest amended other relevant Indian Standard (IS) Codes and practices, Development Control Regulations, statutory requirements, laws of land, the principles of good industry practices and any other norms as applicable from time to time;
- d) ISO – International Organization for Standardization;
- e) Indian Standard (IS) Code as published by the Bureau of Indian Standards;

2 General Quality Standards to apply

The term “**General Quality Standards**” means a standard of performance which,

- a) is competent, efficient, economical and in accordance with internationally accepted techniques used in civil works construction;
- b) is in accordance with professional engineering, accounting and consulting standards, as applicable, recognized by national or international professional bodies;

- c) is in accordance with sound management, commercial, technical, design and engineering practices;
- d) employs appropriate technology and safe and effective equipment, machinery and methods;
- e) is in accordance with national and local standards and codes in India;
- f) protects the interests of the Authorities, Concessionaire, Tenants & Employees;
- g) is in accordance with the Applicable Law;
- h) is in accordance with the applicable Social Safeguards/Environmental Assessment and Mitigation Plan; and
- i) would overall ensure all elements of the design & construction are '**Fit for its intended purpose**'.

3 IT City Guidelines

The Authority encourages use of National / International Best Practices and leading innovation in sustainable development, the following only sets the general guideline in terms of Green and Sustainable development for the IT City. The overall Project Infrastructure and Project Facilities shall take due care on the following:

- a. Environmental conservation
- b. Cultural and heritage sites
- c. Traditional aesthetics
- d. Bio mimicry and eco friendly development
- e. Gross National Happiness Ethos, harmonious living and sustainable living

A. Building Design Guidelines

Ecological Impact	<p>Priority 1 - Must Do</p> <ul style="list-style-type: none"> ▪ Choose building sites to minimize adverse effect on biodiversity – for e.g. avoid felling of trees to the extent possible considering the availability of much flat land with sparse vegetation at the Project Site ▪ Use wood from indigenous/local trees to avoid introducing alien species of insects ▪ Use organic, locally available insulation such as hay bales or saw dust wherever possible - Reduce insulation costs and make it eco-friendly <p>Priority 2 - Should Do</p> <ul style="list-style-type: none"> ▪ Use green roofing techniques - have a thin layer of substrate with grass and small plants - to absorb rainwater and reduce drainage requirements, provide insulation, purify air & be aesthetically pleasing ▪ Use engineered lumber - more environmentally friendly, stronger and straighter
Water Efficiency	<p>Priority 1 - Must Do</p> <ul style="list-style-type: none"> ▪ Minimize water use by using water efficient toilets/sinks/basins <p>Priority 2 - Should Do</p> <ul style="list-style-type: none"> ▪ Design roof to capture rain water - with simple inexpensive adjustments, rain water can be effectively captured for Users
Indoor Quality	<p>Priority 1 - Must Do</p> <ul style="list-style-type: none"> ▪ Use paint, adhesives and caulks that have low or no – Volatile Organic Compounds (VOC) have been connected to cancer and other health concerns ▪ Design buildings for maximum air circulation within the building
Waste Management	<p>Priority 1 - Must Do</p> <ul style="list-style-type: none"> ▪ Install separate and adequate waste collection bins for organic, recyclable and hazardous waste ▪ Separate sewage from wash water using dedicated pipes so that they can be refined easily <p>Priority 2 - Should Do</p> <ul style="list-style-type: none"> ▪ Use recycled materials as much as possible – re-used materials generally save on money and save space in the land-fill

Renewable Energy	<p>Priority 1 - Must Do</p> <ul style="list-style-type: none"> ▪ Use solar heating systems instead of gas/wood-powered ones <p>Priority 2 - Should Do</p> <ul style="list-style-type: none"> ▪ Install solar power on roof and small wind turbines within air passageways wherever possible ▪ Cool buildings by channelling cold water from upstream through building and release downstream, making use of gravity and reducing need to use energy for air-conditioning
Efficiency in Construction	<p>Priority 1 - Must Do</p> <ul style="list-style-type: none"> ▪ Place bins on site during construction to gather and reuse cut studs - This system will waste less lumber than cutting a new stud each time a shorter piece of lumber is needed <p>Priority 2 - Should Do</p> <p>No headers in non structural walls - Reduced lumber and lumber waste</p>

Energy Efficiency	<p>Priority 1 - Must Do</p> <ul style="list-style-type: none">▪ Use passive solar design principles - face building the right way and have windows in right places to maximize solar gain during winter and minimize during summer▪ Use thermal mass to even out temperature fluctuations between night and day▪ Design building interiors (with skylights, solar tubes, etc.) to ensure ambient lighting and reduce the need for artificial lights during daytime▪ Design buildings with adequate air ventilation during the summer▪ Use energy efficient appliances/lighting such as Energy Star TM and LED lamps▪ Use dark colored roofing/outer walls to absorb sunlight in cold climate – will reduce heating costs▪ Use double-pane, glazed windows and insulated frames – reduce heat loss and gain▪ Seal around electric outlets – Air infiltration is a huge problem and the source of much energy waste. It is important to seal even the small air gaps around an electrical outlet as they have a big impact over the life of the building▪ Use sufficient caulking and insulation on walls and roof to minimize heat loss▪ House wrap – A common green building practice which helps to “tighten “ the home envelope <p>Priority 2 - Should Do</p> <ul style="list-style-type: none">▪ Install occupancy-aware lighting and heating appliances▪ Use waste heat from refrigerators and air conditioners to heat water for domestic use▪ During planning, conduct life-cycle assessments of all major buildings using computer simulation tools <p>Priority 3 - Could Do</p> <ul style="list-style-type: none">▪ Install adjustable thermostats - save energy by allowing homeowners to set the house to a lower temperature when they are not home▪ Have electricity meter show amount owed rather than usage
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B. City Design Guidelines

Ecological Impact	<p>Priority 1 - Must Do</p> <ul style="list-style-type: none"> ▪ Conserve old trees– proper planning of the new structure to conserve old mature trees ▪ Only use indigenous trees/ bushes/grass for landscaping in the entire City ▪ Only use organic pesticide/fertilizer on soil ▪ Have eco-friendly pest control mechanisms that does not rely on synthetic pesticides <p>Priority 2 - Should Do</p> <ul style="list-style-type: none"> ▪ Have water permeable parking lots and roads (such as pervious concrete) to allow seepage and recharge of underground reservoirs, and reduce need for drainage
Air Quality and Temperature Control	<p>Priority 1 - Must Do</p> <ul style="list-style-type: none"> ▪ No flyovers or tunnels in the entire city
Urban Design	<p>Priority 1 - Must Do</p> <ul style="list-style-type: none"> ▪ Optimal building density to make public transport viable but reduce urban heat island effect ▪ Limit high-rise buildings to an absolute minimum, if not zero ▪ Have at least 50 feet of green space between centre of road and buildings/walls ▪ Every residential housing complex must have a playground and/or park within 5 minutes walking distance <p>Priority 2 - Should Do</p> <ul style="list-style-type: none"> ▪ Have a easily discernible centre of the City – a square or crossing – from which all housing should be within a kilometre ▪ Utilize biomimicry and permaculture design tools - study the local habitats and ecosystem for clues, in order to overcome various challenges faced during planning and construction

