



**Selection of Partner for JVC to manufacture IP Core
Systems and other Telecom / IT related products at
Bangalore**

COR / PP / JVC / BG

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DRAFT DEVELOPMENT AGREEMENT

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT entered into on this the ----- day of ----- (Month) -
----- (Year) at Bangalore.

BETWEEN

ITI LIMITED, a Company incorporated under the Companies Act, 1956, having its registered office at ITI Bhavan, Doorvaninagar Bangalore - 560016, India (hereinafter referred to as "ITI" which expression shall unless repugnant to the subject or the context include its successors and assigns)

AND

The Parties listed at Schedule 1 hereto (hereinafter collectively referred to as the "Consortium Members" and individually referred to in the manner set out in Schedule 1 hereto; which expression shall, unless repugnant to the context hereof, include their successors-in-title and permitted assigns) of the second part;

AND

M/s _____ Limited, a company incorporated under the Companies Act, 1956, having its registered office at _____ (hereinafter referred to as the "Joint Venture Company" or "JVC").

WHEREAS,

- A. ITI had invited proposals for the Project from bidders, including the Consortium comprising of _____ as the Lead Member / Company / Firm by issuing the Request for Proposal ("RFP") document dated _____ containing inter-alia the minimum qualification for a bidder, the technical and commercial parameters of the Project and the terms and conditions for implementation of the Project.
- B. Pursuant to the MOU the Consortium / Company have incorporated and constituted the JVC for the sole purpose of implementing the Project.
- C. ITI has agreed to support the JVC with equity participation of Rs. ____ Million (____% of total equity of the JVC) for the overall implementation of the Project.
- D. The JVC has agreed to develop the Project as per the Business Plan submitted and on the terms and conditions mentioned herein.

NOW THEREFORE IN VIEW OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED ITI, Lead Promoter AND THE JVC (HEREINAFTER REFERRED TO AS "**PARTIES**" AND INDIVIDUALLY AS "**PARTY**") HEREBY AGREE AND THIS AGREEMENT WITNESSTH 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 ascribed to them:

"Accounting Year" means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.

"Agreement" means this agreement including Schedules I to IX hereto, as of the date hereof and includes any amendments hereto made in accordance with the provisions hereof.

"Applicable Laws" includes any statute, legislation, regulation, ordinance, rule, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision or determination, or any interpretation or administrative order having the force of law of any of the foregoing, by any Government Authority having jurisdiction over the matter in question.

"Applicable Permits" means all clearances, permits, authorisations, consents and approvals under or pursuant to any of the Applicable Laws, required to be obtained and maintained by the JVC, in order to implement the Project and to provide, operate and maintain the Project Facilities in accordance with this Agreement.

"Arbitration Act" means the ICADR Arbitration and Conciliation Act, 1996 and includes any amendment to or any re-enactment thereof as in force from time to time.

"Business Plan" shall mean the Business Plan submitted by the Consortium / Bidder in accordance with sub-Clause 2.1(b)(i) including any amendments approved by ITI in accordance with the Development Agreement.

"Change in Law" shall have the meaning ascribed thereto in Section 6.

"Commercial Production Date" or **"CPD"** shall mean the date on which the commercial production for the Core Product starts in accordance with Section 5.

"Commitment Fee" shall mean the sum payable by the JVC to ITI throughout the Projected period of 10 years as per Business Plan in case of Actual Profit after Tax from the operation of the JVC being below 70% of the projected Profit After tax.

The JVC shall pay Commitment fee as per calculations below :

Commitment Fee = ((Projected Profit after Tax for the specified year X 70%) – (Actual Profit after Tax for the particular year)) x Percentage of Equity share holding by ITI Limited

"Commitment Period" shall mean the period of 10 years starting from the date of signing of this Agreement.

"Completion Certificate" shall mean the Completion Certificate issued by the JVC to ITI certifying completion of the Core Project Facilities by the JVC.

"Conditions Precedent" shall have the meaning ascribed to it in Section 2.

"Consortium" means the parties listed at Schedule 1, formed / acting pursuant to the Memorandum of Understanding dated _____ entered into by them, for the purpose of submitting their proposal for undertaking the Project and to implement the Project through JVC formed and incorporated by them in India.

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“Debt Due” means the aggregate of the following sums expressed in Rupees outstanding and payable by the JVC to the Lenders under the Financing Documents :

- (a) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project which is outstanding as on the Termination Date;
- (b) all accrued interest, financing fees and charges payable on, or in respect of the debt referred to in (a) above up to the date preceding the Termination Date.

“Dispute” shall have the meaning ascribed thereto in Clause 9.1 of Section 9.

“Earnest Money Deposit” shall mean the EMD submitted along with the RFQ cum RFP.

“Emergency” means a condition or situation existing or prevailing on or about the Project Site / Project Facilities, which is likely to endanger the safety of persons / vehicles involved in operating, maintaining or using Project Site / Project Facilities or which poses an immediate threat of material damage to any of the Project Site / Project Facilities.

“Encumbrance” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site/Project Facilities.

“Equity Documents” means collectively the documents evidencing subscription to JVC's equity / preference capital and includes documents relating to the funds in any other form committed by the Sponsors as per the Business Plan.

“Event of Default” shall have the meaning ascribed thereto in Section 8.

“Existing Project Facilities” shall, at any relevant period, mean the Project Facilities that have already been constructed and is being operated and maintained by the JVC in accordance with this Agreement.

“Financial Closure” means the date on which both the Financing Documents and the Equity Documents have become effective and the JVC has access to the funds / financial assistance committed therein or the date on which the Lenders have given their in principle approval for financial assistance to the JVC.

“Financing Documents” means collectively the documents evidencing Lender's commitment to finance the debt component as envisaged in the Means of Finance at Financial Close.

“Force Majeure Event” shall have the meaning ascribed thereto in Section 7.

“Force Majeure Period” means, the period commencing from the date of occurrence of a Force Majeure Event and ending on (i) the date on which the Affected Party, acting in accordance with the Good Industry Practice, resumes or should have resumed such of its obligations the performance of which was excused in terms of sub-Clause 7.2(b) of Section 7 or (ii) the Termination Date, as applicable.

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

“Government Body” means any governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body,

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central, state, or local, having jurisdiction over the JVC, the Project Site/ Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the JVC under or pursuant to this Agreement.

“Incremental Project Facilities” shall mean the Project Facilities developed and created / to be developed and created by the JVC to manufacture the mandatory products.

“IGAAP” means the Indian generally accepted accounting principles consistently applied.

“Initial Construction Period” shall mean the period for the construction of the Core Project Facilities which shall be twelve (12) months from the date of this Agreement.

“Insurance Proceeds” means the proceeds of the insurance policies taken by the JVC in terms of Clause 7.4 of Section 7 or otherwise.

“Lenders” means financial institutions, banks, funds or trusts who provide or refinance the debt component of the cost of the Project (including guarantees, letters of credit, risk participation facility, take-out facility and other forms of credit enhancement) and includes subscribers to/trustee for the holders of debentures/bonds or other securities issued by the JVC to meet the cost of the Project.

“Lease Rental” shall mean the lease rentals payable by the JVC for the land given on lease by ITI as per this Agreement.

