

**FRAMEWORK AGREEMENT**

**GOVERNMENT OF KERALA**

**INFOPARKS KERALA**

**DUBAI TECHNOLOGY AND MEDIA FREE ZONE AUTHORITY**

**SMART CITY (KOCHI) INFRASTRUCTURE PRIVATE LIMITED**

**March 00, 2006**

## **FRAMEWORK AGREEMENT**

This Framework Agreement (hereinafter referred to as the "**AGREEMENT**") executed at **Kochi** on this the 00<sup>st</sup> day of **March** Two Thousand and Six by and between:

**The Governor of Kerala**, (hereinafter referred to as the "**GoK**", which expression shall unless repugnant to the meaning or context thereof, be deemed to mean and include its successors and nominees) acting through its Chief Secretary, Government of Kerala Mr. Mohammed Riazuddin by virtue of .....of **THE FIRST PART**;

**AND**

**Infoparks Kerala**, a society registered under The Travancore-Cochin Literary, Scientific and Charitable Societies (Registration) Act 1955, with the objective of establishing Information Technology Parks in Kerala (hereinafter referred to as the "**Society**", which expression shall unless repugnant to the meaning or context thereof, be deemed to mean and include its successors and assigns) and acting through Mr. K. G. Girish Babu, Chief Executive

Officer, consequent to full authority vested in him by its governing body for the purpose, of **THE SECOND PART**;

**AND**

**Dubai Technology & Media Free Zone Authority**, a corporate entity constituted under Law No. 1 of 2000 of the Emirates of Dubai as amended by its Law No. 9 of 2003 hereinafter referred to as "**TECOM**", which expression shall unless it is repugnant to the meaning or context thereof, be deemed to mean and include its successors and permitted assigns, acting through its Director General Mr. Ahmad Bin Byat by virtue of Article-6 of Law No.1 of 2000 of the Emirates of Dubai of **THE THIRD PART**;

**AND**

**Smart City (Kochi) Infrastructure Private Limited**, a company registered under the provisions of COSA (as defined hereinafter) with its registered office at Kusumagiri, Kakkanad P.O, Ernakulam District Kerala State- 682 030. (hereinafter referred to as "**SPV**", which expression shall unless it is repugnant to the meaning or the context thereof, be deemed to mean and include its successors and assigns) acting through its Director Mr. Deepak Padmanabhan by virtue of its board resolution ..... dated .....of **THE FOURTH PART**;

Each of the GoK, Society, TECOM, and the SPV are hereinafter referred to individually as a "**Party**" and collectively as "**Parties**" as the context requires.

**WHEREAS:**

1. The GoK had incorporated a society by the name and style of "**Infoparks Kerala**" which has established an Information Technology Park in Kochi under the name and style of "**Infopark**";
2. The GoK is now keen to establish knowledge based IT township in Ernakulam District through expansion of Infopark in order to promote employment and economic development of Kerala;
3. The TECOM is engaged in and has substantial experience in developing business, industrial and information technology parks and also administering and operating the said parks;
4. The GoK and TECOM held negotiations to set up an information

technology based town ship (as defined hereinafter) in Ernakulam District, Kerala, under the name and style of "Smart City";

5. TECOM and its Permitted Affiliate have established Smart City (Kochi) Infrastructure Private Limited ("**SPV**"), for the purpose of setting up, owning and operating Smart City and in which GoK will join as a shareholder;
6. The Parties have entered into this Agreement to set out the entire framework of the terms of collaboration between themselves, and their respective rights, obligations and covenants.

**NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS MADE AND CONTAINED HEREIN, IT IS AGREED BY AND AMONG THE PARTIES HERETO AS FOLLOWS:**

## **ARTICLE 1: DEFINITIONS AND INTERPRETATION**

### **1.1 DEFINITIONS**

For the purposes of this Agreement, the following words or terms, when capitalized shall have the meanings assigned herein below. When not capitalized, the terms shall be attributed their ordinary meaning. Words or terms not defined [but capitalized] shall have the same meaning as defined in the Act or COSA.

**"Act"** shall mean The Special Economic Zones Act, 2005, including the rules which may be framed there under and as may be amended from time to time.

**"Additional Land"** shall mean the Connectable land admeasuring a total of one hundred and thirty six (136) acres in the district of Ernakulam comprising in survey numbers as per Annexure "**A/2**" of Kakkanad Village, Ernakulam District more properly earmarked in blue on the map of the site contained in Annexure "**A/1**" attached to and forming a part of this Agreement, with the survey numbers marked therein presently being acquired under the provisions of the Land Acquisition Act, 1894.

**"Agreement"** shall mean this Framework Agreement including the annexures attached hereto.

**"Articles"** shall mean the Articles of Association of the SPV as may be amended from time to time.

**"Asset/(s)"** shall mean all existing assets of the Infopark at Kakkanad whether moveable or immovable, tangible or intangible excluding arrears of rent , arrears of power and other charges ,if any, as on Asset Transfer date from lesses of Infopark and shall include without restriction the Infopark Estate, and contracts, rights, interests and benefits accrued to or in favour of the Infopark or the Society in respect of such Infopark Estate and agreed to be transferred to **SPV** other than monies in the bank accounts.

**"Asset Consideration"** shall mean the consideration payable by the SPV to the Society for the transfer of Assets to the SPV, to the extent and in the manner provided in Article 6 herein and more specifically provided in the Asset Transfer Agreement.

**"Asset Transfer Agreement"** shall mean the deed for sale providing for the sale of the Assets by the Society to the SPV on the terms and conditions contained in this Agreement.

**"Board"** shall mean the Board of Approval constituted under section 8(1) of the Act.

**"Board of Directors"** or **"BoD"** shall mean the Board of Directors of the SPV constituted in accordance with the provisions of COSA and this Agreement.

**"Chairman"** shall mean the individual nominated by GoK to be the Chairman of the Board of Directors of the SPV.

**"Closing Date"** shall mean the date following the Developer Status Attainment Date on which all of the following events have occurred:

- (a) Completion of Minimum Infrastructure;
- (b) Receipt of the SEZ Notification for at least Infopark Estate and in favour of SPV;
- (c) Receipt of statutory approvals for construction;
- (d) Completion of transfer of all Assets in favor of the SPV;
- (e) Execution of the Lease Deed;
- (f) Completion of the acquisition and transfer of the Additional Land in favor of the SPV;
- (g) Transfer of 9% share in SPV in favour of GoK

**"Connectable"** in relation to parcels of land shall mean such parcels of land which are either contiguous or separated only by the width of a water body or of a public road, where appropriate link to connect the same can be created and for which permission of GoK if required will be granted.

**"Continuing Promise"** shall mean the steps and actions for which the involvement and the co-operation of the GoK is necessary subsequent to the Closing Date as more specifically listed in Article 9.2 herein.

**"COSA"** shall mean the Companies Act, 1956, including the rules and directions framed there under and as amended from time to time.

**"Definitive Documents"** shall mean (a) the "Lease" for the lease of Lease Land to the SPV; (b) the "Asset Transfer Agreement" to be executed for the transfer of Infopark Estate to the SPV; and (c) "Indenture" or any other instrument whereby Additional Land shall be transferred to the SPV.

**"Development Plan"** shall mean the development plan of Smart City with the intermediate milestones to be developed by SPV/TECOM and its clients covering the Infoparks Estate, Additional Land and Lease Land for the entire land more particularly describing the base plan built-up area for IT/ITES Space, commercial space, residential space and other spaces, as approved by the parties hereto and annexed to this as Annexure **"B"** and subject to modification by mutual agreement of the parties hereto involving an investment of approximately Rs. 17,000 million. The base plan as shown in Annexure **"B"** may change to an aggressive plan with 40% higher built up area than base plan.

**"TECOM Default Event"** shall have the meaning referred to in Article 8.2 herein.

**"Developer Status Attainment Date"** shall mean the date on which the SPV receives the letter of approval from the Central Government granting to it the developer status under the provisions of section 3(10) of the Act.

**"Directors"** shall mean such individuals who are the members of the Board of Directors of the SPV from time to time.

**"Disputes"** shall have the meaning referred to in Article 13.2 herein.

**"Execution Date"** shall mean the date of execution of this Agreement.

**"Events of Force Majeure"** shall mean any circumstance or event beyond the control of a Party..

**"GoK Additional Land Default"** shall have the meaning referred to in Article 8.1.2 herein.

**"GoK Closing Default"** shall have the meaning referred to in Article 8.1.1 herein.

**"Infoparks Estate"** shall mean the information technology park developed by the GoK and /or Society on sixty-two acres and seventy two cents (62.72 acres) of land along with all roads, infrastructure, building and other super structures constructed on the said land and thirty four acres and eighteen cents (34.18 acres) of land leased to Wipro, L & T and the Leela Group by Infopark/ Kinfra excluding the Reversionary Rights of the Lessor/Society against any development default of lessee and located in Kakkanad Village, District of Ernakulam, comprised in survey numbers as per Annexure **"A/2"** more particularly earmarked in green on the map of the site contained in Annexure **"A/1"** attached to and forming a part of this Agreement, with survey numbers marked therein.

**"Infrastructure"** shall mean the adequate facilities required at Site for the occupants of Smart City as may be agreed to from time to time by the GoK and SPV hereto and including but not restricted to the following:

- (a) Access roads to Smart City;
- (b) Adequate power supply to the Site from a minimum of two sources, to the substation/s to be established by the SPV
- (c) Adequate water supply to the periphery of Smart City;
- (d) Sewerage and drainage connections as and when available to Smart City; and
- (e) Availability of Police Station, Fire Station, etc., within a

reasonable distance from Smart City.