SCHEDULE –E

APPLICABLE PERMITS

(Refer Article 4.1.2)

1 Applicable Permits

1.1 The Concessionaire shall obtain, as required under the Applicable Laws but not limited to the following, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with **Article 4.1.2** of the Agreement:

- (a) Environment clearances and Environmental and Social Impact Assessment from Ministry of Environment & Forest, Government of India:

The Concessionaire will undertake an Environmental Impact Assessment (“EIA”) of the IT City including proposed buildings and associated access and service facilities (access roads, electricity and water supply, landscaping, etc.) before the construction of the buildings to identify and mitigate any site preparation, construction and operational environmental related impacts. An Environmental Management Plan (“EMP”) would be developed to manage and mitigate any potential negative environmental impacts posed by the development and operation of the IT City. The Concessionaire will be responsible to ensure full compliance with the EMP and any other conditions imposed by the Ministry of Environment & Forest, Government of India when the environmental clearance certificate is issued.

- (b) Clearances, permissions and approvals required under the relevant Building Bye-laws;
- (c) Approval for extraction of boulders from quarry from Ministry of Environment & Forest, Government of India and Department of Geology and Mines;
- (d) Approval from Lucknow Municipal Corporation for water & sewerage connection;
- (e) Approval from competent authorities for power/electricity connection;
- (f) Approval from competent authorities for telecommunication/internet connectivity;
- (g) Consent order from competent authorities for pollution control regulation;
- (h) Fire safety clearance from competent authorities;
- (i) Clearance from Airport Authority of India, if required;
- (j) Clearance for blasting and use of explosives at the site for construction activities from competent authorities;
- (k) Clearance for Visas and workers permits from competent authorities;
- (l) Trade and services licenses from Ministry of Commerce;

- (m) Construction licenses from competent authorities;
- (n) Lucknow Development Authority clearances;
- (o) Tax exemptions from Ministry of Commerce and Ministry of Finance;
- (p) Approval and accreditation from competent authorities, if applicable;
- (q) Any other permits or clearances required under Applicable Laws.

SCHEDULE –F

PERFORMANCE SECURITY

(Refer Article 9.1)

The Managing Director,
U.P. Electronics Corporation Limited
10, Ashok Marg,
Lucknow 226001
Uttar Pradesh, India

WHEREAS:

- (A) (the “**Concessionaire**”) and the U.P. Electronics Corporation Limited (the “**Authority**”) have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the “Development of Information Technology City - Special Economic Zone (IT City) on Design, Build, Finance, Operate and Transfer (DBFOT) basis at Chack Gajaria Farms, Sultanpur Road, Lucknow, in the State of Uttar Pradesh” (“**Project**”) subject to and in accordance with the provisions of the Concession Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority {in a sum of Rs. 750,000,000/- (Rupees Seventy Five crore) for Phase I or in a sum of Rs. 400,000,000/- (Rupees forty crore) for Phase II} (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

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

- conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
 4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
 5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
 6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
 7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the COD Phase I (for Phase I) / the earlier of the 5th (fifth) anniversary of the COD Phase II (for Phase II) or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
 8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less

than 100% (one hundred per cent) of the Total Project Cost which is deemed to be Rs. 1500 cr. (Rupees One Thousand and five hundred crore only) for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect until the earlier of the COD Phase I (for Phase I) / the earlier of the 5th (fifth) anniversary of the COD Phase II (for Phase II) or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE –G

PROJECT COMPLETION SCHEDULE

(Refer Article 12.1)

*{Note: The detailed Project Milestones within the Scheduled Commercial Operations Date for Phase I and Phase II, as the case may be, shall be discussed and finalised between the Authority, Independent Engineer and the Concessionaire during the preparation of the DPR and before the Appointed Date and the same shall be deemed to form as part of this **Schedule G.**}*

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this **Schedule G** for each of the Project Milestones. Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2 Project Milestones under Phase I

The Phase I is to be completed within 4 (four) years from the Appointed Date for Phase I and shall be the scheduled date for completion of Phase I which shall comprise of the Suggested Project Infrastructure and Suggested Project Facilities as described in **Schedule C1** and **Schedule C2**, respectively and earmarked for Phase I (the “**Scheduled Phase I Completion Date**”) and the Concessionaire agrees and undertakes that the construction of Phase I shall be completed on or before the Scheduled Phase I Completion Date.

Further, the Concessionaire undertakes to invest not less than Rs. 200 (Two Hundred) Crore on or before third anniversary of the Appointed date and agrees to invest aggregate of not less than Rs. 400 (Four Hundred) Crore on or before Scheduled Commercial Operations Date for Phase I towards development of the IT city..

2.1 Project Milestone – I under Phase I

Project Milestone-I the Concessionaire has to complete the following activities ***** within ***** from the Appointed Date for Phase I (the “**Project Milestone-I**”).

2.2 Project Milestone-II under Phase I

Project Milestone-II the Concessionaire has to complete the following activities ***** within ***** from the Appointed Date for Phase I (the “**Project Milestone-II**”).

3. Project Milestones under Phase II

The Phase II is to be completed within 10 (ten) years from the Appointed Date for Phase II and shall be the scheduled date for completion of Phase II, comprising of the Suggested Project Infrastructure and Suggested Project Facilities as described in **Schedule C1** and **Schedule C2**, respectively (the “**Scheduled Phase II Completion Date**”) and the Concessionaire agrees and undertakes that the construction of Phase II shall be completed on or before the Scheduled Phase II Completion Date.

3.1 Project Milestone – I under Phase II

Project Milestone-I the Concessionaire has to complete the following activities ***** within ***** from the Appointed Date for Phase II (the “**Project Milestone-I**”).

3.2 Project Milestone-II under Phase II

Project Milestone-II the Concessionaire has to complete the following activities ***** within ***** from the Appointed Date for Phase II (the “**Project Milestone-II**”).

4 Extension of Period

Upon extension of any or all of the aforesaid Project Milestones, under and in accordance with the provisions of this Agreement, the Project Schedule shall be deemed to have been amended accordingly.

SCHEDULE –H

DRAWINGS

(Refer Article 12.3)

1 Drawings

In compliance of the obligations set forth in **Article 12.3** of this Agreement, the Concessionaire shall furnish to the Authority, free of cost, all Drawings, including those listed in Annex-I of this **Schedule H**.

2 Additional Drawings

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

Any submission of Drawings made by the Concessionaire to the Authority under this Agreement or any other contractual arrangement, shall not amount to submission and/or fulfilment of the requirement as laid down under Applicable Law and the Concessionaire shall separately comply with statutory requirements.