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

“Material Breach” means a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure despite a receipt of notice to cure such breach within 45 days thereof.

“Means of Finance” means the means of financing the cost of the Project as envisaged at Financial Close.

“Operations Period” means the period commencing from CPD of the Core Project Facilities and ending at the expiry / termination of this Agreement.

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

“Performance Security” means the guarantee to be submitted by the JVC for performance of its obligations during the Operational Period in accordance with Section 5.

“Program Evaluation and Review Chart” or **“PERT”** means the chart submitted by the JVC detailing out the milestones, for Completion of the Project Facilities.

“Person” means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Body or any other legal entity.

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

“Project” shall mean development of Project Facilities as per the Business Plan.

“Project Facilities” shall mean the facilities to be developed and created by the JVC on the Project Site.

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“**Project Site**” means the real estate particulars whereof are set out in Schedule 7 leased by ITI to the JVC, in terms of the Lease Deed on which the Project is to be implemented.

“**Rs.**” or “**Rupees**” refers to the lawful currency of the Republic of India.

“**Shareholders Agreement**” shall mean the agreement that shall be entered after signing of the Development Agreement between the Consortium Members, ITI and JVC.

“**Sponsors**” means Consortium Members and ITI.

“**Substitution Agreement**” means the agreement substantially in the form set out at Schedule 8, to be entered into between ITI, Lenders and the JVC.

“**Termination**” means termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course.

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

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

“**Termination Payment**” means the amount payable by either Party to the other Party under this Agreement upon Termination.

“**Total Project Costs**” shall mean the costs indicated by the Consortium / Company / Firm in the proposal submitted to ITI as part of the bidding process.

1.2 Interpretation

In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re enacted or consolidated so far as such modification or re enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in any State forming part of the Union of India;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) any reference to month shall mean a reference to a calendar month;

- (i) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (k) references to recitals, Clauses, sub-Clauses or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Clauses, sub-Clauses and Schedules of or to this Agreement;
- (l) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party in this behalf and not otherwise;
- (m) unless otherwise stated, any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities and Discrepancies

In case of ambiguities or discrepancies within and between this Agreement, the following shall apply :

- (a) between two Sections of this Agreement, the provisions of specific Section relevant to the issue under consideration shall prevail over those in other Sections;
- (b) between this Agreement and any other agreements including the RFP, the provisions of this Agreement shall prevail.
- (c) between any value written in numerals and that in words, the latter shall prevail.

2 Conditions Precedent to Agreement

2.1 Conditions Precedent

This Agreement and the terms and conditions mentioned hereunder shall not take effect, except on fulfilment or unless the Parties mutually agree to waive any, of the following Conditions Precedent :

(a) Conditions Precedent for ITI :

ITI shall have transferred the land on lease as per the provisions of this Agreement and entered the Substitution Agreement with Lenders.

(b) Conditions Precedent of the JVC :

The JVC shall have :

- (i) Ratified the Business Plan and the PERT charts submitted by the Consortium Members at the time of bid;
- (ii) Achieve Financial Closure and notify ITI of the same;
- (iii) Furnished Performance Security as prescribed in Clause 5.1 of Section 5 of this Agreement to ITI;
- (iv) Submitted the Board resolution authorising the execution, delivery and performance of this Agreement by the JVC;
- (v) Executed the Shareholder's Agreement between the Parties.

(c) Compliance Certificate :

- (i) Each Party shall use all reasonable endeavours, at its costs and expenses, to procure the full satisfaction of all Conditions Precedents within 180 days of the date of this Agreement.
- (ii) Upon compliance with the Conditions Precedent, each Party shall forthwith issue a Compliance Certificate pursuant to which the obligations of the Parties under this Agreement shall commence and whereupon :
 - ITI shall immediately handover vacant and peaceful possession of the Project Site in accordance with Section 4
 - the JVC shall commence activities in accordance with the PERT Charts

(d) Non-Fulfilment of the Conditions Precedent :

- (i) In the event of failure by any Party to procure compliance with any of the Conditions Precedent within 180 days and the other Party have not waived any of the conditions (partially or absolutely), the Agreement shall cease to have any effect as of that date.
- (ii) In the event of the Agreement not coming into effect on account of the Bidder / Consortium not fulfilling the Conditions Precedent, then the Earnest Money Deposit submitted by the Bidder / Consortium shall be forfeited.
- (iii) In the event of the Agreement not coming into effect on account of ITI not fulfilling any of the Conditions Precedent then the Earnest Money Deposit shall be returned to the JVC. ITI shall not be liable to any third parties, contractors or employees of the JVC.
- (iv) Notwithstanding anything contained in this Clause, the Parties may mutually decide to extend the time period for the procurement of the Conditions Precedent.

3 Investment by Parties

The parties shall invest their respective contribution towards JVC in the manner as set out in the Business Plan.

4 Obligations of ITI

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

4.1 Specific Obligations

ITI shall deliver vacant and peaceful possession of the Project Site to the JVC within one week from the date of signing of this agreement and shall :

- (a) Procure all permissions, approvals and exemptions in relation to the acquisition of the Project Site and handing over the Project Site to the JVC in accordance with Applicable Law.
- (b) Bear all costs, expenses and charges in relation to the handing over of the Project Site including shifting of its belongings.
- (c) Ensure full, free and unrestricted access to and use of the Project Site by the JVC to implement the Project in accordance with this Agreement.
- (d) Ensure that, in the event the JVC is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site or any part thereof, ITI shall, if called upon by the JVC, defend such claims and proceedings and also keep the JVC indemnified against any consequential loss or damages which the JVC may suffer, on account of any such right, title, interest or charge.

4.2 General obligations

ITI shall :

- (a) Provide all reasonable assistance to the JVC in securing all Applicable Permits;
- (b) Upon written request from the JVC, assist the JVC on a best effort basis in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the JVC than those generally available to commercial customers receiving substantially equivalent facilities / utilities;
- (c) observe and comply with all its obligations set forth in this Agreement.

5 JVC's Obligations

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

5.1 Performance Security

- (a) The JVC shall, for the due and punctual performance of its obligations during the entire operational period deliver to ITI, Performance Security equivalent to 5% of the

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Project cost in the form of an irrevocable, unconditional, unequivocal Bank Guarantee as per Annexure 1.

- (b) The Performance Security in form of Bank Guarantee shall remain in force and effect till the period commitment charges are payable by the JVC.
- (c) ITI shall have the right to invoke the Bank Guarantee provided in accordance with (a) above in the event of occurrence of a JVC Event of Default.
- (d) If the Agreement is terminated due to any event other than a JVC Event of Default, the Performance Security shall, subject to ITI's right to receive or recover amounts, if any, due from the JVC under this Agreement, be duly discharged and released to the JVC
- (e) In case commencement of commercial production of core project facilities does not start within 12 months of the effective date, the Performance security shall be encashed by ITI. The performance security shall be forfeited at the rate of 4% per week of the Performance Security encashed. ITI, may at its discretion and for reasonable causes, extend the period allowed for commencement of commercial production up to a maximum of 3 months without forfeiture of Performance Security at the rate of 4% per week.