"**Law**" or "**Laws**" includes all applicable statutes, enactments, acts of legislature or parliament, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directions, directives and orders of any Government, statutory authority, tribunal, board, court or recognised stock exchange in India.

"**Lease Land**" shall mean the Connectable land admeasuring a total of one hundred<sup>1</sup> (100) acres in Puthencruz Village, District of Ernakulam comprised in survey numbers as per Annexure "**A/2**" more particularly earmarked in red on the map of the site contained in Annexure "**A/1**" attached to and forming a part of this Agreement with survey numbers marked therein.

"**Minimum Infrastructure**" shall mean that part of the Infrastructure which is necessary for the commencement of development of Smart City, which will mean the following:

- (a) Presently available road access through PWD road with access from both sides for construction traffic 24 hours 7 days basis.
- (b) 10MW power from the existing sub-station of Kinfra Export Promotion Industrial Park excluding the power already made available and the power to be made available to Thapasya, Vismaya, Wipro, Leela group and L&T buildings.
- (c) 1MLD water supply from Kinfra Export Promotion Industrial Park

"**Permitted Affiliates**" In relation to TECOM shall mean duly registered body corporates which are wholly owned by TECOM and shall continue to be so until the job creation obligations assumed by TECOM/Permitted Affiliates in terms of this Agreement are fully complied with.

"**Project**" means the construction and development of the infrastructure, buildings and structures on the site, as envisaged in the Development Plan.

"**Project Commencement Date**" shall mean the date falling seven (7) days following the Closing Date.

"**SEZ Notification**" shall have the mean ascribed to it in Clause 4.3(d) of this Agreement.

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"**Site**" means the Connectable land comprising of the following parcels of land on which the Smart City is to be developed:

- (a) The Infoparks Estate;
- (b) The Lease Land; and
- (c) The Additional Land.

"**Smart City**" shall mean the Project to be developed on the Site as knowledge based Information Technology Township as SEZ/SEZs and as envisaged in this Agreement.

"**Special Economic Zone**" or "**SEZ/(s)**" shall mean the Special Economic Zone status accorded to Smart City by notification under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 of the Act.

"**Strategic Partner**" shall mean any person who is recommended byTECOM, and approved by GOK who may purchase up to 40% of the paid up equity shares of the SPV held by TECOM directly or through its Permitted Affiliates. Such approval by GoK is necessary only prior toTECOM complying with job creation target described in clause 5.4 or 10 years from Closing Date, which ever is earlier, but not after.

## 1.2 **INTERPRETATION**

In this Agreement, (unless repugnant or contrary to the context hereof):

- (a) Reference to the singular includes a reference to the plural and vice versa, and reference to any gender includes a reference to all other genders.
- (b) Reference to any person includes any legal or natural person, partnership, firm, trust, company, government or local authority, department or other body (whether corporate or unincorporated).
- (c) Reference to an individual shall include his legal representative, successor, legal heir, executor and administrator.
- (d) Reference to statutory provisions shall be construed as meaning and including references also to any amendment or re-enactment (whether before or after the date of this Agreement) for the time being in force and to all statutory instruments or orders made pursuant to statutory provisions.
- (e) Reference to any article, clause or annexure shall be deemed to

be a reference to an article, clause or annexure of or to this Agreement.

- (f) Reference to days shall mean business days and shall not include days which are either national holidays or bank holidays in the State of Kerala.

### **1.3 ENTIRE AGREEMENT**

This Agreement contains the entire agreement and understanding among the Parties to this Agreement with respect to the subject matter hereof and shall supersede and replace any other agreement or understanding, whether oral or in writing with respect to the subject matter hereof, including without restriction the Memorandum of Understanding dated September 9, 2005 between the GoK andTECOM.

### **1.4 COUNTERPARTS**

This Agreement may be executed simultaneously in the English language, in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

### **1.5 HEADINGS**

The section, article and clause headings contained in this Agreement are for the convenience of the Parties and shall not affect the meaning or interpretation of any of the terms of this Agreement.

### **1.6 TIME FRAMES**

All time periods specified in this Agreement may be extended or otherwise amended with the mutual consent of the relevant Parties to this Agreement, but only if communicated in writing.

## **ARTICLE 2: OVERVIEW OF THE AGREEMENT**

- 2.1 Smart City shall be owned, developed and operated by the SPV, subject to the provisions of this Agreement.
- 2.2 The Chief Minister of the State of Kerala shall be the Chief Patron of Smart City. It is expected that this will promote Smart City and attract

investments by entrepreneurs in Smart City.

- 2.3 The Parties to this Agreement shall act in utmost good faith with a view to ensuring the success of Smart City through the economic development and greater good of the State of Kerala. To ensure this objective, the Parties shall work together and give due importance to each other's views.
- 2.4 The Parties shall do all things necessary and take all steps diligently to discharge their respective responsibilities and do all other acts and things necessary for the speedy implementation of the Project and the commissioning of Smart City in a timely manner.
- 2.5 On SPV complying with the statutory requirements and GoK acquiring 9% share in SPV, GoK shall take all necessary steps, to make recommendations to the Government of India in the manner prescribed by that Government from time to time to assist the SPV to receive the necessary approvals and notifications under the Act for establishing SEZ/(s).
- 2.6 Within ten (10) days of the Developer Status Attainment Date, the SPV shall acquire the Lease Land in accordance with the provisions of Article 5 herein below.
- 2.7 Within ten (10) days of the Developer Status Attainment Date, the SPV and the Society shall execute an Asset Transfer Agreement to acquire the Assets of the Infopark Estate, Kakkanad in accordance with the provisions of Article 6 herein below. The GoK shall be the confirming party to the Asset Transfer Agreement.
- 2.8 Within ten (10) days of the Developer Status Attainment Date or within 60 days of the Execution Date which ever is later, the Additional Land will be transferred to the SPV at a consideration of Rupees Two Million Six Hundred and Forty Seven Thousand and Fifty Eight (Rs. 26, 47,058) per acre, which consideration shall be the full and final amount payable for the purchase of the Additional Land irrespective of the compensation which may ultimately become payable by the GoK for the acquisition of such Additional Land. The consideration for the Additional Land shall be payable by the SPV to the GoK at the time when the full title and interests in the Additional Land is transferred to and acquired by and in favor of the SPV.
- 2.9 Within 15 days from the Execution Date the GOK shall commence the process of developing the Minimum Infrastructure in consultation with

the SPV.

- 2.10 GoK warrants that the Additional Land shall be Connectable with the Infopark Estate and the Lease Lands.
- 2.11 If TECOM/SPV takes a stand before the concerned Sub Registrar that any document executed in the course of implementation of this Agreement is exempt from the provisions of the applicable Stamp Act and the Sub Registrar does not agree with the same, the time provided for registering the document shall stand extended by the time taken for disposal of any application filed in this behalf before the Collector. However after executing and registering the document in accordance with the decision of the Collector, if TECOM/SPV is still aggrieved by the same, the payment of the stamp duty may be under protest and without prejudice to its rights to claim refund of the same in further proceedings.
- 2.12 The SPV shall be responsible for development and construction of the Project from the Project Commencement Date.

### **ARTICLE 3: PROVISIONS PERTAINING TO THE SPV**

#### **3.1 BOARD OF DIRECTORS**

- 3.1.1 The Board of Directors ("**BoD**") of the SPV shall at any time comprise of a maximum of ten (10) Directors unless otherwise provided in its Articles.
- 3.1.2 The GoK shall as long as they hold 9% of the share capital of the SPV be entitled to nominate a Chairman and one Director on the BoD. TECOM and its Permitted Affiliate may, at their discretion nominate the remaining Directors on the BoD up to the maximum number provided as per Clause 3.1.1 above.
- 3.1.3 The Directors shall hold office until death, resignation or removal in accordance with Clause 3.1.5 herein below.
- 3.1.4 The Chairman of the **BoD** shall not be below the rank of Secretary to the GoK. The Chairman shall not however have any casting vote. Each Director, including the Chairman shall be entitled to one vote in favor or against a particular resolution put up before the BoD for its

consideration.

- 3.1.5 The shareholder who nominated any individual as a Director shall also have the right to remove him at any time without prior notice to the other shareholder and nominate another individual as Director in substitution of the one removed.
- 3.1.6 The memorandum and articles of association of the SPV shall be amended to be in conformity with the provisions of this Agreement.

## 3.2 **MANAGEMENT OF THE SPV**

- 3.2.1 Subject to the provisions of COSA, the SPV shall be managed by the BoD. However, the Directors shall:
  - (a) Appoint either a Managing Director and/or a Chief Executive Officer with such powers, authority and remuneration as it deems fit in accordance with the provisions of COSA; and
  - (b) Form among themselves such committees as may be necessary from time to time for the effective management of the SPV, including the Infrastructure Advisory Committee and the Administration Committee. Provided however, that the committees shall be constituted in such a manner that each such committee shall have one Director who has been nominated by the GoK.
- 3.2.2 All decisions of the BoD shall be taken by formal resolutions passed at meetings of the BoD by a simple majority of Directors present and voting in accordance with the provisions of Clauses 3.2.4.
- 3.2.3 The BoD shall meet at least once in every three months.
- 3.2.4 The quorum for a properly constituted meeting of the BoD shall be five (5) Directors present and voting, of which at least three (3) shall be nominees of TECOM. Provided however, that at any meeting at which the requisite quorum is present, any other Director may participate by conference call or videoconference. Notwithstanding anything contained in this Article 3.2, the BoD may pass circular resolutions as per the relevant provisions of COSA.

