

## LAND LEASE AGREEMENT

THIS LEASE AGREEMENT (the “Agreement”) is made on [\*\*\*\*] (“Signing Date”) at [\*\*\*\*] by and between:

- (1) **SUPSUMPHAN CO., LTD.**, a private limited company duly organized and validly existing under the laws of Thailand, with its registered office at No. 557 Rim Klong Samsen Road, Bang Kapi Sub-district, Huai Khwang District, Bangkok, Thailand (“Lessor”); and
- (2) **DARIA DATA CENTRE AND CLOUD SERVICES CO., LTD.**, a private limited company duly organized and validly existing under the laws of Thailand, with its registered office at 1788, Singha Complex, 30th Floor, Unit 3001-3003, 3009-3014, New Petchaburi Road, Bangkok Sub-district, Huai Kwang District, Bangkok (“Lessee”),

(The Lessor and the Lessee are hereinafter collectively referred to as the “Parties” and individually as a “Party”.)

## BACKGROUND

- A. The Lessor is the legal owner of the Land (as defined below).
- B. The Lessee is in the business of [development and provider of digital infrastructure and data centers] and wishes to establish its first data center in Thailand.
- C. The Parties have agreed to enter into this Agreement with respect to the lease of the Land (as defined below) for the purpose and period as stipulated in this Agreement.

## AGREED TERMS

## 1. LEASE OF THE LAND

1.1. ~~The~~Lease of the Land

~~Subject to~~Subject to the fulfillment (or waiver thereof) of the Conditions Precedent and upon the terms and conditions of this Agreement, the Lessor leases and transfers the possession to the Lessee (or its designated person or entity), which accepts and take possession of the land plots situated in Huai Khwang District, Bangkok, having total area of ~~approximately~~ [8,000] square meters represented by seven land title deeds, the details of which are as specified in Annex 1 of this Agreement (“Land”). ~~[Comment to Damac: The land as defined 1 and 2 will be partially leased under this Agreement, not the entire land plots.](the “Land”).~~

Without prejudice to Article 7 and to Clause 16.2, it remains also agreed and understood that the Lessee shall have the right to designate in writing one or more of its Affiliates as lessee of the Land, in this case the designated Affiliate shall benefit from all the rights and shall bear all the obligations under this Agreement pertaining to the Lessee, for the avoidance of any doubt the assignment shall constitute – and it will be considered and interpreted as – a novation of the Lessee, and accordingly the assignor will be released from any and all the obligations arising from this Agreement, and the designated lessee will be the Lessee for the purpose of this Agreement.

For the Purpose of this Agreement “Affiliate” means: (i) a company directly or indirectly Controlling, Controlled by, or under common Control with the Lessee; and/or (ii) a fund and/or a trust managed by the Lessee and/or by a person which is ultimate beneficial owner of the Lessee. For this purpose, “Control” means holding the majority of the voting rights in a company’s shareholders’ general meeting and/or the right to appoint or dismiss the majority of the members of such company’s board of directors elected by the shareholders’ general meeting; the terms “Controlled” and “Controlling” shall have a meaning consistent with that of Control.

## 1.2. Use of the Land

The Parties agree that during the Lease Period (as defined below), the Lessee shall be entitled to use the Land for the purpose of ~~constructing, developing, managing and operating~~ (i) a carrier and cloud data center ~~with a minimum IT load of 10 MW (“Data Center”); and/or any other complimentary and/or ancillary businesses, including, but not limited, ancillary administrative or other support services, or for the relevant construction and operation of Data Center building(s)(the “Data Center”); and (ii) commercial, office and/or warehouse buildings,~~

including ancillary administrative or other support services, for the construction and operation of the same, or for any other ancillary purposes, as the Lessee deems appropriate at its sole discretion (“the **Lease Purpose**”). ~~[Comment to Damac: Proposed to amend the lease purpose to be in line with the LOI]~~

If, during the Lease Period, there is a change in the data center technology, and there is a similar facility or technological successor to a Data Center, the Lessee may use the Land for the purpose of developing, managing, and operating business utilizing such new technology without obtaining prior consent from the Lessor.

The Lessee has the right to improve or alter the condition of the Land in any way whatsoever, including, without limitation, erecting on the Land any such buildings or structures ~~“(the **Building**)”~~ as may be required for the achievement of the Lease Purpose. The Building once constructed shall become the full and ~~exclusive~~ property of the Lessee without the need to enter into any other agreement or deed whatsoever and without the payment of any sum of any kind whatsoever.