5.2 Project Construction

(a) General Obligations

- (i) Obtained all Applicable Permits in relation to the Project;
- (ii) The JVC shall manufacture IP CORE Systems consisting of : (i) Media Gateway Controller (Soft Switch), (ii) TMGW (Trunking Media Gateway) / LMGW, (iii) SGW (Signalling Gateway), (iv) Session Border Controller, (v) Media Server. Any modifications resulting in increase in the Project Cost by more than 10% shall require express permission of ITI and such modifications shall not ordinarily be disallowed by ITI unless it is decreasing the Shareholder's return.
- (iii) The JVC may undertake construction by itself or through one or more Contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the JVC shall remain solely responsible to meet the Construction Requirements.

(b) Construction of Core Project Facilities

- (i) The JVC shall complete construction of the Core Project Facilities within the Initial Construction Period.
- (ii) The JVC shall submit progress reports and updates in accordance with the PERT chart to ITI during the Initial Construction Period.

5.3 Shareholding

5.3.1 Consortium's minimum shareholding

The JVC and the Lead Promoter shall ensure that the Consortium / Company shall hold minimum 51% of the subscribed share capital on the date of signing of this agreement and such shareholding shall be maintained throughout the Commitment Charges period. In case of sale of shares resulting in the equity of the Consortium reducing below 51% of the total

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subscribed Share capital, the express permission of ITI shall be required. ITI shall have right to disallow such transfer if it is found that the objectives of the Development Agreement and Shareholder's Agreement are likely to be breached.

5.3.2 Change in Composition of Consortium

There should be no change in the consortium structure after the submission of bid. If there are any changes in the consortium structure by any bidder, ITI Limited reserves the right not to consider the change in the consortium and to reject such a bid.

No change in Consortium Members shall be allowed for at least 3 years from the date of commencement of Commercial Production. However, the Lead Consortium Member shall not be allowed to be changed during the Commitment Period and shall continue to hold more than 26% stake in the JVC throughout the Commitment Period.

5.4 General Obligations

(a) The JVC shall at its own cost and expense :

- (i) implement the Project / Project Facilities in accordance with the Project Requirements;
- (ii) Arrange for the supply of electricity, water, consumables and any other services within the Project Site required for the purposes of construction, operation and maintenance during the Operation Period.
- (iii) obtain in such sequence as is necessary to meet the Project Requirements all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all times during the Operation Period;
- (iv) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (v) ensure that the Project Site remains free from all encroachments and take all steps necessary to prevent or as the case may be remove encroachments, if any;

(b) Other Obligations :

- (i) The JVC shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement.
- (ii) The JVC shall not without the prior written approval of ITI use the Project Site for any purpose other than for the purpose of the Project / and purposes incidental or necessary thereto and such permission may be denied by ITI at their own discretion.
- (iii) The JVC shall allow access to and use of the Project Site / Project Facilities for laying/installing telegraph lines, electric lines or for such other public purposes as ITI may specify.

Provided that such access or use shall not result in a Material Adverse Effect and that ITI shall, in the event of any physical damage to the Project Site/Project Facilities on account thereof, ensure that the Project Site/Project Facilities are promptly restored entirely at its cost and expenses.

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

5.5 No Breach of Obligations

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

- (a) Force Majeure Event;
- (b) ITI Event of Default;
- (c) Compliance with the instructions of ITI or the directions of any Government Body other than instructions issued as a consequence of a breach by the JVC of any of its obligations hereunder;
- (d) Emergency decommissioning of the Project Facilities or part thereof in accordance with O&M Requirements;
- (e) Closure of the Project Facilities or part thereof with the approval of ITI;

6 Change in Law

6.1 Definition

“**Change in Law**” includes any of the following events which, as a direct consequence thereof, has a Material Adverse Effect :

- (a) adoption, promulgation, modification, reinterpretation, repeal or enactment of any new law, after the date of this Agreement by any Government Authority of any Applicable Law by any Government Authority; or
- (b) the imposition by any Government Authority of any condition (other than a condition which has been imposed as a consequence of a violation or failure to comply by the JVC of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Agreement; or
- (c) any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach / violation by or the negligence of the JVC or if granted for a limited period, being renewed on terms different from those previously stipulated.

6.2 Consequences of Change in Law

- (a) The JVC shall immediately upon occurrence of Change in Law inform ITI :
 - (i) the nature and impact of the Change in law
 - (ii) the steps proposed to be taken by the JVC for mitigating the impact of Change in law.

- (b) In the event of failure by the JVC to mitigate the impact of the Change in Law, the JVC may propose to ITI modifications to the relevant terms of this Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes to the terms of this Agreement so as to place the JVC in substantially the same legal and economic position as it were prior to such Change in Law. Provided however that, if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance in accordance with the provisions hereof, the JVC or ITI shall have the right to terminate this Agreement, whereupon the provisions of Clause 7.3 shall apply.

7 Force Majeure

7.1 Force Majeure Events

Force Majeure Event means any event or circumstance or a combination of events and circumstances set out hereunder or the consequence(s) thereof which materially and adversely affect the Party claiming Force Majeure ("**Affected Party**") from performing its obligations in whole or in part under this Agreement by reason of such event, and where such event is beyond the reasonable control of the Affected Party. For the avoidance of doubt, a Force Majeure Event means any of the following events and circumstances:

- (a) earthquake, flood, inundation, landslide;
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- (c) fire caused by reasons not directly or indirectly attributable to the JVC or the Contractor or any of the employees or agents of the JVC or the Contractor;
- (d) acts of terrorism;
- (e) action of a Government Body having Material Adverse Effect including but not limited to (i) acts of expropriation, compulsory acquisition or takeover by any Government Body of the Project / Project Facilities or any part thereof or of the JVC's or the Contractor's rights under any of the Project Agreements, (ii) any judgement or order of a court of competent jurisdiction or statutory authority in India made against the JVC or the Contractor in any proceedings which is non-collusive and duly prosecuted by the JVC.
- (f) Early determination of this Agreement by ITI for reasons of national emergency or national security.
- (g) war, hostilities (whether war be declared or not);
- (h) invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war;
- (i) ionising radiation, contamination by radio activity from nuclear fuel, any nuclear waste, radioactive toxic explosion;
- (j) volcanic eruptions;

7.2 Obligations of the Parties

(a) Obligation to Notify

- (i) As soon as practicable and in any case within 7 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party of the Force Majeure Event setting out, inter alia, the following in reasonable detail :
- the nature and extent of the Force Majeure Event.
 - the estimated Force Majeure Period.
 - the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event.
 - the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby.
 - any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- (ii) As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with (i) above, the Parties shall meet, hold discussions in good faith and where necessary conduct physical inspection / survey of the Project / Project Facilities in order to:
- assess the impact of the underlying Force Majeure Event,
 - to determine the likely duration of Force Majeure Period and,
 - to formulate damage, mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which has been affected by the underlying Force Majeure Event.
- (iii) The Affected Party shall during the Force Majeure Period provide the other Party with regular (not less than weekly) reports concerning the matters set out in (ii) above as also any information, details or document, which the other Party may reasonably require.

(b) Performance of Obligations

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

- (i) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (ii) the Affected Party shall make all reasonable efforts to mitigate or limit damage, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (iii) the Affected Party shall take all remedial measures including duly prosecuting and exhausting all such remedies available to the Affected Party under the Applicable Laws;

- (iv) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder;
- (v) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement.