Annex – I

List of Drawings

(Schedule –H)

*{Note: The final list of Drawings shall be finalised between the Authority and the Concessionaire during the preparation of the DPR and before the Appointed Date and the same shall be deemed to form as part of this **Schedule H.**}*

The following is only a tentative list of the various drawings that is to be submitted by the Concessionaire:

1. Master Plan of the Lucknow IT City
2. As-built drawing of the water distribution system
3. As-built drawing of the sewerage collection system
4. As-built drawing of the power distribution system
5. As-built drawing of the telephone and TV cables
6. As-built drawing of road and footpath network including parking areas
7. Detailed as-built architectural and structural drawings of the following:
 - a. Architectural drawings for all Buildings (academic blocks, administrative blocks, conference centres, sports complex, hostels, shopping centres, etc.) and other service facilities
 - b. Structural drawings
 - c. Landscaping design
 - d. Slope protection design
 - e. Foundation design
8. All and any other drawings as deemed necessary.

SCHEDULE – I

TESTS

(Refer Article 14.1.2)

1 Schedule for Tests

- 1.1 The Concessionaire shall, no later than 60 (sixty) days prior to the likely completion of Phase I and Phase II, notify the Independent Engineer and the Authority of its intent to subject the Project Infrastructure and Project Facilities to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Project Infrastructure and Project Facilities.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project Infrastructure and Project Facilities to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with **Article 14** and this **Schedule I**.

2 Tests

- 2.1 **Visual and physical Test:** The Independent Engineer shall conduct a visual and physical check of the Project Infrastructure and Project Facilities to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.2 **Other Tests:** The Independent Engineer may require the Concessionaire to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Infrastructure and Project Facilities with Specifications and Standards.
- 2.3 **Environmental Audit:** The Independent Engineer shall carry out a check to determine conformity of the Project Infrastructure and Project Facilities with the environmental requirements set forth in Applicable Laws and Applicable Permits.

3 Agency for Conducting Tests

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

4 Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of **Article 14**.

SCHEDULE –J

COMPLETION CERTIFICATE

(Refer Articles 14.2 & 14.3)

COMPLETION CERTIFICATE FOR PHASE {I OR II}

- 1 I, ***** {Name of the designated official}, acting as Independent Engineer, under and in accordance with the Concession Agreement dated ***** (the “**Agreement**”), for the Development of Information Technology City - Special Economic Zone (IT City) on Design, Build, Finance, Operate and Transfer (DBFOT) basis at Chack Gajaria Farms, Sultanpur Road, Lucknow, in the State of Uttar Pradesh” through ***** {Name of Concessionaire}, hereby certify that the Concessionaire has duly provided the Occupancy Certificate from the relevant Authority and I am satisfied that the {Phase- I or Phase- II} can be safely and reliably placed in commercial usage for the Users thereof.
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of the {Phase- I or Phase- II} have been completed, and the {Phase- I or Phase- II} is hereby declared fit for entry into commercial operation on this the ** day of ***** 20**.

SIGNED, SEALED AND DELIVERED
For and on behalf of the **AUTHORITY** by:

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

SCHEDULE –K

MAINTENANCE REQUIREMENTS

(Refer Article 17.2)

{Note: The detailed Maintenance Requirement shall be discussed and finalised between the Authority and the Concessionaire during the preparation of the Maintenance Requirement and the Maintenance Manual as per Article 17.2 and 17.3 and the same shall be deemed to form as part of this Schedule K.}

1 Maintenance Requirements

1.1 The Concessionaire shall, at all times, operate and maintain the Project Infrastructure and Project Facilities in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Concession Period, conform to the maintenance requirements set forth in this **Schedule K** (the “**Maintenance Requirements**”).

1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this **Schedule K** within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in the Agreement without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

1.3 Manual of Specifications and Standards to Apply

Maintenance of the Project Infrastructure and Project Facilities shall conform to the standards specified in **Schedule D** and also the following standards:

(i) ***** (in order of preference)

(ii) *****

(iii) *****

2 Repair/Rectification of Defects and Deficiencies

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex-I of this **Schedule K** within the time limit set forth therein.

3 Other Defects and Deficiencies

3.1 In respect of any defect or deficiency not specified in Annex-I of this **Schedule K**, the

Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.

- 3.2 In respect of any defect or deficiency not specified in Annex-I of this **Schedule K**, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Engineer.

4 Extension of Time Limit

Notwithstanding anything to the contrary specified in this **Schedule K**, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

5 Emergency Repairs/Restoration

Notwithstanding anything to the contrary contained in this **Schedule K**, if any defect, deficiency or deterioration in the Project Infrastructure and Project Facilities poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

6 Periodic Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a periodic visual inspection of the Project Infrastructure and Project Facilities and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

7 Divestment Requirements

All defects and deficiencies specified in this **Schedule K** shall be repaired and rectified by the Concessionaire so that the Project Infrastructure and Project Facilities conforms to the Maintenance Requirements on the Transfer Date.

Annex – I

Repair/Rectification of Defects and Deficiencies

(Schedule-K)

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of **Schedule K** set forth herein. All repair /ratification of defects and deficiencies shall be incorporated in the City Management Services/Maintenance Manual with sections and guidelines or Service Level Agreements.

Nature of Defect or Deficiency	Time limit for Repair/Rectification
i. Buildings a) Minor damage b) Major damage	10 days 30 days
ii. Roads, parking areas and footpaths a) Blockade b) Pot holes c) Damage to pavement edges exceeding 10 cm	Temporary restoration within 24 hours and permanent restoration within 15 days 48 hours 10 days
iii. Water and Sewerage services a) Blockage and overflow b) Major damages	24 hours 3 days
iv. Electricity and telecommunications a) Any major failure of the system b) Faults and minor failures	24 hours 8 hours
v. Law enforcement	1 hour
vi. Any and all other defects or deficiency as suggested by the Authority from time to time and as specified in the Maintenance Manual	To be suggested in detail in the City Management Services/Maintenance Manual

SCHEDULE –L

SAFETY REQUIREMENTS

(Refer Article 18.1)

1 Guiding Principles

- 1.1 Safety Requirements which shall include the Safety Guidelines attached hereto as Annex I to this **Schedule-L** (the “**Safety Guidelines**”) shall aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Site, irrespective of the person(s) at fault.
- 1.2 Users of the Project include staff of the Concessionaire and its contractors working on the Project Infrastructure and Project Facilities.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

2 The Concessionaire shall abide by the following in so far as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Fire safety norms as per Good Industry Practice;
- (c) Provisions of this Agreement;
- (d) usage of earthquake resistant materials and designs in accordance with Good Industry Practice, in the event the Site is prone to seismic activity;
- (e) relevant Standards/Guidelines contained in internationally accepted codes;
- (f) the Safety Guidelines; and
- (g) Provisions of the Environmental Laws

3 Safety Measures during Construction Period

The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones, and notify the Authority about such arrangements.

4 Safety Measures during Operation Period

- 4.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 4.2 The Concessionaire shall establish a Safety Management Unit (the “**SMU**”) to be functional, and designate one of its officers to be in-charge of the SMU.