## 3.3 **SHAREHOLDING**

- 3.3.1 The initial authorised share capital of the SPV shall be Rs.6800 million and initial paid-up share capital of the SPV shall be Rs.2400 million

comprised of ordinary equity shares of the nominal value of Rupees Ten (Rs. 10) each. The shares shall be subscribed to by the Parties in the following ratio:

- (a) GoK: 9% to be subscribed out of the transfer consideration of the Assets.
- (b) TECOM through its Permitted Affiliate: 91%

3.3.2 Nothing contained in this Agreement or the Articles shall prevent the Parties from transferring after an initial lock in period of Five years or after the fulfillment of jobs target as in clause 5.4 or creation of sufficient space to accommodate jobs targets as in clause 5.4, whichever is later, the whole or part of its shareholding at any time subject to the provisions of Article 3.3.6 herein below or otherwise to any other party at such value as they may deem fit. In such an event GoK, if TECOM is transferor, and TECOM if GoK is the transferor, shall be entitled to the right of first refusal at the offered price and then the sale to a third party shall not be at a price less than the offered price.

3.3.3 The BoD of the SPV will make capital calls for funding the cost of the Project as may be necessary from time to time. The Parties hereby agree that the shareholders of the SPV, namely the GoK and TECOM or its Permitted Affiliates shall contribute equity capital response to such capital calls, in a manner such that their percentage shareholding *inter se* mentioned in Clause 3.3.1 above is maintained. The GoK and TECOM through its Permitted Affiliate shall be required to subscribe to contribute the necessary funds as may be necessary pursuant to this Clause 3.3.3 within ninety (90) days of such calls being made.

3.3.4 Notwithstanding anything contained in clause 3.3.2 above, in the event that any Party is unable to contribute the funds necessary to subscribe to the equity shares pursuant to Clause 3.3.3, (the "Defaulting Party"), the Shareholding of the Defaulting Party shall stand diluted beyond the percentages referred to in clause 3.3.1 above. Further, the shares that were offered to the Defaulting Party may be offered to a third party investor at the same value at which was offered to the Defaulting Party.

3.3.5 The Parties hereto agree that the SPV shall neither issue nor allot nor agree to allot any shares to any third party in any manner save as provided in this Article 3. Where an offer is made to the public for subscription through a prospectus, such offer to the public shall be made in accordance with the terms and conditions as may be mutually

accepted between GoK andTECOM at the relevant point of time. In such case, references in this Agreement to 91% shareholding by TECOM through its Permitted Affiliate and 9% holding by GoK shall be read as references to the said percentages of the portion of paid up capital not offered to the public.

3.3.6 Notwithstanding anything contained in this Agreement, the Parties hereto agree that TECOM or its Permitted Affiliate shall be entitled to sell 40% of its shares in the SPV to a Strategic Partner/(s). Prior to TECOM complying with job creation target described in clause 5.4 or 10 years from closing date, whichever is earlier, but not after, it is further agreed between the parties that the transfer of shares in the SPV in accordance with this clause 3.3.6 has to be approved by the GOK, which approval shall not be unreasonably withheld and in the event of GOK not responding within 30 days from the date application of TECOM or its Permitted Affiliate or the SPV, as the case may be, the request will be deemed to have been approved by GOK.

#### 3.4 **DEBT FUNDING FOR THE PROJECT**

It is hereby agreed between the parties that the SPV can raise the cost for funding the Project in form of debt on such terms as may be approved by the BoD. TECOM shall assist the SPV in arranging such funding on the best commercial terms as reasonably possible.

### **ARTICLE 4: SPECIAL ECONOMIC ZONE NOTIFICATION**

- 4.1 SPV shall finalize the proposal/(s) for the setting up of a SEZ/(s) and forward the same to the GoK within ten days of the Execution Date.
- 4.2 The GoK shall in compliance with clause 2.5, forward the proposal/(s) to the Government of India, Ministry of Commerce along with their recommendations. The GoK hereby agrees to fulfill its commitments as per Policy/ Rules framed by the Government of India from time to time.
- 4.3 While it is the responsibility of the SPV to obtain the necessary approvals, orders and notifications in this behalf, GoK will render all assistance to the SPV and make best efforts to enable the SPV in obtaining such approvals orders and notifications and in particular the following:

- (a) The approval to the proposal under section 3(7) of the Act, by the Board;
- (b) Following the receipt of the said approval of the Board, that the Board communicates it to the Central Government in accordance with the provisions of section 3(9) of the Act;
- (c) Following the communication of the approval of the Board, the Central Government issues to the SPV a letter of approval in accordance with the provisions of section 3(10) of the Act; and
- (d) The Central Government notifies the Site and Smart City as a Special Economic Zone in accordance with the provisions of section 4(1) of the Act (the "**SEZ Notification**").

#### **ARTICLE 5: LEASE LAND**

- 5.1 Subject to clause 2.11, within ten (10) days of the Developer Status Attainment Date or within sixty (60) days of the Execution Date, whichever is later, the GoK shall lease the Lease Land to the SPV by execution and registration of the Lease Deed for a term of ninety- nine (99) years for the purpose of developing the same along with the other lands under the Development Plan.
- 5.2 The lease of the Lease Land shall be for a term of ninety nine (99) years and the Lease Deed shall *inter alia* provide for the following terms:
  - (a) The consideration for the lease shall be Rupee One (Re 1) per acre per annum, payable annually in advance;
  - (b) The SPV shall not require any permission or other approval from the GoK for the purpose of mortgaging its lease hold rights in respect of the land as security or for creating any lien or charge on the lease hold rights of the Lease Land; and
  - (c) The SPV shall not require any permission or approval from the GoK for sub-leasing the Leased Land and/or the building constructed thereon (whole or any part thereof) to any third party for the purpose of development in accordance with the Development Plan and for carrying on business operation within the Lease Land.
- 5.3 The Lease Land shall be used for the purpose of the development of Smart City and the SPV shall be free to build and construct structures on such Lease Land for the purpose of development of Smart City provided the same is in accordance with the Development Plan.



- 5.4 The lease of the Lease Land on the aforesaid terms and on the concessional rate is granted on the basis that TECOM. undertakes and guarantees that the SPV, along with the other operating companies within the Smart City shall together create and provide for at least 33,300 direct jobs in the Smart City in addition to the number of existing jobs as on Execution Date and jobs to be created in Infopark buildings and jobs to be created by Wipro and Leela group in their leased plots of 25 acres and 5 acres respectively, over a period of 10 years in phases as follows or pay penalty for short fall in jobs in the manner as provided in clause 8.2 of this Agreement.-
- i) Within 5 years of the Closing Date, 5,000 jobs.
  - ii) Within 7 years of the Closing Date 15,000 cumulative jobs and
  - iii) Within 10 years of the Closing Date 33,300 cumulative jobs.
- 5.5 The Lease Land shall be converted into freehold land proportionately with the progress made in the creation of jobs in accordance with Article 10.4 herein below.
- 5.6 Subject to the exception of the employment incentive entitlement (to which neither the SPV nor any of the IT companies operating from the Smart City shall be entitled), the SPV and any of the IT companies operating from the Smart City shall be entitled to any further subsidies or concessions as may be applicable or are extended to such companies under the IT policy of the Government from time to time. However after 33,300 jobs have been created, the IT companies and the SPV shall be eligible for all IT related incentives including the employment incentive entitlement if any from GoK as extended from time to time for investments made or jobs created thereafter.

#### **ARTICLE 6: ASSET TRANSFER**

- 6.1 Subject to Clause 2.11, within ten (10) days of the Developer Status Attainment Date, the GoK, the Society/ Kinfra and the SPV shall execute the Asset Transfer Agreement for the vesting of all rights in the Assets to the SPV, inclusive of management of the Assets.
- 6.2 It is agreed and understood that other than the security deposits

including those from tenants and contractors and advance rent ,if any , collected by the society for the period, starting from the Asset Transfer Agreement date to respective lease agreement expiry date, pertaining to lease agreements already executed by the Society and which are set out in the **Annexure "C"** to this Agreement, and subject to the provisions contained in sub-Clause 6.5.3 of this Agreement, no liabilities of the Society, whether long-term or current, secured or unsecured shall be transferred to or assumed by the SPV. All Assets shall be transferred to the SPV free of all charges or liens whatsoever. In the event of any third party claims against the SPV other than those envisaged in 6.5.3 of this Agreement, the Society, and/or the GoK shall indemnify the SPV and keep it harmless from all claims, costs and expenses

- 6.3 The SPV shall offer employment to all full time employees of Infopark as of September 9, 2005, on such terms and conditions as are no less favorable than the terms and conditions of their employment with the Society. The Society shall be responsible for settling all dues of such employees of whatsoever nature, up to the date of transfer of the Assets to the SPV. In the event of any employee claims against the SPV, the Society, and/or the GoK shall indemnify the SPV and keep it harmless from all claims, costs and expenses (including legal costs incurred if any in refuting such claims).
- 6.4 Neither the GoK nor the Society shall, directly promote, develop, maintain or operate any other information technology park or development similar to Smart City within the district of Ernakulam nor will GoK allot land at concessional rate for similar parks in Ernakulam District for a period ending on completion of 5 years from the Closing Date. The Society or GoK shall also not use the name "Infopark" or any closely resembling derivative thereof in the State of Kerala or elsewhere within India in any form or manner or capacity whatsoever. Provided however that nothing contained in this Agreement or the Asset Transfer Agreement shall prevent the Society from promoting, developing, maintaining or operating any information technology park in the State of Kerala other than in the district of Ernakulam, using any name other than or which does not closely resemble "Infopark"

## 6.5 **CONSIDERATION**

- 6.5.1 The consideration for the transfer of Assets under the Asset Transfer Agreement shall be the sum of Rupees One Thousand and Ninety Million (Rs. 1,090,000,000).