7.3 Termination due to Force Majeure Event

(a) Termination

If a Force Majeure Event continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 180 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 180 days, be entitled to terminate this Agreement.

(b) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to (a) above, it shall issue Termination Notice to the other Parties setting out :

- (i) in sufficient detail the underlying Force Majeure Event;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof including any payment towards purchase of the equity stake of the other parties and;
- (iv) any other relevant information.

(c) Obligation of Parties

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

- (i) Subject to (ii) below, the Termination Payment, if any, payable in accordance with Clause 7.4;
- (ii) the Project Site / Project Facilities are handed back to ITI by the JVC on the Termination Date free from all Encumbrance.

7.4 Termination Payments

On termination of this Agreement due to a Force Majeure Event following Termination Payments shall be applicable :

- (a) If Termination is due to a Force Majeure Event under Sub-Clause 7.1(a) to Sub-Clause 7.1(d), then the JVC shall have the right to appropriate and retain any amounts received by way of insurance proceeds.
- (b) If Termination is due to a Force Majeure Event under Sub-Clause 7.1(e) and Sub-Clause 7.1(f), ITI shall out purchase the equity stake of the other Shareholders at a price which will reflect the market value of the equity. The business valuation of the

equity shall be conducted by a Merchant Banker appointed by ITI. ITI may have right to substitute existing Lead Promoter with other Shareholders.

- (c) If Termination is due to a Force Majeure Event under Sub-Clause 7.1(g) to Sub-Clause 7.1(j), either party shall have either right of winding up of the JVC. No termination payment shall be paid by any party to the other.

7.5 Liability for other losses, damages etc.

Save and except as expressly provided in this Section 7, no Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

8 Events of Default and Termination

8.1 Events of Default

Event of Default means either JVC Event of Default or ITI Event of Default or both as the context may admit or require.

(a) JVC Event of Default

Any of the following events shall constitute an event of default by the JVC ("**JVC Event of Default**") unless caused by a Force Majeure Event or a ITI Event of Default.

- (i) The JVC has not completed construction of Core Project Facilities within the Initial Construction Period.
- (ii) The JVC has not completed construction of Incremental Project Facilities within Construction Period.
- (iii) The JVC has not adhered to the Schedule for commencement of commercial production of the mandatory products as defined in Clause 5.2(ii).
- (iv) Occurrence of an Event of Default under the Shareholders Agreement.
- (v) Any representation made or warranties given by the JVC under this Agreement is found to be false or misleading.
- (vi) The JVC has created any Encumbrance on the Project Site/ Project Facilities in favour of any Person save as otherwise expressly permitted under this Agreement.
- (vii) The JVC has failed to ensure minimum shareholding requirements specified in sub-Clause 5.3 of Section 5.
- (viii) A resolution has been passed by the shareholders of the JVC for the voluntary winding up of the JVC, except where such resolution is passed with the prior written consent of ITI as a shareholder of the JVC..
- (ix) Any petition for winding up of the JVC has been admitted and liquidator or provisional liquidator has been appointed or the JVC has been ordered to be wound up by Court of competent jurisdiction except for the purpose of amalgamation or reconstruction with the prior consent of ITI, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the JVC are transferred to the

amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the JVC under this Agreement and the Project Agreements, and provided further that :

- the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the JVC on Commencement Date and
 - each of the Project Agreements remains in full force and effect.
- (x) The JVC has abandoned the Project/Project Facilities.
- (xi) The JVC has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement.
- (xii) The JVC has suffered an attachment levied on any of the assets located or comprised in the Project Site/Project Facilities, causing a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days.
- (xiii) The JVC has otherwise been in Material Breach of any of its other obligations under this Agreement or any of the Project Documents.

(b) ITI Event of Default

Any of the following events shall constitute an event of default by ITI ("**ITI Event of Default**"), unless caused by a JVC Event of Default or a Force Majeure Event :

- (i) ITI is in breach of any of its obligations under this Agreement and has failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the JVC.
- (ii) ITI has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
- (iii) Any representation made or warranties given by ITI under this Agreement have been found to be false or misleading.

8.2 Termination due to Events of Default

(a) Termination for JVC Event of Default

- (i) Without prejudice to any other right or remedy which ITI may have in respect thereof under this Agreement, upon the occurrence of a JVC Event of Default, ITI shall subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement as hereinafter provided.
- (ii) If ITI decides to terminate this Agreement pursuant to (i) above, it shall in the first instance issue Preliminary Notice to the JVC. Within 30 days of receipt of the Preliminary Notice, the JVC shall submit to ITI in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**JVC's Proposal to Rectify**"). In case of non submission of the JVC's Proposal to Rectify within the said period of 30 days, ITI shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- (iii) If the JVC's Proposal to Rectify is submitted within the period stipulated therefor, the JVC shall have a further period of 30 days to remedy / cure the underlying Event of

Default. If, however the JVC fails to remedy/cure the underlying Event of Default within such further period allowed, ITI shall, subject to Substitution Agreement, be entitled to terminate this Agreement by issue of Termination Notice and to appropriate the Performance Security, if subsisting.

(b) Termination for ITI Event of Default

- (i) Without prejudice to any other right or remedy which the JVC may have in respect thereof under this Agreement, upon the occurrence of a ITI Event of Default, the JVC shall be entitled to terminate this Agreement as hereinafter provided.
- (ii) If the JVC decides to terminate this Agreement pursuant to (i) above it shall in the first instance issue Preliminary Notice to ITI. Within 30 days of receipt of Preliminary Notice ITI shall forward to the JVC its proposal to remedy/cure the underlying Event of Default the "**ITI's Proposal to Rectify**". In case of non submission of ITI's Proposal to Rectify within the period stipulated thereof, JVC shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If ITI's Proposal to Rectify is forwarded to the JVC within the period stipulated thereof, ITI as the case may be shall have further period of 30 days to remedy/cure the underlying Event of Default. If, however ITI fails to remedy/cure the underlying Event of Default within such further period allowed, the JVC shall be entitled to terminate this Agreement by issuing Termination Notice.

(c) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to (a) or (b) above, it shall issue Termination Notice setting out :

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated Termination Payment equivalent to the valuation of the portion of equity stake owned by the party including the details of computation thereof and;
- (iv) any other relevant information.

(d) Obligation of Parties

Following issue of Termination Notice by a Party entitled to do so, the Parties shall promptly take all such steps as may be necessary or required to ensure that :

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continuity of service to the users of the Project Facilities,
- (ii) Take such steps as necessary to pay or commence payment of any Payment due and payable to the party in lieu of purchase of equity stake by the defaulting party.