Annex – I

Safety Guidelines

(Schedule-L)

1 Safe Movement

In the design, construction and operation of the Project Infrastructure and Project Facilities, particular care shall be taken to ensure safety of Users. This shall include facilities for safe and efficient evacuation in case of emergency.

2 System Integrity

In the design of power supply, circuits and equipments, particular care shall be taken to minimise the likely incidence of failure.

3 Restoration of Service

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

4 Safety Management

A safety statement shall be prepared by the Concessionaire once in every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Authority within 15 (fifteen) days of the close of every quarter.

5 Safety Equipment

The following equipment shall be provided in adequate numbers:

- (a) fire extinguishers and fire alarms at the appropriate locations;
- (b) stretchers and standard first aid boxes; and
- (c) such other equipment as may be required in conformity with Good Industry Practice.

6 Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a Disaster Management Manual to be prepared and published by the Concessionaire prior to COD Phase I

7 Fire Safety

- 7.1 The Concessionaire shall adopt provisions of the relevant fire protection policy as applicable in Uttar Pradesh.
- 7.2 To prevent fire in the User areas, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit harmful gases when burning.
- 7.3 Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the building in case of emergency.
- 7.4 Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Article, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardised.

8 User Safety and Information System

- 8.1 The Concessionaire shall provide the SMU with the facilities required for supervising User areas, and shall provide visual information to Users. The Concessionaire shall also provide one-way communication to Users through a Public Announcement (PA) system. The User call points should be located at convenient locations to allow Users to contact the SMU in emergencies.
- 8.2 The User information system shall comprise dynamic visual displays and loudspeakers.

SCHEDULE –M

SKILL DEVELOPMENT CENTRE

(Refer Article 2.1)

1.1. Objective

The Concessionaire shall develop the Skill Development Centre (SDC) to impart the employable skill & training for the students in IT/ITES Sector or any other relevant training in accordance with the provisions of the Concession Agreement.

1.2. Area

The SDC shall be developed in an area of 10 acre of land along with hostel facility to be suitable earmarked in the approved Project master plan on a location which is easily accessible to the Users.

1.3. Student Capacity

The SDC shall be developed with a total intake capacity of minimum 5000 student per annum. The above mentioned capacity shall be required to be achieved on or before from the 2nd Anniversary of COD Phase I, however, the Concessionaire will ensure the minimum passing out of 1000 (one thousand) students from Skill Development Centre in each year from the 5th (fifth) year of the Appointed Date, per annum shall require to be achieved within Phase I SCOD.

1.4. Hostel Capacity

The SDC shall also be developed with a hostel accommodation for minimum 1000 students. The above mentioned capacity shall be required to be achieved on or before from the 2nd Anniversary of COD Phase I, however, a capacity of 200 students per annum shall require to be achieved within Phase I SCOD.

1.5. Eligibility criteria

The Concessionaire shall be allowed to set eligibility criteria for the admission of students in the SDC. However, the Concessionaire shall notify the eligibility criteria to the Authority as and when required.

1.6. Curriculum and Certifications

The Concessionaire shall design the appropriate curriculum, process & methods of imparting training and certification process to make students employable either in the IT City, or outside it, in the IT/ITES sector or any other relevant sector. The courses, their duration, their delivery methods and certification, for the trainings imparted in the SDC, shall be as acceptable to industry at all times during the Concession Period.

1.7. Tuition Fee and Hostel charges

The Tuition Fee applicable to the Students should be market driven and decided by the Concessionaire. The Tuition Fee with course detail shall be notified to the Authority before the start of each academic year. The Concessionaire shall be entitled to levy such Tuition Fee from the Students after admissions. In addition to the Tuition Fee, the Concessionaire shall be free to charge reasonable charges for providing Hostel facility, however, Concessionaire will not make it mandatory to avail hostel facilities for any student.

1.8. Admission process

The Concessionaire shall follow an open and transparent process for admission of students based on the eligibility criteria. The process, requirements and output shall be published in the public domain, including on the website of IT City, and process so conducted shall be in strict adherence with published procedures. Each admitted student shall be given a unique id for reference at any time. A skilled /trained student, from the SDC, cannot be retrained in next 5 years, if the student has been supported by Authority.

1.9. Support from Authority

The support from the Authority for the SDC shall be in the form of per student support for UP residents as envisaged in the Concession Agreement.

SCHEDULE –N

PANEL OF CHARTERED ACCOUNTANTS

(Refer Article 28.2.1)

1 Panel of Chartered Accountants

Pursuant to the provisions of **Article 30.2.1** of the Agreement, the Concessionaire and the Authority shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this **Schedule N**.

2 Invitation for Empanelment

2.1 The Concessionaire shall invite offers from all reputable firms of Chartered Accountants who fulfill the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of atleast 100 (one hundred) companies registered under the Indian Companies Act, 1956;
- (b) the firm should have at least 3 (three) practicing Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Authority and the Comptroller and Auditor General of India; and
- (d) the firm should have an office in India with at least 2 (two) practising Chartered Accountants on its rolls in Lucknow.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year- wise information relating to the names of all the companies with an annual turnover exceeding Rs. 100 (One Hundred) Crore whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and Selection

1.1 The information furnished by each firm shall be scrutinised and evaluated by the Concessionaire and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded five points.

- 3.2 The Concessionaire shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Authority

The Concessionaire shall convey the aforesaid panel of firms to the Authority for scrutiny and comments, if any. The Authority shall be entitled to scrutinise the relevant records of the Concessionaire to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Concessionaire within 15 (fifteen) days of receiving the aforesaid panel. If no comments are received from the Authority within the prescribed time limit the panel will be deemed to be confirmed.

5 Mutually Agreed Panel

- 5.1 The Concessionaire shall, after considering all relevant factors including the comments, if any, of the Authority, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this **Schedule N**.

SCHEDULE –O

VESTING CERTIFICATE

(Refer Article 32.3)

- 1 The Managing Director on behalf of UP Electronics Corporation Limited , GoUP (the “**Authority**”) refers to the Concession Agreement dated ***** (the “**Agreement**”) entered into between the Authority and ***** (the “**Concessionaire**”) for Design, Build, Finance, Operate and Transfer the Project Infrastructure and / or Project Facilities, located at IT City (the “**Project**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in **Article 34.1** 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 Project Infrastructure and / or Project Facilities, as the case may be shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this ** day of *****, 2*** at Lucknow.

AGREED, ACCEPTED AND SIGNED

For and on behalf of

CONCESSIONAIRE by:

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

AUTHORITY by:

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

In the presence of:

1.

2.