6.5.2 The consideration referred to in Clause 6.5.1 hereinabove shall be payable as follows:

- (a) By issue or transfer of sufficient number of equity shares of the SPV of Rupees Ten (Rs. 10) each at par constituting 9% of its issued equity share capital on the Execution Date to GoK;
- (b) On determining the value of shares issued to GoK under 6.5.2(a), the balance amount payable by the SPV shall be paid in cash on the execution of the Asset Transfer Agreement.

Provided however that at no time will the equity issued to the GoK exceed nine percent (9%) of the total paid-up equity share capital at the time.

6.5.3 The amount of Rupees One Thousand and Ninety Million (Rs 1090), agreed upon as the value for Infopark, includes approximately INR 168.8 million worth of committed works, which have not yet been paid for as on 31<sup>st</sup> March, 2005 as setout in Annexure "D". Payment of each of these works will continue to be made by Infopark till the date of Asset Transfer (Infopark being compensated on payment by the SPV of the agreed amount). Any payment on each of these committed works, not yet made as on the date of Asset Transfer will be made byTECOM directly to the contractor and the same will be deducted from the agreed amount. Any extra payment / claim over and above the Probable Amount of Contract for each of the committed works and payment for any work contracted after 31<sup>st</sup> March 2005 shall not be part of the agreed amount. These will be met byTECOM over and above the agreed amount, even if it is paid by Infopark before the actual transfer. All capital expenditure incurred by the Society with due intimation toTECOM from 1<sup>st</sup> April 2005 to the date of the Asset Transfer Agreement shall be paid by SPV over and above the agreed amount. The amount due to the Society on account of this as on 7th December 2005 is agreed to be Rupees Two Hundred and One Lakhs and Eighty Two Thousand (Rs.201.82) . Any further expenditure of such nature shall be incurred by the Society only on obtaining written confirmation of the same byTECOM. If the written confirmation or rejection byTECOM is not forthcoming for a period of ten (10) days from the date of intimation of the same by the Society, the approval shall be deemed have been given unless any clarification required byTECOM is pending with the Society. In the event that the Society does not obtainTECOM approval to such payments, then GoK shall be liable for all such payments.

- 6.5.4 Infopark has already granted lease of land within the area contiguous to the land hereby agreed to be transferred to SPV in favour of Wipro and L&T. And in terms of the lease deeds the lessees are entitled to utilise the common facilities provided by Infopark as a whole, and SPV will be liable to honour the commitments made by Infopark to the said lessees with regard to power supply, networking, water distribution and sharing of common facilities. GoK has also decided to add the facilities of Leela group to Infopark. The SPV shall extend similar facilities to Leela group, once the area is merged in Infopark Estate. Such merger will not have any impact on Asset Consideration. GoK has recommended SEZ status to this entire area covering the campuses of Wipro, L&T and Leela group. The SPV can collect civic charges against extension of facilities. It is made clear that in so far as the rights and obligations of SPV, with regard to the lands leased to Wipro, L&T and Leela group are concerned, any reversionary right to be exercised for any default on part of lessee can be exercised only with the written approval of GoK.
- 6.5.5 GOK and Infopark will settle all outstanding issues if any between Infopark and KINFRA/KEPIP without involving SPV and will indemnify SPV andTECOM.
- 6.5.6 Any future liability arising out of land acquisition related to Infopark Estate, the Additional Land, the Lease Land and land for link road to Airport-Seaport Road shall be borne by GoK and GoK will indemnify SPV andTECOM.
- 6.6 The amounts realized by the society towards security deposits from lessees and retention money/deposit from contractors and advance rent, if any , collected by the society for the period starting from Asset Transfers Agreement date to respective Lease Agreement expiry date pertaining to Lease Agreements already executed by the Society and which are setout in the Annexure "C" to this Agreement, will be transferred to SPV on the Asset Transfer date.

## **ARTICLE 7: INFRASTRUCTURE DEVELOPMENT**

- 7.1 The GoK shall commence work on the Minimum Infrastructure within fifteen (15) days of the Execution Date and shall complete the Minimum Infrastructure as soon as possible thereafter.

- 7.2 On completion of the Minimum Infrastructure the GoK shall continue the development of the Infrastructure commensurate with the requirement of the Development Plan in such a manner that the required amount of electrical power and water are made available at the periphery of Smart City when the facilities built by the SPV are ready to draw on the said utilities. GoK shall also complete acquisition of the land for the new 4-lane road connecting to the airport-seaport road and complete the road construction.
- 7.3 It is hereby agreed between the Parties that all Infrastructure which is to be developed within the area notified as the SEZ/(s) by the Central Government, shall be the specific responsibility of the SPV. It shall not be the responsibility of the GoK to develop any Infrastructure within the Smart City.
- 7.4 Notwithstanding the provisions of Article 7.1, any delays in completion of the Minimum Infrastructure to the satisfaction of the BoD may be condoned if in the opinion of BoD the delay was caused due to certain unforeseen or extraordinary circumstances and was not attributable to failure on the part of GoK to take necessary steps. However, failure of the GoK to achieve the completion of the Minimum Infrastructure within a maximum of six (6) months from the Execution Date shall constitute a GoK Closing Default and TECOM and its Permitted Affiliate shall be entitled to the remedies as per the provisions of Article 8.1 herein below.
- 7.5 Without prejudice to the provisions of Clause 7.1 to 7.3 hereinabove, the GoK shall also:
- (a) Assist the SPV in completion of the fencing of the Site;
  - (b) Assist in obtaining a permanent source of water supply including but not limited to the right to extract ground water from the Site. In the event that ground water or water supplied by GoK is insufficient for the SEZ, the GoK will grant permission or cause the relevant department of the the GoK to grant permission for laying pipes across roads, rivers or panchayat/ public land for the purposes of obtaining water connectivity for the SEZ;
  - (c) Ensure in obtaining relevant approvals and permissions necessary for the construction of linkages between different parcels of land to make them interlinked;

- (d) Assist in obtaining relevant permission to construct and operate a power generation system;
- (e) Assist in obtaining fast-track approval for all licenses, inclusive of but not limited to Liquor license for hotels and restaurants, permits and registrations as may be necessary to establish the requisite hospitality facilities of international standards within the Smart City as per the Development Plan;
- (f) Grant exemption from any power cuts or load shedding regulations to Smart City;
- (g) Extend support for any representation by SPV to the Kerala State Electricity Regulatory Commission for the rationalization of the power tariff applicable to all Units within the precincts of Smart City without incurring any financial liability on its part;
- (h) Assist and facilitate regular bus services and metro services from Cochin and surrounding areas to Smart City; and
- (i) Construct, develop and maintain adequate link roads to the airport – seaport road as per national highway standards.

## **ARTICLE 8: DEFAULT**

### **8.1 DEFAULTS OF GoK**

8.1.1 Subject to any event of Force Majeure it is agreed and understood that the following defaults on the part of GoK, which would prevent the occurrence of the Closing Date ("**GoK Closing Default**"), are serious defaults which would inherently jeopardize the Project and prevent the development of Smart City:

- (a) Fulfill its commitments specified in Clause 4.2 of this Agreement; or
- (b) Failure to complete the Minimum Infrastructure within Six (6) months of the Execution Date;
- (c) Failure to assist and co-operate in matters crucial to the implementation of Smart City as mentioned in Clause 9.1 of this Agreement.

8.1.2 GoK acknowledges that the acquisition of the Additional Land is critical

to the ultimate success of the Project and the Smart City. Subject to Events of Force Majeure , failure of the GoK to complete the process of acquisition and transfer of the Additional Land to SPV in accordance with the provisions of Article 11.1 (iv) hereinbelow ("**GoK Additional Land Default**") within the period specified therein would jeopardize the Project and prevent the development of Smart City.

8.1.3 In the event of any of GoK Closing Default, or GoK Additional Land Default,TECOM (and, or its Affiliates) shall at its option have recourse to any one or more of the following remedies:

- (a) to abandon the Project and the development of Smart City in which case the GoK shall acquire the entire shareholding ofTECOM and its Permitted Affiliate in the SPV at a consideration which is the same amount as any sums paid to GoK in cash by the SPV till the date of such acquisition; and, or
- (b) Notwithstanding anything contained in Clause 3.3.2 hereinabove, to buy out the entire shareholding of the GoK at a price to be determined by an independent valuer, in which event the GoK shall agree not to claim any rights, title or liens over the assets of the SPV. The SPV may thereafter carry on such business as may be permissible under the policy and procedures of the Government of India. ; and, or
- (c) Recovery of all investments made, costs and expenses incurred from GoK as certified by an independent firm of chartered accountants jointly appointed by the Parties.

8.1.4 In the event of any of GoK Closing Default or GoK Additional Land Default, in addition to the remedies specified in Article 8.1.3 hereinabove, the GoK accepts that the SPV shall not be able to create the requisite number of jobs as mentioned in Article 10.3 herein below and shall therefore not be subject to any penal consequences for any shortfall.

## 8.2 **DEFAULTS OFTECOM**

8.2.1 In the event that the SPV fails to implement the minimum program resulting in a shortfall in the number of jobs created in each phase, as mentioned in Article 10.3 ("**TECOM Job Default**")TECOM shall be liable to pay to GoK a one-time penal amount of Rupees Six Thousand (Rs.6,000) per job shortage in that phase. It is clarified that the payment of penalty as above will not entitle SPV to claim conversion of

corresponding area of Lease Land to freehold.