(e) Withdrawal of Termination Notice

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

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

8.3 Termination Payments

Subject to the Substitution Agreement, upon Termination of this Agreement the following payment shall be due :

- (a) In case of termination of agreement is due to the JVC's or Lead Promoter's default under their obligations then ITI shall have right to :
 - (i) proceed for winding up of the JVC and recover any losses incurred by it and likely to incur. After such recovery of losses the balance payment to any of the equity holders shall be disbursed for their portion of equity. The Project site shall be handed over to ITI on the Termination Date free from any Encumbrance.
 - (ii) Purchase the equity stake of the other parties at a price as determined by a Merchant Banker appointed by ITI. ITI shall have right to substitute the equity of the Lead Promoter led consortium with others.
- (b) In case termination of agreement is due to ITI's default under it's obligations and in case the Other Parties decide to terminate the Agreement then Consortium members of JVC shall be able to sell their equity, unless ITI at it's discretion decides to buy their equity in the JVC at a price which shall be equal to the fair market price decided by an Independent Merchant Banker appointed by JVC. The lease of the Project site shall continue unless JVC decides to dissolve.

8.4 Rights of Parties

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

9 Dispute Resolution

9.1 Amicable Resolution

Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement and so notified in writing by any Party to the other parties (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Clause 9.2 below.

9.2 Arbitration

If a dispute arises out of or in connection with this contract, or in respect of any defined legal relationship associated therewith or derived therefrom, the parties agree to submit that dispute for arbitration under ICADR Arbitration Act, 1996.

(a) Place of Arbitration

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

(b) English Language

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

(c) Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provision of the Arbitration Act.

(d) Performance during Arbitration

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

10 Representations, Warranties and Disclaimer

10.1 Representations and Warranties of the JVC

The JVC represents and warrants to ITI that :

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it is a special purpose company set up by the Consortium solely for the purpose of implementing and operating the Project / Project Facilities in accordance with the terms of this Agreement and that it will not during the subsistence of this Agreement undertake any other Project or business activity unrelated to the Project;
- (c) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (d) it has taken all necessary corporate and other actions under Applicable Laws and its charter documents to authorise the execution, delivery and performance of this Agreement;
- (e) it has the financial standing and capacity to undertake the Project;
- (f) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (g) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (h) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the JVC's Memorandum and Articles of Association or of any member of the Consortium or any Applicable Laws or any covenant, agreement,

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understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;

- (i) there are no actions, suits, proceedings or investigations pending or to the JVC's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute JVC Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Body which may result in Material Adverse Effect;
- (k) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (l) no representation or warranty by the JVC contained herein or in any other document furnished by it to ITI or to any Government Body in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (m) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the JVC or Lead Promoter led Consortium to any Person to procure the Agreement.
- (n) Without prejudice to any express provision contained in this Agreement, the JVC acknowledges that prior to the execution of this Agreement, the JVC has after a complete and careful examination made an independent evaluation of the Project Site, Project Requirements and the information provided to it as part of the bid documents or otherwise, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the JVC in the course of performance of its obligations hereunder.

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

10.2 Representations and Warranties of ITI

ITI represents and warrants to the JVC that :

- (a) ITI has full power and authority to enter into this Agreement and perform / disclose it's obligations contained herein;
- (b) ITI has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes ITI's legal, valid and binding obligation enforceable in accordance with the terms hereof.
- (d) There are no suits or other legal proceedings pending or threatened against in respect of the Project Site.

10.3 Representations and Warranties of Lead Promoter

Lead Promoter represents and warrants to the JVC that :

- (a) the Lead Promoter have full power and authority to enter into this Agreement and perform / disclose their obligations contained herein and shall strictly adhere to the terms of the Request for Qualification cum Request for Proposal Document issued;
- (b) Lead Promoters has taken all necessary action to authorise the execution, delivery and performance of this Agreement including any action that may be necessary to keep the other members of the consortium as per the terms of the Development Agreement and Shareholder's Agreement;
- (c) This Agreement constitutes Lead Promoter's legal, valid and binding obligation enforceable in accordance with the terms hereof.
- (d) There are no suits or other legal proceedings pending or threatened against in respect of the Project.

10.4 Obligation to notify change

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

11 Operation and Maintenance

11.1 Lease of Land

ITI shall lease land including any infrastructure and civil construction on the land of _____ Sq. M. to the JVC as shown in **Schedule 7** (hereinafter referred to as "**the said Land**") on following terms and conditions :

- (a) JVC shall pay monthly lease rent of Rs. _____/- (Rupees _____ Lakhs Only);
- (b) The lease of the said Land and building has been approved by ITI shall be for a term of 30 years from the date of signing of this Agreement;
- (c) Such lease shall be renewed at the end of the lease period for a further period subject to the renewal of lease to ITI by the State Government / Local Bodies
- (d) JVC shall adhere to the development control regulations as set out by the local body;
- (e) JVC shall make payment of all rates, taxes, assessments, dues and duties upon the said land to Government of India, State Government and all local authority and any other applicable authority as the case
- (f) Every year from the date of handing over of the land and / or Building, the lease rent shall be increased by 5% over the lease rent paid for the previous year;
- (g) The lease rent shall be paid in advance before the start of the respective month;
- (h) The JVC shall not make any excavation in the Demised Land nor remove any earth subsoil therefrom in contravention of provisions of any applicable law, rule or regulation of the Land use and management and if made with the prior permission of

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the Competent Authority, and the JVC shall use best reasonable efforts so that the surrounding plots and common areas possessed by ITI or persons claiming through them are not disturbed in anyway;

- (i) The lease of land does not give right to JVC for mining any mineral from the soil;
- (j) The JVC shall indemnify and keep indemnified ITI against any and all claims for damage which may be caused to any adjoining buildings or other premises within the such area to the extent such damage is a consequence of the execution of any works by the JVC at the Demised Land and also against payments for bodily injury or death or third party property damage to the extent arising during the progress and as a consequence of said work by the JVC and also against payments that become payable or be demanded by the Municipality or any Local Authority in respect of the said works or for any negligent act or omission by the JVC under this Indenture of Lease; and this obligation to indemnify and keep indemnified shall survive the term of this Lease; provided, however, ITI's (a) providing timely written notice to the JVC of any claim or occurrence that is likely to be or give rise to a claim that will fall within the scope of the foregoing indemnity, (b) permitting the JVC to defend at its costs and risks against and manage any claims or proceedings with respect thereto and JVC shall also bear and pay all the costs of ITI forthwith without any delay or default, and (c) cooperating fully with the JVC in any defence or settlement against the claim or liability.
- (k) Compliance with Laws and Regulations. At all time during the continuance of this Lease the JVC shall observe and conform its use of the Demised Land to all applicable laws, rules and regulations of any central State or municipal or local authority having jurisdiction in that behalf as may be in force for the time being relating in anyway to the JVC's activities on the Demised Land and any building/s the JVC constructs thereon including Estate Regulations and Building Rules.
- (l) The JVC shall not alter the location of sewer, water, power, telecommunication and other connections installed by ITI except with prior approval of ITI which shall ordinarily be granted.
- (m) The JVC shall make no alterations and additions at any time to the facade or elevation of any buildings erected and standing on the Demised Land or architectural features thereof except with the previous approval in writing of ITI
- (n) The JVC shall allow any person authorized by ITI to inspect, maintain and construct / reconstruct the sewer lines and water meter, storm water drains and other utility services or to do any other work in connection with inspection, construction or reconstruction within the Demised Land without any obstruction or hindrance by the JVC,
- (o) Unless otherwise approved by ITI, JVC shall not affix or display or permit to be affixed or displayed on any building erected or to be built or erected on the Demised Land any skysign, sign board, hoarding, bill board or advertisement of any permanent or temporary nature whatever of the nature of an advertisement provided, however that subject to approval of ITI, the JVC may affix or install reasonable signage, name plating, and other identification marks in and around the Demised Land (including on buildings and improvements) associated with and in furtherance of the Manufacturing Activities .
- (p) The JVC shall not carry on or allow to be carried on in the Demised Land by any of its employees, agents, contractors or invitees, any unlawful, illegal or immoral activities, which may be considered offensive or a source of any annoyance, inconvenience or nuisance to the area surrounding the Demised Land in ITI area,