SCHEDULE –P

SUBSTITUTION AGREEMENT

(Refer Article 34.3)

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

AMONGST

- 1 The U.P. Electronics Corporation Limited, incorporated under the Companies Act, 1956, a nodal agency acting on behalf of Information Technology & Electronics (IT&E) Department, Government of Uttar Pradesh as appointed by Government of Uttar Pradesh, represented by its Managing Director and having its principal offices at 10, Ashok Marg, Lucknow 226001 (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, 1956 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);
- 3(name and particulars of Lenders’ Representative) and having its registered office at, acting for and on behalf of the Senior Lenders(name) 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 Development of Information Technology City - Special Economic Zone (IT City) on Design, Build, Finance, Operate and Transfer (DBFOT) basis at Chack Gajaria Farms, Sultanpur Road, Lucknow, in the State of Uttar Pradesh, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

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

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

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

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

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

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with

particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

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

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project IT City in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; Provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; Provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project IT City including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project IT City in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority 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

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The

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

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

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

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 37 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For

realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

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

7 INDEMNITY

7.1 General indemnity

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

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

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

7.2 Notice and contest of claims

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

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders’ Representative. Such arbitration shall be held in accordance with the 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 Lucknow and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of immunity

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 from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

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

- (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

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

9.7 Survival

9.7.1 Termination of this Agreement:

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

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

9.8 Severability

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

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following

the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorised representatives

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

9.13 Original Document

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

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

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

SIGNED, SEALED
AND DELIVERED
For and on behalf of
U. P. ELECTRONICS CORPORATION
LIMITED / IT&E Department, GoUP
by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

[§] To be affixed in accordance with the articles of association of the Concessionaire.

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1. _____
2. _____

SCHEDULE –Q

ESCROW AGREEMENT

(Refer Article 26.1.2)

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, 1956 and having its registered office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2name and particulars of Lenders’ Representative and having its registered office atacting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3name and particulars of the Escrow Bank and having its registered office at(hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The U.P. Electronics Corporation Limited, incorporated under the Companies Act, 1956, a nodal agency acting on behalf of Information Technology & Electronics (IT&E) Department, Government of Uttar Pradesh as appointed by Government of Uttar Pradesh, represented by its Managing Director and having its principal offices at 10, Ashok Marg, Lucknow 226001 (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 Development of Information Technology City - SEZ (IT City) on Design, Build, Finance, Operate and Transfer (DBFOT) basis at Chack Gajaria Farms, Sultanpur Road, Lucknow, in the State of Uttar Pradesh, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

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

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

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

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

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

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on

behalf of Senior Lenders.

- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

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

2.2 Acceptance of Escrow Bank

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

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

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

2.5 Rights of the parties

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

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

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 monies received in relation to the Project IT City from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- c) all the User Charges from or in respect of the Project, including the proceeds of insurance claims and advances and deposits made to the Concessionaire with respect to the Project Infrastructure and Project Facilities;

- d) all monies received in relation to the IT City from insurance or any other person towards repair, maintenance or damages for the Project Infrastructure;
- e) all money forming part of User Charges including licence fee, sub-lease rent / revenue, deposits or capital receipt and User Charges accruing, arising or received by the Concessionaire or any other person acting through or on behalf of the Concessionaire;
- f) all benefits accruing under the applicable Acts, Laws and Policies; and
- g) all payments by the Authority to the Concessionaire, if any

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

3.2 Deposits by the Authority

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

- (a) Student Fee Support and any other monies disbursed by the Authority to the Concessionaire;
- (b) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; Provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

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

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders'

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) Concession Fee and Lease Rent due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) Land Premium due and payable to the Authority;
- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

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

4.2 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;

- (b) outstanding Concession Fee, Lease Rent & Land Premium;
- (c) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in **Article 33** of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

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

4.3 Application of insufficient funds

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

4.4 Application of insurance proceeds

Notwithstanding anything contained 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 contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under **Article 30** of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

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

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

5.4 No set off

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

5.5 Regulatory approvals

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

reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

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

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

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

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

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a Supplementary Escrow Agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; Provided that such Supplementary Escrow Agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such Supplementary Escrow Agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

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

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

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 Lucknow and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of immunity

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 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

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

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

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

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

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

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number 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

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

11.12 Authorised representatives

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

11.13 Original Document

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

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

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
SENIOR LENDERS by the
Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
ESCROW BANK by:

(Signature)
(Name)
(Designatio
(Address)
(Fax No.)
(e-mail
address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
U.P. ELECTRONICS CORPORATION
LIMITED / IT&E Department, GoUP
by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

- 1.
- 2.

[§] To be affixed in accordance with the articles of association of the Concessionaire.

Annex A

{A copy of the Concession Agreement, executed between the Concessionaire and the Authority to be attached as Annex A}

SCHEDULE –R

SELECTION OF INDEPENDENT ENGINEER

(Refer Article 22.1)

1 Selection of Independent Engineer

- 1.1 The Authority shall select the reputed consulting engineering / architect firms or bodies corporate as Independent Engineer through open and transparent Competitive Bidding to undertake and perform the duties and functions set forth in **Schedule S**. The Authority shall convey the aforesaid selected firm to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid name of the selected firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, engage the selected firm and convey its decision to the Concessionaire.
- 1.2 The Authority shall invite the technically qualified firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist eligible firms on the basis of their technical scores / qualification. The financial bids in respect of such firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted technical and financial evaluation on Quality Cost Based Selection basis or on Least Cost basis subject to Technical qualification.

2 Fee and Expenses

- 2.1 The nature and quantum of duties and services to be performed by the Independent Engineer during the Concession Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Concession Period shall be reimbursed by the Concessionaire to the Authority.

3 Appointment of Government Entity as Independent Engineer

Notwithstanding anything to the contrary contained in this **Schedule R**, the Authority may appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by GoUP shall not be eligible for appointment as Independent Engineer.

SCHEDULE –S

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

(Refer 22.2.1)

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated ***** (the “**Agreement**”), which has been entered into between the Authority and ***** (the “**Concessionaire**”) for development of Project Infrastructure and Project Facilities for the Development of Information Technology City - SEZ (IT City) on Design, Build, Finance, Operate and Transfer (DBFOT) basis at Chack Gajaria Farms, Sultanpur Road, Lucknow, in the State of Uttar Pradesh, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project Infrastructure.

2 Definitions and Interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in **Articles 1.2, 1.3 and 1.4** of the Concession Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and Functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
 - i) The Independent Engineer shall review and provide inputs / suggestions /comments in conformity with the provisions of this Agreement on the Detailed Project Report and Master Plan submitted by the Concessionaire to the Authority.
 - ii) The Independent Engineer shall assist the Authority in finalizing the Design, Detailed Project Report and Master Plan submitted by the Concessionaire
 - iii) review of Drawings of the Project Infrastructure and Project Facilities as set forth in Paragraph 4;

- iv) review, inspection and monitoring of Construction Works with respect to the Project Infrastructure and Project Facilities as set forth in Paragraph 4;
 - v) conducting Tests of the Project Infrastructure and Project Facilities on completion of construction and issuing Completion Certificate as set forth in Paragraph 4;
 - vi) review, inspection and monitoring of O&M of Project Infrastructure and Project Facilities as set forth in Paragraph 5;
 - vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation; and
 - ix) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Construction Period