8.2.2 Subject to any event of Force Majeure, in the event TECOM (and, or its Affiliates) /SPV and its clients fails to create either 20,000 jobs or 2 Million sq. ft of built up IT/ITES/Commercial space within 10 years from the Closing Date, within one month thereafter GoK shall issue notice to SPV and TECOM in this behalf and if the default continues for a minimum period of 6 months from the date of notice, GoK shall at its option have recourse to any one or more of the following remedies:

(a) to abandon the Project and the development of Smart City in which case the TECOM shall acquire the entire shareholding of GoK in the SPV at a consideration which is the same amount as any sums paid or adjusted under clause 6.5.2 (a) of this agreement by GoK to the SPV till the date of such acquisition; and, or

(b) Notwithstanding anything contained in Clause 3.3.2 hereinabove, to buy out the entire shareholding of the TECOM at a price to be determined by an independent valuer taking the value of Lease Land as zero , in which event the TECOM shall agree not to claim any rights, title or liens over the assets of the SPV. The SPV may thereafter carry on such business as may be permissible under the policy and procedures of the Government of India. ; and, or

(c) To recover all investments made, costs and expenses incurred from TECOM as certified by an independent firm of chartered accountants jointly appointed by the Parties.

## **ARTICLE 9: RESPONSIBILITIES AND COVENANTS OF GOK**

### **9.1 GOVERNMENT INVOLVEMENT AND CO-OPERATION NECESSARY**

9.1.1 This Agreement constitutes the intent of the GoK for the purpose and for all purposes of the development, operating and maintenance of Smart City. In the event that any statute or regulation requires the specific approval or sanction of the GoK for the purpose of development of Smart City the application made by SPV in this behalf shall be dealt with expeditiously by the GoK.

9.1.2 The GoK warrants that Lease Land and the Infoparks Estate already acquired and Additional Land being acquired is for the purpose of



setting up knowledge based IT Township as envisaged by the Smart City and will satisfy the purpose for which the land was acquired.

- 9.1.3 If on the presentation of the proposal by the GoK the Central Government specifies any conditions as to Additional Land whether pertaining to the area or otherwise, then the GoK and SPV shall discuss the matter in good faith and the GoK shall take all steps necessary to co-operate and enable the fulfillment of such conditions.
- 9.1.4 The GoK shall issue all notifications and pass such orders or make such rules or regulations as may be necessary to ensure that Smart City shall be the recommending agency for release of all subsidies, and, or incentives to which the Units established by the entrepreneurs within Smart City are otherwise eligible or may be eligible from time to time.
- 9.1.5 Subject to provisions of Law, if any , the GoK shall allow Smart City to widen water bodies for landscaping.
- 9.1.6 The GoK recognizes the critical importance of the aspects set out in this Clause 9.1.1 to 9.1.6 hereinabove to the commencement of the implementation of Smart City.

## **9.2 CONTINUING PROMISE**

- 9.2.1 The GoK shall use its best effort to liaise with the Board on all matters in relation to the Smart City from time to time concerning the Central Government, the Board or the Development Commissioner or other officers as may be appointed by the Central Government under section 11(1) of the Act or the Approval Committee constituted by the Central Government under section 13(1) of the Act, or any other authority, office, or regulatory body which may be formed or constituted for the regulation or governance of SEZ's in India.
- 9.2.2 If required GoK shall use its best efforts to see that all notifications, or such other requirements as may be prescribed under the relevant provisions of the Income Tax Act, 1961 be issued/complied with as the case may be, to enable the SPV to claim the tax holiday and other benefits applicable to IT parks, infrastructure facilities and/or, SEZ's, as may be provided from time to time can be availed to the fullest possible extent.
- 9.2.3 GoK shall endeavor to put in place a statutory mechanism under the Kerala Industrial Single Window Clearance Boards and Industrial

Township Area Development Act, 1999 or such other statute as may be applicable so that all clearances under the Building Rules, etc. required to be obtained by the SPV or the entrepreneurs investing in one or more Units in Smart City can be obtained as applicable to an "industrial area" for the purposes of statutory clearances and for the operation and administration of Smart City.

- 9.2.4 The GoK shall declare the Smart City within the scope and meaning of a "Public utility" under the Industrial Disputes Act 1947 and shall also exempt Smart City from the provisions of the Kerala Shops and Commercial Establishments Act, 1960.
- 9.2.5 The GoK shall use its best efforts to obtain all other approvals or sanctions, whether by way of letter, notification, order, direction or otherwise, as may be necessary from time to time for the successful implementation of the Project, including but not restricted to the notification of the SEZ as an inland container depot, land station or land customs station as relevant under the provisions of section 7 of the Customs Act, 1962, environment clearances from the pollution control board.
- 9.2.6 The GoK shall make best efforts to facilitate the establishment of International Business School within the precincts of Smart City.
- 9.2.7 The GoK shall make best efforts to establish a check-in counter for air passengers within the precincts of Smart City.
- 9.2.8 On the request of SPV , GOK shall consider transfer of 177.79 Acres of land to the SPV which is currently under acquisition vide GO(Rt) No 279/05/ITD dated 05/12/05 or any other connectable land to be acquired in future. Transfer of such land shall be at such terms and conditions as may be mutually agreed upon.
- 9.2.9 The GoK shall make best efforts to establish an appropriate mechanism to promote Smart City through its marketing plan.
- 9.2.10 The GoK shall make best efforts as a joint venture partner in the SPV to not undertake activities that shall diminish the value of the Smart City, such as (but not restricted to) encroachments, entry to polluting industries, dumping of waste, dumping yards, abattoir and discharge point of sewerage treatment plants, within radius of 2 kms from the precincts of Smart City

9.2.11 The GoK recognizes the importance of the aspects set out in this Clause 9.2 to the ultimate success of Smart City.

**ARTICLE 10:  
RESPONSIBILITIES AND COVENANTS OF TECOM**

- 10.1 It is agreed and understood that Smart City shall be developed as a knowledge based Information Technology township as an SEZ/(s) and as provided in the Development Plan.
- 10.2 TECOM and its Permitted Affiliate shall develop the Project in a manner so that it enables the rapid economic development of the State of Kerala.
- 10.3 TECOM and its Permitted Affiliate shall ensure that it actively markets Smart City as a destination for investment and does all things necessary for the purpose. Without prejudice to the generality of the foregoing, TECOM and its Permitted Affiliate shall adopt a minimum program to generate within 10 years of Closing Date a cumulative total of 33,300 jobs. For the purpose of short fall penalty payable by SPV, as set out in 8.2.1 above only the following interim minimum levels of jobs shall be created in the Infoparks Estate, Additional Land and Lease Land:

<b>Timeline</b>	<b>Total number of Jobs</b>
Within 5 years of the Closing Date	5,000
Within 7 years of the Closing Date	15,000 (cumulative)
Within 10 years of the Closing Date	33,300 (cumulative)

- 10.4 TECOM and its Permitted Affiliate will, subject to Events of Force Majeure, commence construction of IT/ITES building/(s) in the Site within 90 days of the closing date and complete construction by the SPV and their clients, of IT/ITES/Commercial building/(s) as per the timeline given below. However it is clarified hereunder that if 20% or more of space is vacant in any of the periodic tranches envisaged here, timeframe of the subsequent tranches will be amended to a periodic tranche time frame, mutually agreed by GoK and TECOM.

Timeline	Minimum built-up IT/ITES/Commercial space in sq. feet
Within two year of the Closing Date	300,000
Within five year of the Closing Date	1,000,000 (cumulative)
Within ten year of the Closing Date	3,330,000 (cumulative)

- 10.5 SPV shall use its best effort to consider positively the request of those parties inclusive of Companies incubated by the Society at the ITES habitat, who have already submitted formal requests to Society or GoK for allocation of land or built up space.
- 10.6 TECOM and the SPV shall participate in and support and promote any annual IT events of Kerala Government to make Kerala into a global IT/ITES destination.

**ARTICLE 11:  
REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

**11.1 REPRESENTATIONS AND WARRANTIES OF GOK AND THE SOCIETY**

The GoK and the Society (Infopark) hereby represent and warrant to and agree with the TECOM and the SPV as follows and acknowledge that TECOM and SPV are relying on the representations and warranties provided in this Agreement in connection with the purchase of Additional Land and Infopark Estate and lease of Lease Land by the SPV as well as the following:

- i. The GoK and Society have full power, capacity and authority to execute, deliver and perform this Agreement and shall take all necessary action (corporate, statutory or otherwise) to transfer and register the Additional Land and the Infopark Estate in favor of the Purchaser and to authorise that the execution of the transfer the Additional Land and Infopark Estate in favour of the SPV will result in the creation of lawful and valid title to such properties in favour of the SPV, free and clear of any and all Liens, pledges, encumbrances, charges, agreements, interests or claims of any kind;

- ii. The GoK as well as Society has not entered into any commercial agreement and arrangement with any other third party;
- iii. The Society does not have any mortgage, lien, charge, lease, easement, trust, option, right to acquire or any other claim and encumbrance over moveable and immovable property belonging to the Society;
- iv. The GoK has already taken steps to acquire the Additional Land and shall diligently continue the process of acquisition of the Additional Land until it is completed and thereafter transfer the same to the SPV within a period of one hundred and twenty (120) days from the Execution Date;
- v. The GoK warrants that the Additional Land is Connectable with the Infopark Estate and the Lease Lands.

#### **11.2 REPRESENTATIONS AND WARRANTIES OFTECOM**

TECOM hereby represents and warrants to and agree with the GoK and Society as follows and acknowledge that GoK and Society are relying on the representations and warranties provided in this Agreement in connection with their respective undertakings and obligations under this Agreement as well as the following:

- i. The TECOM have full power, capacity and authority to execute, deliver and perform this Agreement by virtue of the powers conferred on them by Law No. 1 of 2000 of Emirates of Dubai as amended from time to time and as subsequently clarified to GOK vide letter dated 21.02.2006 by the Director General, Dubai Technology and Media Free Zone Authority and shall take all necessary action (corporate, statutory or otherwise) to ensure the successful implementation of the Smart City;
- ii. TECOM has not entered into any agreement or arrangement with any third party which would prevent them from either the execution of this Agreement or the fulfillment of its obligations under this Agreement.