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- (q) Not to erect or permit to be erected on any part of the Demised Land, any stable, sheds or other structures of any description whatsoever for keeping horses, cattle, dogs, poultry or other animals and not to keep on the Demised Land any animals.
- (r) To use or permit to be used the Demised Land or any part thereof only for the purpose of Manufacturing Electric and Electronic and not to use the same for any other purpose or purposes or user/s as the case may be and timely to comply with the directions, which may be given from time to time, by the State Pollution Control Board for the purpose of preventing any discharge or emission of hazardous pollutant from the JVC's activities at the Demised Land contrary to applicable law or permit.
- (s) The JVC shall take full comprehensive Insurance of buildings and structures which may be constructed by the JVC on the Demised Land at its costs throughout the term of the Lease and keep the same valid for the market value thereof. In the event of the said insurance being invoked during the term of this Lease for destruction or damage to the buildings or structures on the Demised Land, the JVC shall, utilize the sum assured and or received by the JVC as claimed under such insurance for sole purpose of reconstructing or repairing building or structures which are substantially equivalent to the Buildings and structures constructed by the JVC destroyed or damaged or which have been reasonably approved by ITI as acceptable alternatives to such buildings and structures, and timely furnish the evidence thereof to ITI without any delay or default;
- (t) The JVC shall not Alienate, assign, sublet or part with the possession of the Demised Land or any part thereof or any building or buildings thereof or any part thereof or any interest therein without the previous written consent of ITI;
- (u) If and whenever any part of rent hereby reserved payable hereunder or any installment of premium or any installment of interest or compound interest payable on such premium to be paid by the JVC to ITI shall be in arrears the same may together with interest thereon calculated at the rate of 18% per annum, which may be prescribed from time to time, from the date of default until payment be recovered from the JVC as arrears of the Land revenue under the provision of the law for the time being in force in that behalf;
- (v) ITI do hereby covenant with the JVC that the JVC paying the rent hereby reserved and observing and performing the covenants hereinbefore on the JVC's part contained shall and may peaceably enjoy the Demised Land for the said term hereby granted without any interruption or disturbance from or by ITI or any person or persons lawfully claiming by, from or under ITI.
- (w) The stamp duty, registration charges and any other incidental charges, if any, in respect of this Lease and its duplicate shall be borne and paid wholly and exclusively by the JVC.

11.2 Commitment Fee

If Actual Profit after Tax from the operation of the JVC are below 70% of the projected Profit After tax in that case JVC shall pay Commitment fee as per calculations below

Commitment Fee = ((Projected Profit after Tax for the specified year X 70%) – (Actual Profit after Tax for the particular year)) x Percentage of Equity share holding by ITI Limited

In case JVC earns Profit After Tax in any year more than the projected Profit After Tax as per the Business Plan submitted, then setoff shall be allowed in subsequent years for any

such excess amount while calculating the Commitment fee and for such calculation for any later date the set off shall be increased at the rate of 15% per annum.

12 Miscellaneous

12.1 Assignment and Charges

- (a) Subject to (b) and (c) hereinbelow, no Party shall assign this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of the other Party.
- (b) Except as provided in (c) hereinbelow, the JVC shall not create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement except with prior consent in writing of ITI, which consent ITI shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in (a) and (b) above shall not apply to liens / encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the JVC.

12.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by any Party shall, if the same be not paid to the Party entitled to receive the same, within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at 18% from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Clause 12.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

12.3 General Liability and Indemnity

- (a) The JVC shall indemnify, defend and hold ITI harmless against any and all proceedings, actions and third party claims arising out of a breach by JVC of any of its obligations under this Agreement except to the extent that any such claim has arisen due to breach by ITI of any of its obligations under this Agreement or a Force Majeure Event in sub-Clause 7.1(e) and (f) of Section 7.
- (b) ITI shall, indemnify, defend and hold harmless the JVC against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of breach by ITI, its officers, servants and agents of any obligations of ITI under this Agreement except to the extent that any such claim has arisen due to breach by the JVC of any of its obligations under this Agreement.

12.4 Governing Law and Jurisdiction

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

12.5 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 a 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 any other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

12.6 Survival

Termination of this Agreement :

- (a) shall not relieve the JVC or ITI 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.

12.7 Amendments

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

12.8 Notices

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

If to the JVC

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If to ITI
Company Secretary

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

12.9 Severability

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

12.10 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.

12.11 Exclusion of Implied Warranties etc

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

12.12 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of ITI by

(Signature)

(Name).....

(Designation).....

SIGNED, SEALED AND DELIVERED

For and on behalf of JVC by:

(Signature)

(Name).....

(Designation).....

SIGNED, SEALED AND DELIVERED

For and on behalf of Lead Partner by:

(Signature)

(Name).....

(Designation).....

In the presence of:

1).....

2).....

Schedule 1 : Consortium Members

Sr. No.	NAME

Schedule 2 : Copy of Memorandum of Understanding

Schedule 3 : Project Requirements

Schedule 4 : Design Requirements

Schedule 5 : Financing Plan

Schedule 6 : Project Facilities

The Project shall have the following Facilities :

Schedule 7 : Project Site

Name of work :- Overall implementation of the project

Details of Site :-

Ownership :- ITI Limited

Place :-

Area :- .

Boundaries

East :-

West :-

North :-

South :-

Schedule 8 : Substitution Agreement

THIS SUBSTITUTION AGREEMENT is entered into on this the ----- day of -----
(Month) --- (Year) at -----.

AMONGST,

ITI Limited, a Company registered under the Companies Act, 1956, having its registered office at ITI Bhavan, Doorvaninagar Bangalore - 560016, India (hereinafter referred to as the “**ITI**” which expression shall unless repugnant to the subject or the context include its successors and assigns)

AND

XXXX Limited, a company incorporated under the Companies Act 1956 having its registered office at ----- (hereinafter referred to as the “**JVC**” which expression shall when the context so admits or implies be deemed to include its successors, legal heirs and/or assignees as well) of the other part.

AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at -----
----- hereinafter referred to as “**the Lender**”.

OR

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at-----
----- acting for and on behalf of the Lenders listed in Schedule I hereto
(hereinafter referred as “**the Lender’s Representative**”.

WHEREAS,

ITI has entered into a Development Agreement dated ____ with the JVC for manufacturing of the mandatory products as defined in Clause 5.2(ii) of the Development Agreement. The JVC may manufacture other telecom / IT related products at each location in addition to the mandatory product line, in accordance with the provisions of this Agreement.