- 4.1. During the Construction Period, the Independent Engineer shall undertake a detailed review of Drawings of the Project Infrastructure and Project Facilities to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2. The Independent Engineer shall review any modified Drawings and supporting Documents, if any sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3. The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.4. Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project Infrastructure and Project Facilities, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.
- 4.5. The Independent Engineer shall review the monthly progress report relating to the Project Infrastructure and Project Facilities as furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 4.6. The Independent Engineer shall inspect the Construction Works with respect to the Project Infrastructure and Project Facilities once every month, preferably after receipt

of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with respect to the Project Infrastructure and Project Facilities with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Infrastructure and Project Facilities. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 4.7. The Independent Engineer may inspect the Project Infrastructure and Project Facilities more than once in a month if any lapses, defects or deficiencies require such inspections.
- 4.8. For determining that the Construction Works with respect to the Project Infrastructure and Project Facilities conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 4.9. The sample size of the tests, to be specified by the Independent Engineer under Paragraph 4.8, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed by the Authority for the construction works undertaken by the Concessionaire through their contractors; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 4.10. The timing of tests referred to in Paragraph 4.8, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer in accordance with the Good Industry Practice for quality assurance. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 4.11. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works with respect to the Project Infrastructure and Project Facilities into conformity with the Specifications and Standards, and the provisions of this Paragraph 4 shall apply to such tests.
- 4.12. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project Infrastructure and Project Facilities is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within

- 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the COD Phase I shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 4.13. If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works with respect to the Project Infrastructure and Project Facilities that should be suspended for ensuring safety in respect thereof.
- 4.14. In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 4.15. If suspension of Construction Works with respect to the Project Infrastructure and Project Facilities is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 4.16. The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in **Schedule I** and recommend to Authority for issue of a Completion Certificate. For carrying out its functions under this Paragraph 4.16 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of **Article 14** and **Schedule I**.
- 4.17. The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual, Development Control Guidelines or Rules and Regulation and City Management Services Regulation.

5 Operation Period

- 5.1. In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 5 shall apply, mutatis mutandis.
- 5.2. The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 5.3. The Independent Engineer shall review the quarterly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

- 5.4. The Independent Engineer shall inspect the Project Infrastructure and Project Facilities once every quarter, preferably after receipt of the quarterly status report from the Concessionaire, but before the 20th (twentieth) day of the following month after the end of the quarter in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project Infrastructure and Project Facilities. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.5. The Independent Engineer may inspect the Project Infrastructure and Project Facilities more than once in a quarter, if any lapses, defects or deficiencies require such inspections.
- 5.6. The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project Infrastructure and Project Facilities is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 5.7. In respect of any defect or deficiency referred to in Paragraph 3 of **Schedule K**, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 5.8. The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 5.9. The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in **Article 19.4**.
- 5.10. In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project Infrastructure and Project Facilities, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

6 Termination

- 6.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project Infrastructure and Project Facilities for determining compliance by the Concessionaire with the Divestment Requirements set forth in **Article 34.1** and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project Infrastructure and

Project Facilities is such that its repair and rectification would require a larger amount than the sum set forth in **Article 35.2**, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.

- 6.2 The Independent Engineer shall inspect the Project Infrastructure and Project Facilities twice during a period of 120 (one hundred twenty) days after Termination for determining the liability of the Concessionaire under **Article 35**, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

7 Determination of Costs and Time

- 7.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8 Other Duties and Functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

9 Miscellaneous

- 9.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 9.2 A copy of all communications, comments, instructions, Drawings sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 9.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 9.4 The Independent Engineer shall retain at least one copy each of all Drawings received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 9.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. 2 (Two) copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

- 9.6 The Independent Engineer shall be of the highest integrity and shall be able to execute the Integrity Pact and shall abide by the highest code of conducts and ethical practice.

SCHEDULE- T

DRAFT LAND LEASE AGREEMENT

(Refer 4.1.3)

This Land Lease Agreement (the “**Agreement**”) made at Lucknow on the [●] day of [●] Two thousand and [●]

BETWEEN

Uttar Pradesh Electronics Corporation Limited, a nodal agency acting on behalf of Information Technology & Electronics (IT&E) Department, Government of Uttar Pradesh as appointed by Government of Uttar Pradesh, represented by its Managing Director and having its principal office at 10 Ashok Marg Lucknow-226001 (hereinafter called as “**Lessor**” or “**the Authority**”, which expression shall, unless it be repugnant to the context or meaning thereof, include it's successors, and assigns) of the One Part

AND

_____, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____ through its authorised signatory _____ name], _____ [designation of authorised signatory] (hereinafter called the “**Lessee**” or the “**Concessionaire**” which expression shall unless the context does not so admit includes its successor or successors in business and permitted assigns) of the Other Part;

WHEREAS, in pursuance to the Concession Agreement (the “**Concession Agreement**”), entered into between the Lessor of the One Part and the Lessee of the Other Part, the Lessor agreed to grant to the Lessee, upon performance and observance by the Lessee of its obligations and conditions contained in the Agreement, lease of all that piece of land and premises hereinafter described in the manner mentioned herein.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. Definitions

- (a) **Applicable Law** means all laws, brought into force and effect by GOI or the GoUP including rules, regulations, policies 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;
- (b) **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 usage of the Demised

Premises in accordance with the terms of this Agreement during the subsistence of this Agreement;

- (c) **“Encumbrance”** means any encumbrance such as an easement, right of way, license, mortgage, charge, lien, hypothecation, pre-emptive right or security interest whether or not registered and howsoever arising, including by statute or common law;
- (d) **“Lease Period”** means the term of Lease for which the Project Site is given on Lease to the Concessionaire, commencing from the date of signing of Lease Agreement and co-terminus with the Concession Agreement.
- (e) **“Lease Rent”** shall have the meaning assigned to it in Section 2;
- (f) **“Party”** shall mean either Lessor or the Lessee, and **“Parties”** shall mean Lessor and the Lessee;
- (g) **“Transferee”** means the sub-lessees of the Project Infrastructure and Project Facilities, as more particularly defined in the Concession Agreement.

2. Description of Land

In consideration of the premises aforesaid, and of the covenants and agreements on the part of the Lessee to be observed and performed and the rent hereby reserved, the Lessor doth hereby demise unto the Lessee all of the demised premises, as more particularly described in **Schedule -1** hereto and together with all rights, easements and appurtenance thereto belonging, except and reserving unto the Lessor all mines and minerals in and under the said land or any part thereof, to hold the land and premises hereinbefore expressed to be hereby demised (herein referred to as **the Demised Premises**” or **“Project Site”**) unto the Lessee for the **Lease Period** and the rules thereunder paying therefore yearly during the said term to the Lessor at the office of the Lessor or as otherwise required an annual rent of Rs. 1 (Rupees One) only (the **“Lease Rent”**).

Lease Rent shall be payable by means of cheque/demand draft drawn in favour of the Lessor, payable at Lucknow or at such other place as may be notified by the Lessor. The first annual rent shall be made on the date of the execution of this Agreement and subsequent payments shall be paid on or seven day before every anniversary thereof till the expiry or early termination of the term of Lease.