#### **ARTICLE 12: INDEMNITY BY PARTIES**

- 12.1 The GoK and the Society ("Infopark") shall be jointly and severally liable to indemnify, defend and hold TECOM harmless for damages arising directly or indirectly, from or in connection with:
- (a) any breach of any warranty of the GoK and the Society contained in this Agreement; or
  - (b) any breach of any covenant or agreement of the GoK or the Society contained in this Agreement; or
  - (c) any claim arising on account of Tax liabilities (whether for income tax, withholding tax, sales tax, excise duty or any other taxes) pertaining to the business of the Society for the period prior to the Asset Transfer Date, whether such Tax is assessed before or after the Asset Transfer Date.
- 12.2 TECOM shall be jointly and severally liable to indemnify, defend and hold the GoK and the Society harmless for damages arising directly or indirectly from or in connection with:
- (a) any breach of any warranty of TECOM contained in this Agreement; or
  - (b) any breach of any covenant or agreement of TECOM contained in this Agreement.

**ARTICLE 13**  
**GOVERNING LAW, DISPUTE RESOLUTION AND ARBITRATION**

- 13.1 This Agreement shall be governed, construed, interpreted and enforced in accordance with the Laws of India.
- 13.2. If any question arises as to the interpretation of the provisions of this Agreement or as to matters not provided therein, ("Disputes") the parties to this Agreement shall consult with each other at each instance and resolve such doubts in good faith.
- 13.3 If mutual resolution cannot be reached within fifteen (15) days after the commencement of such negotiations, the Parties shall have the option to refer the Disputes to an arbitral tribunal comprising of three (3) arbitrators. Each Party shall have the right to appoint one (1) arbitrator and the two appointed arbitrators shall appoint the third arbitrator. For this purpose the GoK and Society shall be treated as one party and TECOM/Permitted Affiliates and SPV shall be treated as the other party.

- 13.4 The arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 or any subsequent enactment and amendment thereto. The venue for such arbitration shall be Ernakulam. The arbitration proceedings shall be conducted in English. Any award rendered pursuant to such arbitration shall be binding on the Parties.
- 13.5 If, on account of reasons of Force Majeure the performance of the obligations of any of the parties hereto is delayed for a period of up to six months, the corresponding period for the performance of the obligation shall stand extended by a similar period. However, if the situation of such Force Majeure continues beyond six months, the parties shall attempt to arrive at a mutually acceptable resolution to determine the fair manner in which the provisions of the agreement may be implemented.

#### **ARTICLE 14: CONFIDENTIALITY**

- 14.1 The Parties to this Agreement shall ensure that all persons forming part of or associated with each of the Parties shall observe all confidentiality obligations contained herein or otherwise and shall also keep confidential and secret the terms of this Agreement and any other deed or document (including the **Definitive Documents**) executed by and between the Parties including but not limited to the correspondences exchanged by and between the Parties ("**Confidential Information**") unless otherwise required to disclose the Confidential Information due to any requirement under Law.

#### **ARTICLE 15 NOTICES**

- 15.1 Any notice or other communication to be given by any party to the other party under, or in connection with the matters contemplated by this lease deed shall be in writing and shall be given by letter delivered by hand or sent by a reputed courier or registered, Speed A/D post or facsimile, and shall be deemed to have been received (unless the contrary is proved), in the case of:
- (i) Delivery by hand, when delivered and acknowledged;
  - (ii) A reputed Courier or registered A/D post, on the seventh day

following the day of posting.

**ARTICLE 16  
MISCELLANEOUS**

- 16.1 Waiver: No failure or delay on the part of any of the Parties to this Agreement relating to the exercise of any right, privilege or remedy provided under this Agreement shall operate as a waiver of such right, power, privilege or remedy or as a waiver of any preceding or succeeding breach by the other Party to this Agreement, power, privilege or remedy nor shall any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of any right power, privilege or remedy provided in this Agreement, all of which are several and cumulative, and are not exclusive of each other, or of any other rights or remedies otherwise available to a Party at Law or in equity.
- 16.2 Severability: Each of the provisions contained in this Agreement shall be severable, and the unenforceability of one shall not affect the enforceability of any others or of the remainder of this Agreement.
- 16.3 No Partnership: Nothing in this Agreement or in any document referred to in it shall constitute any of the Parties as partner of the other, nor shall the execution and implementation of this Agreement confer on any Party any power to bind or impose any obligations on the other Party or to pledge the credit of the other Party.
- 16.4 Good Faith: Each of the Parties hereto undertake with the other to act in the utmost good faith in interpreting and implementing this Agreement and agrees to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands to this Agreement on the day and year first above written.

**The Government of Kerala**

**Dubai Technology and Media Free  
Zone Authority**

By: .....

By: .....



**Mr. Mohammed Riazuddin**  
Chief Secretary to the Government of Kerala  
Secretariat, Thiruvananthapuram 695 001  
Zone

Date: February 00, 2006

**Infoparks Kerala**

By: .....

**Mr. K.G.Girish Babu**  
Chief Executive Officer, Infoparks Kerala  
Kochi

Date: February 00, 2006

In the presence of:

- 1.
- 2.

**Mr. Ahmad Binbyat**  
Director General,  
Dubai Technology and Media Free  
Authority

Date: February 00, 2006

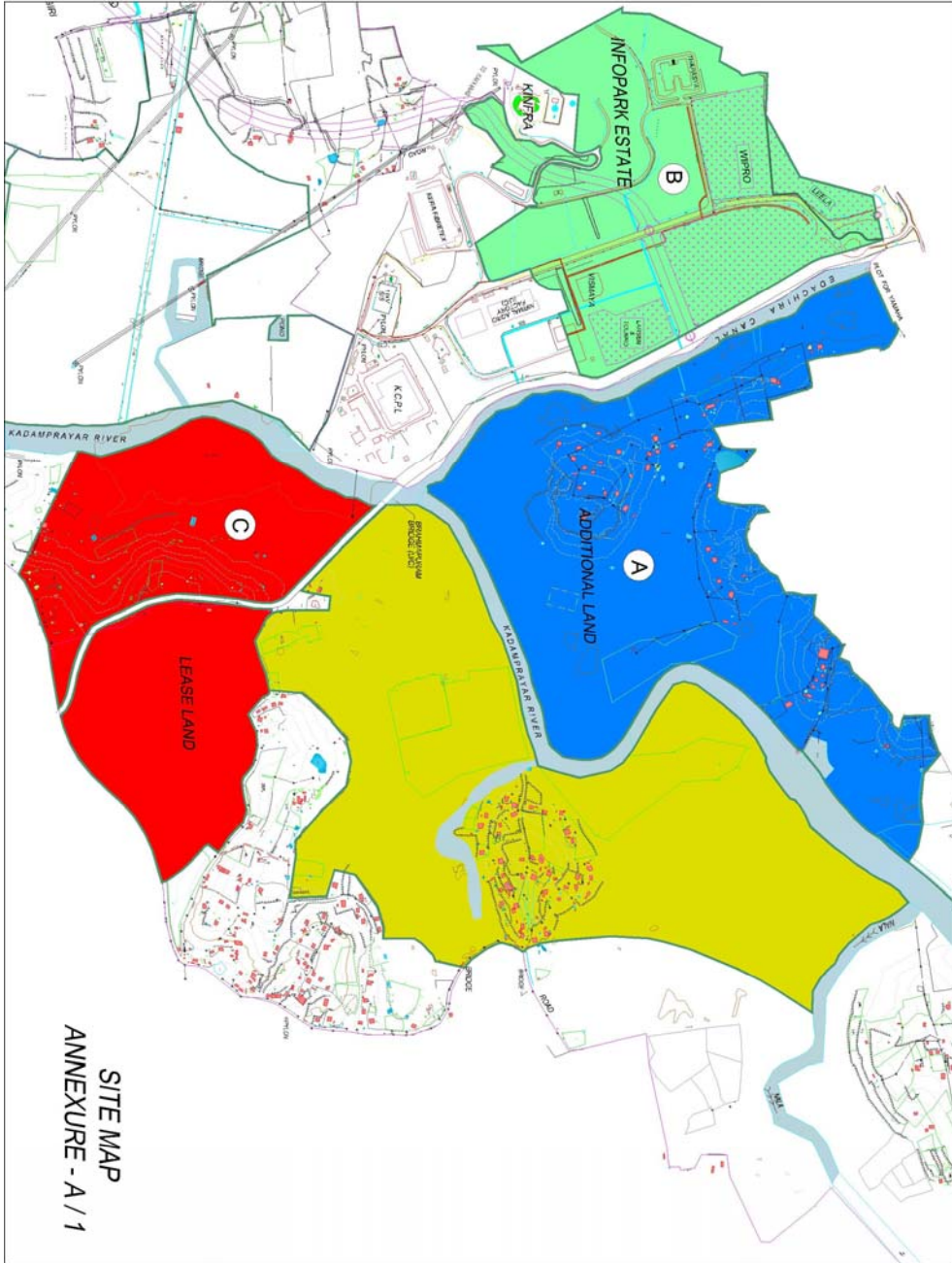
**Smart City (Kochi) Infrastructure  
Private Ltd, Kochi**

By: .....