- A. The JVC has approached the Lenders for the financing of the Project. As a condition to making any disbursement pursuant to the Financing Documents, the Lender(s) has/ have required that the Substitution Agreement being these presents be entered into.
- B. With a view to facilitate financing of the Project by the JVC, in pursuance of sub-Clause 2.1(a) of Section 2 of the Development Agreement, ITI and the JVC have agreed to enter into Substitution Agreement being these presents with the Lender/s / Lenders’ Representative.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS :

1. Definitions and Interpretation

1.1. Definitions :

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

“Agreement” means this agreement and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

“JVC Event of Default” shall mean an event of default by the JVC under the Financing Documents or the Development Agreement.

“ITI Nominee” shall mean the Person selected by ITI to substitute the JVC in accordance with Clause 3.2 of Section 3 of this agreement.

“Financial Assistance” means the financial assistance set forth in Schedule I hereto, agreed to be provided by the Lender(s) to the JVC for financing the Project.

“Lender(s)” means the financial institutions/banks whose name(s) and addresses are set out in Schedule I hereto.

“Selectee” means a Person proposed by the Lender / Lender’s Representative pursuant to this Agreement and approved by ITI for substituting the JVC for the Residual Period, in accordance with the provisions of this Agreement.

“Suspension Period” means the period commencing from the expiry of the Cure Period specified in the Preliminary Notice and ending on the date on which all formalities connected with substitution of the JVC by the Selectee including handing over of Project Site/Project Facilities, in accordance with this Agreement are completed and the substitution has become effective.

- 1.2. Capitalised terms used in this Agreement but not defined shall have the meaning assigned to them respectively in the Development Agreement or in the event of ambiguity shall have the meaning commonly understood in law.

2. Substitution of the JVC

2.1. Lenders right to Substitute

ITI and the JVC hereby irrevocably agree that upon occurrence of a JVC Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them under law / Financing Documents and without being required to exercise or exhaust such rights or remedies, have the right to seek substitution of the JVC by Selectee under the Development Agreement in accordance with the provisions of this Agreement.

2.2. Preliminary Notice of Termination

ITI shall as soon as possible but in any case not later than 15 days of its knowledge of the occurrence of the JVC Event of Default issue Preliminary Notice of Termination to the JVC in terms of Sub-Clause 8.2(a) of the Development Agreement, with a copy thereof simultaneously to the Lenders.

The Lenders shall as soon as possible but in any case not later than 15 days of its knowledge of the occurrence of the JVC Event of Default issue Preliminary Notice of Termination to the JVC in terms of the Financing Documents with a copy thereof simultaneously to ITI.

2.3. Suspension of Agreement and Takeover of the Project Facility

The JVC irrevocably agrees that if the Cure Period specified in the Preliminary Notice of Termination lapses without the JVC Event of Default having been cured, the Agreement shall, effective from the expiry of such Cure Period, stand suspended without any further notice or other act of ITI being required, and that ITI shall have the right to enter upon and takeover the Project Site/Project Facilities and to take all such steps as are necessary for the continued operation and maintenance of the Project Facilities, and the substitution of the Lead promoter by the Selectee in accordance with this Agreement. The Lead Promoter hereby irrevocably consents to the takeover of the JVC by ITI forthwith upon suspension becoming effective, subject to the payment towards the equity held by Lead Promoters and the Consortium Members at a price as decided by the Merchant Banker appointed by ITI.

2.4. Substitution Notice

ITI and the Lead Promoter hereby irrevocably agree that in the event of the JVC's failure to cure the Event of Default specified in the Preliminary Notice of Termination the Lender/Lender's Representative may, within 15 (fifteen) days of the expiry of the Cure Period specified therein notify ITI and the JVC about the intention of the Lender(s) to seek substitution of the Lead Promoter and the Consortium Members by the Selectee (the "**Substitution Notice**").

2.5. Criteria for selection of the Selectee.

The Lender/ Lenders' Representative shall in addition to any other criteria that it may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- (a) the Selectee shall possess the network, experience, technical capability and managerial ability to perform and discharge all the residual duties, obligations and liabilities of the Consortium Led by Lead Promoter in respect of the Project, under the Development Agreement;
- (b) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Lead Promoter led Consortium to ITI under and in accordance with the Development Agreement and also payment of Debt Due to the Lender(s) upon terms and conditions as agreed to between the Selectee and the Lenders.

3. Modality for Substitution

3.1. Substitution by Lenders

The following modalities shall be followed for substitution of the Lead Promoter by the Selectee pursuant to this Agreement :

- (a) The Lender(s) / Lenders' Representative shall be entitled, within a period of 120 (one hundred twenty) days from the date of delivery of the Substitution Notice pursuant to the preceding Clause 2.4, to invite or procure offers either through private negotiations or public auction or process of tender or otherwise from the eligible Persons, for the substitution of the Lead promoter led Consortium by the Selectee and propose a Person to ITI for its approval of the Selectee (the "**Proposal**"). The Proposal of the Lender/Lender's Representative shall contain the particulars and information in respect of the Selectee, the terms of Substitution, particulars of the

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Debt Due and such data and information as would be necessary and relevant for ITI to decide as to the acceptability of the Selectee. The Lender/ Lender's Representative shall provide to ITI such additional information and clarification in respect of any data, particulars or information contained in the Proposal, as ITI may promptly and reasonably require.

- (b) The Proposal shall be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by ITI of the Proposal observe, comply with, perform and fulfill the residual terms, conditions and covenants of the Development Agreement as if the Selectee had been the Lead Promoter led Consortium under the Development Agreement and to assume, discharge and pay the Debt Due on the terms and conditions agreed to by the Selectee with the Lenders. The Selectee shall also undertake to enter into such documents and writings with ITI and the Lender(s) as may be necessary or required to give effect to the substitution of the Lead Promoter led Consortium by the Selectee.
- (c) ITI shall convey to the Lender / Lenders' Representative its acceptance or otherwise of the Selectee within 30(thirty) days of the date of receipt of the Proposal by ITI.
- (d) At any time prior to the acceptance of the Selectee by ITI pursuant to this Agreement, ITI may require the Lender / Lenders' Representative to satisfy it as to the eligibility of the Selectee and the decision of ITI as to acceptance or rejection of any Selectee (which shall be reasonable), shall be final, conclusive and binding on the Lender(s), the Selectee and the Lead Promoter led Consortium. In the event that ITI fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Proposal/ the Selectee within a period of 30 days prescribed in preceding (c), ITI shall be deemed to have accepted the Proposal / the Selectee.
- (e) The rejection of the Selectee if made by ITI shall be reasoned and be made after hearing the Lender / Lenders' Representative. Following the rejection of the Proposal, the Lender / Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee, within 30 days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of (c) and (d) above shall apply mutatis mutandis to such fresh Proposal.
- (f) If ITI accepts the Proposal / fresh Proposal, ITI shall take all necessary steps to substitute the Lead Member led Consortium by the Selectee by amendment of the Development Agreement or by execution of fresh agreement or such other writing as may be required or necessary to give effect to the substitution of the Lead Member led Consortium by the Selectee.
- (g) The substitution of the Lead Member led Consortium by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of ITI and the Lender(s) so as to give full effect to the terms and conditions of substitution subject to which the Selectee has been accepted by the Lender(s) and ITI and upon the delivery by ITI of the Project Facilities to the Selectee. Upon the substitution becoming effective pursuant to this sub-Clause all the rights of the Lead Member led Consortium under the Development Agreement shall cease to exist. Provided nothing contained in this sub-Clause shall prejudice any pending/subsisting claims of the Lead Member led Consortium against ITI or any claim of ITI against the Lead Member led Consortium and the Selectee shall incur no liability or consequence on account of any previous breach/default and shall subject to the terms and conditions of the substitution, have a period of 90 days to cure any breach/default subsisting on the date of substitution and required to be cured.
- (h) The decision of the Lenders and ITI in the selection of the Selectee shall be final and binding on the Lead Member led Consortium and shall be deemed to have been

made with the concurrence of the Lead Member led Consortium. The Lead Member led Consortium hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.