3. The Lessee with intent to bind all persons into whenever hands the Demised Premises may come doth hereby covenant with the Lessor as follows:

a) To pay Lease Rent

During the Lease Period pay unto the Lessor the Lease Rent at the times on the days and in manner hereinbefore appointed for payment thereof clear of all deduction.

b) To pay Land Premium

To pay Land Premium in four equal instalment in accordance with the provisions of the Concession Agreement

c) To pay Concession Fee

To pay Concession Fee in accordance with the provisions of the Concession Agreement.

d) To pay rates and taxes

To pay all existing and future taxes, rates, assessments, and outgoings of every description for the time being payable either by landlord or tenant or by the occupier in respect of the Demised Premises and anything for the time being thereon.

e) To pay fee or service charges

Throughout the Lease Period pay to the Lessor from time to time such recurring fees in the nature of service charges/drainage cess as may from time to time prescribed by Government of Uttar Pradesh (GoUP) in respect of the amenities or common facilities provided by the Lessor.

f) Not to excavate

Not to make any excavation upon any part of the Demised Premises nor remove any stone, sand, gravel clay or earth therefrom except for the purpose of implementing the Project in terms with the Concession Agreement or for the purpose of executing any work pursuant to the term of this Agreement.

g) Environmental Compliance

The Lessee shall duly comply with the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and the rules made thereunder as also with any condition which may from time to time be imposed by the Uttar Pradesh Pollution Control Board constituted under the said Act as regards the collection, treatment and disposal or

discharge of effluent or waste or otherwise howsoever and shall indemnify and keep indemnified the Lessor against the consequences of any breach or non-compliance of any such provision or condition as aforesaid.

h) To develop the Project as per the Concession Agreement

Not at any time during the period of this demise to develop, create, obtain, set up, construct as the context admits or requires, the Project Infrastructure and Project Facilities by itself or through its Contractors except in accordance with the Concession Agreement and the Uttar Pradesh Pollution Control Board Regulations.

i) Approved DPR to be submitted before Project implementation

Project implementation shall not be commenced unless and until the DPR is approved by the Lessor in accordance with the Concession Agreement.

j) Assignment of the Demised Premises

- i. During the Lease Period, subject to the provisions of the Concession Agreement, the Lessee shall be entitled to develop the Demised Premises and to sub-lease any portion or part portion of the Demised Premises to Transferees, in terms of this Agreement, the Concession Agreement and Applicable Laws.
- ii. The Lessee may during the Lease Period create a charge in favour of Senior Lenders on the physical structures developed by it over the Demised Premises/ Project Site. Further, the Lessee shall also have the right to create charge in favour of the Senior Lenders on the area of land on which it is undertaking construction of Project Infrastructure and Project Facilities.

k) Assignment to be registered with the Lessor

If the Lessee shall assign or part with the Project Infrastructure and Project Facilities in accordance with and subject to clause above, the Lessee shall deliver at its own expenses within 20 (twenty) days of registration of every such assignment or assurance under the Indian Registration Act, 1908 or other amending statute, a notice of such assignment or assurance to the Lessor. The notice shall be delivered to the Managing Director, U.P. Electronics Corporation Limited or to such Officer or person on behalf of the Lessor as the Lessor shall from time to time require.

l) To give preference in employment of labour

While employing the skilled and unskilled labour, it shall afford adequate opportunity for recruiting the maximum local people on the basis of their

knowledge of handling and operating the equipments/machineries used by the Lessee and the general qualifications of the Local labour.

m) Indemnity

To indemnify and keep indemnified the Lessor against any and all suits, proceedings, actions, demands and third party claims for any loss, damages, cost and expenses of whatever kind and nature or on account of any defect or deficiency in the provision of services by the Lessee to any user of the Project Facilities, which may be caused in consequence of the implementation of Project on Demised Premises and also against any and all payments whatsoever which during the period of implementation of the Project may become payable or be demanded from the Lessee in respect of the said Project or of anything done under the authority herein contained.

n) To implement the Project according to Rules

In the implementation of the Project and at all times during the continuance of this demise, the Lessee shall observe and conform to the rules, regulations, guidelines framed by the GoUP or any Government Agency in respect of Rules of Building Regulations and any other statutory regulations as may be in force for the time being relating in any way to the Demised Premises and any Project Infrastructure and Project Facilities thereon.

o) Sanitation

To observe and conform to all rules, regulations and bye-laws of the Municipality/Local authority concerned or any other statutory regulations in any way relating to public health and sanitation for the time being in force.

p) To repair

Throughout the Lease Period, the Lessee shall keep the Project Infrastructure and Project Facilities repaired in the manner and within the period provided in the Concession Agreement.

q) To enter and inspect

To permit from time to time and at all reasonable time of the day during the term hereby granted, the Lessor and other authorized officers of the Authority, to enter into and upon the Demised Premises and to inspect to the conditions of the Demised Premises to ensure the compliance of terms of this Agreement and Concession Agreement by the Lessee.

r) Nuisance

Not to do or permit anything to be done on the Demised Premises, which may constitute to be a nuisance, annoyance or disturbance.

s) Use of the Demised Premises

To use the Demised Premises only for the purpose of implementation and operation of the Project and for no other purpose whatsoever.

t) Insurance

Throughout the Lease Period, Lessee shall at its cost and expense, purchase and maintain or cause to be purchased and maintained, by due-reinstatement or otherwise, all insurances in respect of the Demised Premises and the Project Infrastructure and Project Facilities in accordance with the Concession Agreement and Good Industry Practices.

u) Delivery of possession

In the event of determination of the Lease Period for any reason whatsoever, Lessor shall re-enter and take possession of the Demised Premises as provided hereunder;

- i) On expiry or earlier Termination of this Lease, the Lessee shall hand over peaceful possession of the Demised Premises in accordance with the terms of the Agreement to the Lessor along with all relevant documents including those pertaining to sub-lease, licences, including all other records in respect of the Demised Premises.
- ii) Lessor shall not as a consequence of taking over of the Demised Premises, upon expiry of the Lease or earlier Termination have any obligation whatsoever including continuance or regularization of employment, compensation for loss of employment with respect to any person in the employment of or engaged by the Lessee.

4. Sub-lease and License of the Demised Premises

I. Sub-Leases

Any time during the Lease Period, subject to the provisions of the Concession Agreement, the Lessee may sub-lease any portion or portions of the Demised Premises to the Transferees in order to fulfil its obligations pursuant to Agreement and to demand, collect, retain and appropriate User Fees in respect of such portion or portions of the Demised Premises so sub-leased.

Provided that:

- i) such sub-lease shall be by way of a sub-lease deed, in favour of the Sub-Lessee in terms and conditions consistent to the Agreement and the Concession Agreement, on term and conditions that are mutually agreed between the Lessee and the Transferees; Provided the provisions thereof are not inconsistent with or in derogation of any terms or provisions of the

Agreement and the Concession Agreement;

- ii) The duration of such sub-leases, shall be limited to and shall not be more than the term of this Agreement or Concession Agreement;
- iii) sub-leases shall be determined and terminated on the expiry, determination or termination of the terms of this Agreement unless extended by the Authority in accordance with the provisions of this Agreement;
- iv) The Lessor shall not be liable in any manner whatsoever to any Person in respect of such sub-leases.