**Mr. Deepak Padmanabhan**  
Director,  
Smart City (Kochi) Infrastructure  
Private Ltd, Kochi

Date: February 00, 2006

**ANNEXURE - A/1 (Refer Definitions Article 1.1)**



**ANNEXURE - A/2(Refer Definitions Article 1.1)**

Description of land	Survey Nos.													
<p><b>"Additional Land"</b>                      Approx.136 acres                      Block: 9                      Village: Kakkanad                      Taluk: Kannayanur                      District: Ernakulam</p>	642,643,644,645,646,647,648,649,650,651,652,653,654,655,656, 704,705,706,707,708,709,710,711,712,640,641,665,666,686,687,689 (Total 53.838 hectares)													
<p><b>"Infopark Estate"</b>                      Block : 9                      Village: Kakkanad                      Taluk: Kannayanur                      District: Ernakulam</p>	a) Infopark Estate: 62.72	601,602,612,615,616,617,618, 619,620,621,622,623,624,625, 626,627,629,632,633,634,635, 636,637,669, 670,671,684 (Total 39.214 hectares)												
	b) Area already allocated:  <table border="0" style="margin-left: 20px;"> <tr> <td>Wipro</td> <td>25.18</td> </tr> <tr> <td>Leela</td> <td>5.00</td> </tr> <tr> <td>L&amp;T</td> <td>4.00</td> </tr> <tr> <td></td> <td>-----</td> </tr> <tr> <td>Total</td> <td>34.18 acres</td> </tr> <tr> <td></td> <td>=====</td> </tr> </table>		Wipro	25.18	Leela	5.00	L&T	4.00		-----	Total	34.18 acres		=====
	Wipro		25.18											
Leela	5.00													
L&T	4.00													
	-----													
Total	34.18 acres													
	=====													
c) Grand Total: 96.90 acres														
<p><b>"Lease Land"</b>                      100 acres                      Block : 37                      Village: Puthencruz                      Taluk: Kunnathunad                      District: Ernakulam</p>	62,63,67,68,69,70,71,72,73,74,101,103,104,105, 106,107,108,109 (Total 40.47 hectares)													

## ANNEXURE – B(Refer Definitions Article 1.1)

### BASE DEVELOPMENT PLAN- PHASE-I BY SPV/DIC & CLIENTS(Area in Sq feet)

Year of Commencement of Construction	0	1	2	3	4	5	6	7	8	9	Total
<b>By SPV/Clients</b>											
<b>IT/ITES Office Space</b>											
Built-Up Area		619,630	837,421	772,312	781,187	958,328	1,006,742	411,522	459,936	96,829	
<b>Residential villas</b>											
Built-up area		106,665	123,330	139,995	156,660	83,325	83,325				
<b>Apartments</b>											
Built-up area		264,000	304,000	344,000	384,000	200,000	200,000				
<b>Commercial Space</b>											
Built-Up area			548,000								
<b>By SPV/Clients- Total</b>											<b>TOTAL</b>
Total Built up Area		990,295	1,812,751	1,256,307	1,321,847	1,241,653	1,290,067	411,522	459,936	96,829	<b>8,881,207</b>

**( Note: The Built-up area as mentioned in table above is proposed to be completed within two years of year of commencement of construction.)**

## ANNEXURE C/1(Refer Article 6.2 , Article 6.6)

### EMD & Security Deposits of Vendors as on 16.1.2006

Name of the Vendors	EMD (is Rs.)	Security Deposit (in Rs.)
Ajayagosh	2400	
Amough Engineers	3750	37360
Archana Equipment & Technologies	860	10720
Asokan	2200	11600
Athull V P	1000	
Bright's Equipments	860	
Carrier Aircon	4000	
C.A Shaji	8000	17000
Earthline Services Pvt. Ltd	2000	
Electrotek Engineers	1200	33500
Featherlite Office Systems	32000	
Fins Engineers	17600	26709
Floor of the World, Maradu	2000	
GEAFAB	6000	26193
Goodwill Power Co. Pvt Ltd	1000	
Gopakumar K	14000	
Hi – Cons Building Products	12200	63700
Inter Elect	2000	
Joshy George	1200	
Justin Thomas	500	
Kannathil Trading	1500	
K M Joy	5600	
K Nanu	6500	
Kriticons, Chennai	62000	739550
Lalji S	2000	
Lee Builders, Perumbavoor	19200	100000
Mariya Metals	860	
Mastrotech	1500	
Prayukthi Power	2150	
Pure Enviro Engineering Pvt Ltd	2200	
Rashid	1000	
R.S. Associates, Kochi	3000	
Sanghvi Furniture Pvt Ltd	2000	
Square Feet	6000	62066
St. Thomas Construction	1000	

Studio Line Interior	2000	
Sunny N K	2000	
Supreme Electrical Engineering	1000	
Suresh Engg. Works, Kochi	3000	25275
Techno Power Engineering	2500	
Vellappally Brothers	325000	
Visual Impact	1000	
Woodmanns		11610
<b>TOTAL</b>	<b>567780</b>	<b>1165283</b>

## ANNEXURE C/2(Refer Article 6.2 , Article 6.6)

### AMOUNT RECEIVED AS SECURITY DEPOSITS FROM TENANTS

NAME of THE TENANTS	Amount in Rs
Affiliated Computer Seviles	6,007,800.00
Armia Systems	35,297.00
ART Technologies	62,513.00
Athira Business Centre	4,500.00
Bang Software Technology Ltd	37,149.00
Bharathi Cellular Limited	20,000.00
Bharati Televenture Ltd	24,000.00
BPL Mobile Cellular Ltd	60,000.00
Calpine Technologies	237,059.00
Charter Mercantile Holdings P.Ltd	817,614.00
Digiterna Broad Band	41,145.00
Ditro Advanced Technologies Pvt Ltd	261,360.00
Ecomm IT Labs (P) Ltd	270,175.00
Exora India (P) Ltd	170,961.00
Exsyst Inc	27,960.00
IBS Software Services (P) Ltd	1,610,400.00
IDSI Pvt. Ltd	166,551.34
Incite Systems	91,341.00
Indigo Concepts P Ltd	37,014.00
IND Sigma Infotech (P) Ltd	170,717.00
Infogenic	160,482.00
Iormyx	46,083.00
Jacobson BPO Services P Ltd	225,939.00
Lumiere	150,000.00
Popular Motor Corpn.	88,375.00
Promyx Outsource Service Ltd	37,028.00
Radha Krishna Hospitality Services	100,000.00
Reliance Infocomm Ltd	36,000.00
SBT	12,000.00
Sify	16,623.00
Tata Consultancy Services Ltd	5,040,000.00
UTI Bank Ltd	4,326.00
Vanilla Networks Pvt Ltd	83,432.00
V Fortress	170,961.00
Wipro Limited	4,290,000.00
Wirpo Tecnologies	759,792.00

Amlaki Information System Pvt Ltd	225,939.00
<b>TOTAL</b>	<b>21,600,536.34</b>



## ANNEXURE C/3(Refer Article 6.2 , Article 6.6)

### Retention Money withheld from Vendors as on 16.1.06

Name of the Vendors	Amount (Rs.)
ABB Ltd	5,627,082.00
Abhinand Computer	6,130.00
ABM Interiors	3,125.00
Ajayaghosh	106,604.00
Al-Mana Fabricators	54,898.00
Amough Engineers	213,283.00
Archana Equipments & Technologies	11,420.00
Athullya	10,816.00
Avanthika Interior System (P) Ltd	9,240.00
B.E.Billimoria & Co. Ltd.	13,966,867.00
Carriers Aircon Ltd	44,992.00
Essenco	3,815.00
Exclusive Furnishers	16,200.00
Fins Engineers	3,488,738.00
Floor of the World	46,899.00
GEFAB	45,415.00
G Jayachandran	15,554.00
Godrej & Boyce	26,400.00
Hi-cons Building Products	97,126.00
K N Sivasankaran	3,261.00
KONE Elevators India (P) Ltd	1,459,260.00
KPGM Ventures	143,399.00
K R Ashokan	40,676.00
Kriticons	1,182,329.00
Lee Builders	475,883.00
Michael & Micheal Pipes	9,052.00
Multi Sales ,Kochi	650.00
Nest System Pvt Ltd	123,599.00
N R Jasani	33,656.00
Powerica Ltd	438,331.00
Prabhu Envirotech	134,744.00
Prayukti Power Ltd	18,627.00
Sabu M M	6,635.00
Service and Trade ,Kaloor	2,655.00
Siemens Ltd.	4,501,840.00
Sign Design ,Narakkal	5,625.00

Square Feet	1,835.00
Sunny.N.K	8,284.00
Suresh Engineering	24,399.00
Technopower Engineering Co.	51,764.00
Terrafirm Projects P Ltd	15,970.00
Universal Catering & Kitchen Equipments	115,906.00
Vellapally Brothers	26,614.00
Vijaya Construction	511,094.00
Vijaya Eletech	450,134.00
Woodmanns	342,895.00
<b>TOTAL</b>	<b>33,923,721.00</b>