3.2. Substitution by ITI

- (a) In the event of failure by the Lenders to substitute the Lead Member led Consortium in accordance with Clause 3.1 of Section 3 above, ITI shall have the right to substitute the Lead Member led Consortium with a Person of its choice ("**ITI Nominee**") provided :
 - (i) ITI shall give due regard to the Debt Due of the Lenders while selecting ITI Nominee.
 - (ii) ITI shall ensure that ITI Nominee takes over or agrees to take over the Debt Due to the Lenders.
- (b) The decision of ITI shall be final and binding on the Lead Member led Consortium and the Lenders and shall be deemed to have been made with the concurrence of the Lead Member led Consortium and the Lenders.

4. General

4.1. General

- (a) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement and the Lenders Representative is duly and fully authorised by each of the Lenders to enter into this Agreement on their behalf.
- (b) Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by a Registered post acknowledgement due and delivered to the other parties.
- (c) The expressions "**ITI**", the "**JVC**", the "**Lender**" and the "**Lenders' Representative**" herein used shall unless there be anything repugnant to the subject or context include the respective successors, legal representatives, administrators and permitted assigns.
- (d) This Agreement shall not be affected by reorganisation of any Lender, the JVC, Lead Member led Consortium or ITI and the successor in interest of the Lender or ITI shall have the benefit of this Agreement.
- (e) If a dispute arises out of or in connection with this contract, or in respect of any defined legal relationship associated therewith or derived therefrom, the parties agree to submit that dispute for arbitration under ICADR Arbitration Rules, 1996. The Award shall be final and binding on the Parties. The Parties agree and undertake to carry out the award of the arbitrators (the "**Award**") without delay.
- (f) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The Courts of competent jurisdiction alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.

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- (g) The consultation, recommendation or approval of the Lenders' Representative under this Agreement shall always be taken as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.
- (h) This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- (i) It shall not be necessary for the Lender(s) or the Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.
- (j) No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties hereto.
- (k) All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Development Agreement or execution of fresh Development Agreement for the purpose of substitution as aforesaid shall be borne by and be to the account of the JVC. In the event of the Lenders making such payment for the time being, it shall be deemed to be a part of the Debt Dues.
- (l) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Development Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Development Agreement.

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Schedule I : Particulars of Financial Assistance

Name and Address of the Lender	Nature and Amount of Financing Assistance

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS HEREUNTO
ON THE DAY, MONTH AND YEAR HEREINABOVE MENTIONED.

SIGNED AND DELIVERED ON BEHALF OF
----- LIMITED

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF
ITI

BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF
----- ON BEHALF OF THE
LENDERS SETFORTH IN SCHEDULE I

BY : _____

Name :

Annexure 1 : Proforma of Bank Guarantee

[To be issued by any Scheduled Commercial Indian Bank / Foreign Bank whose Net Worth is more than Rs. 3,000 Million. In case of a Foreign Bank, this Bank Guarantee should be confirmed by any Scheduled Commercial Indian Bank]

From:

[Name and Address of Bank / Financial Institution]

Additional General Manager (Projects & Planning)

ITI Limited

ITI Bhavan,

Doorvaninagar,

Bangalore - 560016

1.[Name of JVC], for the implementation of the project for manufacturing IP Core Systems and other Telecom / IT related products at Bangalore, has entered into Development Agreement dated _____ with ITI Limited.
2.[Name of Bank / Financial Institution] (the "Guarantor") with its registered office at, unconditionally guarantees to pay ITI Limited upon first written demand and without deduction the sum of Rupees (Rupees in words) (the "Guaranteed Sum") subject to the conditions set out below.
3. The Guarantor unconditionally and irrevocably promises to pay on demand the Guaranteed Sum, without protest or demur whatsoever upon the receipt of a written demand from ITI Limited, which shall be final and conclusive as against the Guarantor requiring the Guarantor to make payment to ITI Limited.
4. No underlying dispute as between ITI Limited and the [Name of JVC], nor any pending application for interim relief or arbitration proceedings or other legal proceedings shall constitute any ground for prevention, delay or obstruction for making payment to ITI Limited by the Guarantor and the existence of any disputes or differences or claims in arbitration or otherwise shall not constitute any ground for non-payment on this Guaranteed Sum.
5. ITI Limited shall notify the Guarantor of its demand for payment of the Guaranteed Sum without any deduction of whatsoever nature and without reference to any claim or counter claim or set off, upon ITI Limited 's notification that:
 - (a) upon the occurrence of any of the conditions for disqualification as set out in the Development Agreement.
 - (b) there has been non-compliance of the conditions precedent as provided in the Development Agreement, or as elsewhere referred to in the RFQ cum RFP documents / Development Agreement.

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Certification by ITI Limited of the occurrence of such event shall be conclusive and binding on the Bank / financial institution.

6. This Guarantee shall be valid for a period of twelve months from the date mentioned herein and shall be renewed annually atleast one month in advance of the validity period of this Guarantee; failing which ITI Limited shall have the right to revoke this Guarantee without any further notice.
7. The release of this Guarantee and its return will be exclusively notified by ITI Limited.
8. This Guarantee shall be valid and effective for enabling ITI Limited to lodge a claim for payment under the Guarantee till the date of expiry of the term of the Guarantee. The Guarantor shall be obligated to make payment upon the Guarantee forthwith on demand if the claim is lodged within the claim validity period. Time is of essence for payment and in the event of failure to make payment, the Guarantor shall be obligated to pay compound interest at 2% above the prime lending rate of the Guarantor institution, compounding quarterly in the event of the Guarantor's failure to make payment upon the Guarantee for any reason whatsoever. Payment of interest as provided would be no excuse for delayed payment or non-payment.
9. No change in the constitution of the JVC or of the Guarantor shall be a ground for release or discharge of the Guarantee. The Guarantor shall notwithstanding such change, be bound to make payment upon the Guarantee on demand.
10. The Guarantor agrees that it will not assign its obligations under this Guarantee without the prior written consent of ITI Limited. ITI Limited will not unreasonably withhold its consent if the proposed assignee is of at least equal financial standing to the Guarantor and the assignee assumes in writing the obligations of the Guarantor under this Guarantee at the same time or before the assignment.
11. This Guarantee binds the Guarantor, its successors and permitted assigns.

SEAL OF [BANK / FINANCIAL INSTITUTION]

NAME OF [BANK / FINANCIAL INSTITUTION]

SIGNATURE

NAME

TITLE

DATE