Provided further that the Lessee shall be entitled to sub-lease the Site/Plots/build up area/units in favour of Tenants / Sub - Lessees in the following manner:

Sub – Lease in Phase I Development Activities

The Concessionaire shall have the right to sub-lease under Phase I Development Activities as follows:-

- a) Subleasing of the construction and / or operation of the Skill Development Centre in 10 acre of Land on or after the 1st anniversary of the Appointed Date;
- b) Subleasing 20 acre of Plot for Non Core Zone on or after the 1st Anniversary of the Appointed Date; Provided that construction on such plot shall be undertaken on or after the 2nd anniversary of the Appointed Date;
- c) Subleasing 25% of built up area in the IT Unit constructed by the Concessionaire for the purpose of plug & play.

Sub – Lease in Phase II Development Activities

The Concessionaire can Sub lease remaining land for Core Zone and Non Core Zone on or after the COD Phase I.

The Lessee agrees and undertakes that it shall ensure that the Transferee performs its obligations under the sub-lease deed relating to it and that the Lessee shall be liable for all acts or omissions of a Transferee there under.

II. Licenses and Sub-letting

The Lessee may for the purpose of effective implementation of the Project, grant licenses/sub-let any portion or portions of the Site/Plots/build up area/units including the right to develop Project Infrastructure and Project Facilities to the Transferee or Sub-Lessees subject to Applicable Laws and provisions of this Agreement. Provisions of this Agreement and the Concession Agreement shall, in so far as possible, be applicable to all such licenses/sub letting.

5. Recovery of Rent, Fees etc., as land revenue

If and whenever any part of the rent hereby reserved or recurring fees or service charges payable by the Lessee hereunder shall be in arrear, the same may be recovered from the Lessee as an arrear of land revenue.

6. Lessor's covenant for peaceful enjoyment

The Lessor does hereby covenant with the Lessee that the Lessee paying the rent hereby reserved and performing the covenants herein before on the Lessee's part contained shall and may peaceably enjoy the Demised Premises for the said term hereby granted without any interruption or disturbance from or by the Lessor or any person or persons lawfully claiming by from or under the Lessor.

7. Cost and charges to be borne by the Lessee

The stamp duty and registration charges in respect of the preparation and execution of this Land Lease Agreement and its duplicate including the costs, charges and expenses of attorneys of the Lessor shall be borne and paid wholly and exclusively by the Lessee in accordance with the provisions of the UP IT Policy 2012.

8. Disputes

If any dispute or difference of any kind whatsoever (a "**Dispute**") shall arise between the Parties, the dispute resolution mechanism in the Concession Agreement shall apply.

9. Survival

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

10. Amendments

The Concession Agreement, this Agreement and the Schedule of the Demised Premises together constitute a complete and exclusive understanding of the terms of this Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

11. Waiver

- a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - ii) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
 - iii) shall not affect the validity or enforceability of this Agreement in any manner.

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

12. Severability

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

13. Language

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

14. Governing Laws

This Agreement shall be construed and interpreted in accordance with and governed by the Laws of India and the Courts at Lucknow shall have jurisdiction in matters related to the enforcement of the provisions of this Agreement or any disputes related thereto.

15. Notice

Any notice or other communication to be given hereunder shall be in writing and shall be sufficiently given if delivered by registered mail or hand-delivered against written receipt, or if transmitted and clearly received by facsimile transmission addressed as follows:

If to the Lessor:

[●]

If to the Lessee

[●]

16. This Agreement shall be executed in duplicate by the Parties hereto, each of which shall be an original but shall together constitute one and the same document.

IN WITNESS WHEREOF the Lessor and the Lessee have put their respective hands on the original and duplicate thereof on the day and year first herein above written.

THE SCHEDULE ABOVE REFERED TO:

SIGNED SEALED AND DELIVERED

On behalf of the U.P. Electronics Corporation Limited / IT&E Department, GoUP
(Lessor)

Signature:

Name:

Designation:

SIGNED SEALED AND DELIVERED

On behalf of the Lessee

Signature:

Name:

Designation:

In the presence of witnesses

(1) [●]

(2) [●]

SCHEDULE – U

BUILDING REGULATIONS

While undertaking development of the Project, the Concessionaire shall adhere to the latest amended applicable Building Byelaws of the State of Uttar Pradesh and/or, other relevant IS Codes and practices, Development Control Rules, FSI Limits, statutory requirements, laws of land, the principles of Good Industry Practices and any other norms as applicable from time to time. It shall also comply with the provisions of **Schedule D**.

SCHEDULE – V

INCENTIVES FROM THE AUTHORITY

(Refer Article 6.1.5)

The incentives are admissible to the IT City are as below:

(a) All incentives, as available to the Concessionaire or other occupants of the IT City, as provided in UP IT Policy 2012 to be read along with all revision or amendments framed thereunder from time to time by Government of Uttar Pradesh.

(b) Interest Subsidy

Interest Subsidy on term loan for the execution of the Project by the Concessionaire till 10th anniversary from Appointed Date, on the following basis:

- An interest subsidy of 5% per annum for a period of 10 years on the rate of interest paid on the loans obtained from Banks/ Financial Institutions would be reimbursed subject to a maximum of Rs 25.00 crore per annum.
- The interest subsidy will be paid directly to the Senior Lenders with which the investor reaches financial closure.

For avoidance of doubt, the incentive provided in (b) above shall be over and above, but shall be inclusive of interest subsidy payable as per UP IT Policy 2012, the incentives provided in UP IT Policy 2012 to be read along with all revision or amendments framed thereunder from time to time by Government of Uttar Pradesh

(c) Student Fee Support

The Authority shall provide student fee support only for IT / ITES trainings in the form of grant for students having requisite domicile proof residing in State of Uttar Pradesh and enrolled in the Skill Development Centre. The Authority shall provide per student fee support of 50% of tuition fee as prescribed by Concessionaire or a maximum amount of Rs. 5,000 per student per month, whichever is lower, for a maximum period of 5 years starting from commercial operation of the Skill Development Centre. The payment shall be made on a quarterly basis not later than 30 (thirty) days from the date of receipt of payment request from Concessionaire. GoUP may verify the supporting documents submitted along with payment request.

(d) Other Incentives

The Concessionaire shall be free to seek any other fiscal or non-fiscal incentives, over and above as provided in UP IT Policy 2012, as available from Central or State Government or its agencies, including incentives provided in Special Economic Zone Act 2005, without any adverse implication on the provisions of the Concession Agreement.

The Authority shall assist the Concessionaire in its best endeavour to seek such fiscal or non-fiscal incentives but the Authority shall not be responsible in any manner to assure or deemed to be assured, such incentives are being made available to the Concessionaire. The Concessionaire shall be only and solely responsible for seeking such incentives.

ANNEXURES