## ANNEXURE C/4(Refer Article 6.2 , Article 6.6)

<b>Rental Details-Infopark</b>					
Sl no.	THAPASYA Company Name	Initial Lease	Area(Sq ft)	Rent/month(Rs)	Lease Expiry Date
1	Dimension Cybertec Pvt Ltd	1/1/2004	2,748	43,968.00	1/9/2006
2	ART Technologies	15/4/04	2,535	29,710.00	14-02-2006
3	SIFY	15/2/04	437	5,462.00	23-07-2006
4	C-DAC	GOK	3,109	0.00	GOK
5	STPI	12/10/2001		0.00	11-10-2007
6	Bharathi Telesonic	18/1/03	876	7,200.00	17-10-2005
7	BSNL	18/01/03	1,435	7,200.00	17-1-2006
8	IBS	21/3/05	12,200	298,900.00	20-02-2006
9	Canteen	1/8/2005	5,562	15,000.00	31-07-2006
10	Calpine Technologies(Previously ARYS)	1/10/2004	2,748	67,326.00	31-07-2006
11	Charter BPO	15/9/04	5,562	136,269.00	14-07-2006
12	Genfocus	24/10/200	2,748	17,065.00	30-09-2006
13	AITS		6,943	86,729.00	Legal process
14	Calpine Technologies (SBC-1)	1/5/2004	625	14,385.00	31-07-2006
15	Systalent(previously Exyst Inc.) (SBC-1)	18/5/05	498	11,465.00	28-02-2006
16	Vanilla Networks (SBC-1)	2/5/2004	736	16,949.00	28-02-2006
17	Indigo Concepts (SBC-1)	30/3/05	659	15,177.00	01-02-2006
18	Cool Minds (SBC-1)	5/4/2004	733	16,871.00	03-02-2006
19	Ditro (SBC-1)	24/2/05	746	13,963.00	23-01-2006
20	Vanilla Networks (SBC-1)	15/8/05	750	17,262.00	14-06-2006
21	Iormix (SBC-1)	1/6/2005	662	15,361.00	30-04-2006
22	Promix Outsourcing pvt Ltd (SBC-1)	1/8/2004	495	11,392.00	31-05-2006
23	Armia systems (SBC-1)	6/4/2004	629	14,476.00	05-02-2006
24	IDSi (SBC-2)	10/12/2004	1,133	32,209.00	8/10/2006
25	vFortress (SBC-2)	7/1/2005	1,163	33,062.00	05-11-2006
26	Ditro (SBC-2)	22/12/05	1,163	33,062.00	22-10-2006
27	Exor India (SBC-2)	1/1/2005	1,163	33,062.00	29-10-2006

28	Jacobsons BPO (SBC-2)	16/12/05	1,537	43,694.00	14-10-2006
29	Amlaki (SBC-2)	2/5/2005	1,537	43,694.00	05-11-2006
30	Infogenie ITAS (P) Ltd	1/10/2004	3,644	29,954.00	Dispute
31	TechSpine	8/3/2005	1,852	15,223.00	07-02-2006
32	Popular E-solutions	1/4/2005	2,748	29,459.00	31-01-2006
33	ACS	1/1/2005	5,644	152,388.00	29-10-2006
34	Wipro Infotech	19/7/04	6,200	136,400.00	19-05-2006
35	Wipro Technologies	1/1/2005	5,756	126,632.00	29-10-2006
36	Bharathi Cellular (Mobile BTS)	30/7/05	455	3,740.00	29-07-2010
37	BPL Mobile (Mobile BTS)	1/7/2005	500	10,000.00	30-06-2008
38	EcommIT Labs	27/1/05	5,478	45,029.00	26-01-2008
39	Ind-Sigma Infotech	13/6/05	4873	70,659.00	12-06-2010
40	UTI-ATM	13/1/05	86	721.00	12-01-2014
41	UBI-ATM	1/3/2005	100	2,000.00	28-02-2010
42	Reliance	28/10/05	300	6,000.00	27-10-2008
43	OPI Global (Temporary facility)	1/6/2005	2155	129,300.00	24-11-2005 (terminated)
44	Shop	1/2/2005	100	750.00	30-11-2006
45	SBT-ATM	1/3/2005	100	2,000.00	28-02-2008
				<b>1,700,397.00</b>	
	<b>VISMAYA</b>				
46	Tata Consultancy Services	25/5/05	52500	1,023,750.00	11-01-2010
47	Wipro Ltd	16/4/05	26300	710,100.00	30-04-2008
48	ACS	26/4/05	26350	487,475.00	30-04-2010
49	ACS	25/11/05	26350	553,350.00	24-11-2010
				<b>2,774,675.00</b>	
				<b>4,475,072.00</b>	

### ANNEXURE D(Refer Article 6.5.3)

Sl.No.	Description of Work	Probable amount of contract (Rs in Million)	Payment upto 31-3-2005 (approx) (Rs in Million)	Balance to be paid (3-4) (Rs in Million)
1	2	3	4	5
<b>1</b>	<b>Vismaya - New IT Building</b>			
(i)	Piling	12.5	12.5	Nil
(ii)	Superstructure (BEBL contract)	241	169.4	71.6
(iii)	Additional steel claimed by BEBL	Nil	Nil	Nil
(iv)	Roof top Cafeteria (BEBL) - Structural work	4.5	3.1	1.4
(v)	Airconditioning (ABB)	74.5	37.2	37.3
(vi)	Lift (Kone)	12.7	6.1	6.6
(vii)	Sewage Treatment Plant(Prabhu Env.)	1.7	0.2	1.5
(viii)	Diesel Tank	Nil	Nil	Nil
(ix)	Cafeteria Fitout & Base Kitchen	4.9	Nil	4.9
	<b>Sub-Total 1</b>	<b>351.8</b>	<b>228.5</b>	<b>123.3</b>
<b>2</b>	<b>Thapasya' - SDF Building</b>			
(i)	Modification & Fit out works	112.1	99.5	12.6
(ii)	500 KVA DG set & ATS	4.6	4.6	Nil
(iii)	750 KVA DG set	10.1	0.6	9.5
	<b>Sub Total 2</b>	<b>126.8</b>	<b>104.7</b>	<b>221</b>
<b>3</b>	<b>Power Distribution</b>			
(i)	Siemens Contract	44	32.9	111
(ii)	Cable Trench	9.1	9.1	Nil
	<b>Sub Total 3</b>	<b>53.1</b>	<b>42</b>	<b>111</b>
<b>4</b>	<b>Landscaping</b>			
(i)	Phase I	2.2	2	0.2
(ii)	Phase II	2	1.8	0.2
(iii)	Perimeter Fencing	3.8	0.5	3.3
(iv)	Car Parking for 'Vismaya'	Nil	Nil	Nil
(v)	Sewage Treatment Sump	Nil	Nil	Nil
(vi)	Road - Black topping, signages	2.2	1.8	0.4
	<b>Sub Total 4</b>	<b>10.2</b>	<b>6.1</b>	<b>4.1</b>
<b>5</b>	<b>Misc.</b>			
(i)	First floor fitout (Vismaya)	Nil	Nil	Nil
(ii)	Consultancy fees	20	11.8	8.2

(iii)	Establishment Project			
	Management & Promotional Activities	24.2	24.2	Nil
(iv)	AMC, Security, Salaries (six months)	Nil	Nil	Nil
	<b>Sub Total 5</b>	<b>44.2</b>	<b>36</b>	<b>8.2</b>
<b>6</b>	<b>Internal roads and drains</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>
<b>7</b>	<b>Contingency</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>
	<b>Grand Total</b>	<b>58.61</b>	<b>41.73</b>	<b>16.88</b>
	<b>Total committed - Rs.586.1 Million</b>			
	<b>Total spent - Rs.417.3 Million</b>			



## **GOVERNMENT OF KERALA**

### **Abstract**

Information Technology Department - Setting up of Smart City at Kochi - Draft Agreement Approved - The Chief Secretary on behalf of Government of Kerala and the Chief Executive Officer, Infopark on behalf of Infoparks Kerala authorized to sign the Agreement - Orders issued

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### **INFORMATION TECHNOLOGY (A) DEPARTMENT**

G.O. (Ms) No.10/2006/ITD.

Dated, Thiruvananthapuram: 02.03.2006

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*Read:- (1) G.O. (Ms) No. 04/2006/ITD dated 15.02.2006.*

*(2) Proceedings dated 01.03.2006 of the Council of Ministers.*

### **ORDER**

Government of Kerala entered into a Memorandum of Understanding with the Dubai Technology and Media Free Zone Authority (TECOM) Emirates of Dubai, on 09.09.2005 for setting up "Smart City", an IT/ITES Township at Kochi as a Joint Venture. After several rounds of negotiations between the parties, an Agreement was drafted.

2. Meanwhile, Shri. V.P. Vasudevan, General Secretary, Adhinivesa Prathirodha Samithy approached the Hon'ble High Court with a prayer to keep the signing of agreement in abeyance. The Hon'ble High Court while dismissing the petition, directed the Government to examine the draft agreement in the light of the contentions raised by the petitioner through a person well versed with the subject matter of the agreement and obtain clearance before signing the Agreement. As per the Government Order read as first paper above a Committee was constituted to examine the issues raised by the petitioner and clear the draft agreement. The Committee in its report cleared the draft agreement.

3. Government have examined the draft Agreement in detail and are pleased to approve the draft Agreement (version 6.3) appended to this order, to be signed between Government of Kerala, Dubai Technology and Media Free Zone Authority (TECOM), Smart City (Kochi) Infrastructure Private Limited and Infoparks Kerala. Government are also pleased to authorize the Chief Secretary on behalf of Government of Kerala and the Chief Executive Officer, Infopark on behalf of Infoparks Kerala to sign the Agreement on 8<sup>th</sup> March, 2006 with Dubai Technology

and Media Free Zone Authority (TECOM) and Smart City (Kochi) Infrastructure Private Limited at Thiruvananthapuram.

By Order of the Governor

**P. H. KURIAN**  
**SECRETARY TO GOVERNMENT**

To:

The Chief Secretary, Government of Kerala.  
The Chief Executive Officer, Infoparks Kerala.  
The Director, Smart City (Kochi) Infrastructure Private Limited.  
The Director General, Dubai Technology and Media Free Zone Authority,  
Emirates of Dubai.  
The Accountant General (A&E)/ (Audit), Kerala, Thiruvananthapuram.  
The Director, Kerala State IT Mission.  
The Managing Director, KINFRA.  
The Finance Department (U O No: 14536/ExpA2/06/Fin)  
The Law Department (U O No: 4052/G1/06/Law, UO No. 5257/G1/06/Law)  
The Revenue Department.  
The Industries Department.  
The GA (SC) Department  
Office Copy/ Stock file

FORWARDED/BY ORDER

SECTION OFFICER