Without prejudice to the above, the Lessor agrees to take such required and pertinent steps (including signing such documents) as may be requested by the Lessee to enable the Lessee to use the Land in line with the Lease Purposes. ~~[Comment to Damac: The land owners do not allow Damac to mortgage the building throughout the period of lease agreement.], including the obtainment and/or a granting of any security interest over the Building.~~ [Note to Landlord: Please see our proposed mechanism in Clause 13]

## 2. LEASE TERM AND RENEWAL OPTION

2.1. The lease ~~period~~ under this Agreement shall ~~start from the first day~~ comprise of the ~~calendar month immediately~~ following:

(a) The lease period starts from the date in which ~~the all~~ Conditions Precedent have been fulfilled or waived pursuant to Clause 9, ~~(the “**Rent-Free Lease Start Date**”).~~ The lease period shall initially be 30 years commencing from until the first day of the calendar month immediately following the 18<sup>th</sup> (eighteenth) month anniversary of the Rent-Free Lease Start Date (the “**Rent-Free Lease Period**”); and

(b) The lease period starts from the day immediately following the expiry of the Rent-Free Lease Period (the “**Lease Start Date**”) up until but excluding the 30<sup>th</sup> (thirtieth) year anniversary of the Lease Start Date (the “**Main Lease Period**”).

(The Rent-Free Lease Period and the Main Lease Period shall be collectively referred to as “**Lease Period**”).

### 2.1.2.2. Renewal Option.

(a) Upon the expiry of the Lease Period, the Lessor irrevocably grants the Lessee an option to renew the lease of the Land, for a period of 30 (thirty) years immediately following the expiration of the Lease Period (“**Renewal Lease Period**”) unless the Parties agree otherwise. The Lessee may exercise the renewal option specified in this Clause 2.2(a) for the Renewal Lease Period by notifying the Lessor at least ~~[90] days~~ 24 months prior to the expiration of the Lease Period (**“Renewal Notice”**); the renewal of this Agreement (and the Agreement is renewed in such a case) on the same terms and conditions ~~of this Agreement~~, except for the ~~gratuity~~ Gratuity and ~~rental~~ the Annual Rent which shall be determined by an independent primary third party expert of international standing (the “**Valuer**”) to be appointed by the Parties ~~shall mutually discuss and agree to reflect~~ for the purpose of determining the value of the Annual Rent for the Renewal Lease Period and the amount of the Gratuity on the basis of the market value of the Land use (but excluding the Building) and the expected inflation rate during the renewal such period. The renewal term ~~It being understood that, should the Parties fail to agree on the appointment of the Valuer within 30 days from the date of the Renewal Notice, the latter shall be for a period of 30 (thirty) years immediately following the expiration of the Lease Period (“**Renewal Lease Period**”) unless the Parties agree otherwise. appointed by the [SIAC (Singapore International Arbitration Center)], upon request of the Lessee.~~

(b) The Valuer shall perform its mandate in the interest of both Parties, in a diligent and fair manner and in good faith, applying the evaluation criteria usually applied – according to the best international market practice - for the determination of the rent and gratuity for lands rented for commercial purposes, as well as in accordance with applicable laws and with the provisions of this Agreement. The Valuer shall also take into account any reasonable comment and remark provided in writing by the Parties and shall render to both Parties its written and justified assessment of the new Annual Rent and of the new Gratuity within [●] Business Days following the date of acceptance of its mandate. The Valuer's assessment of the new Annual Rent and of the new Gratuity shall be final and binding upon the Parties. The Valuer's fees shall be shared equally between the Parties.

(c) Upon ~~completion~~receipt of ~~agreement~~the Renewal Notice as specified in Clause 2.2 (a), the Lessor shall, as soon as practicable but no later than 3 (three) Business Days following the determination of the new Annual Rent and of the new Gratuity from the Valuer, jointly with the Lessee (or its designee) register the lease of the Land for the Renewal Lease Period.

~~3. [Comment to Damac: The gratuity and rental of the renewal term needs to be agreed upon the parties prior to renewal]~~**RELEASE OF LAND**

### **3. RELEASE OF LAND**

3.1. The Lessor agrees to release and grant the possession of the Land to the Lessee on the Rent-Free Lease Start Date, free and clear of any Encumbrances (as defined below), occupiers, constructions (including building and/or structures) and/or legal claim whatsoever that may prevent the use of the Land pursuant to the Lease Purpose, and in the condition that is proper, suitable and fit for the Lease Purposes.

~~3.2. The Lessor represents and warrants that at the Rent Free Start Date the Land is in the condition that proper, suitable and fit for the Lessee to, or procure any other person and/or entity to, commence construction works of the Building on the Land.~~

### **4. LEASE REGISTRATION**

4.1. Unless agreed otherwise by the Parties in writing, on the Rent-Free Lease Start Date or the first Business Day following the Rent-Free Lease Start Date, the Lessor and the Lessee shall register the lease of the Land for the Main Lease Period ~~ewith~~ with the relevant office of the land department and shall do anything to comply with the applicable laws of Thailand or as directed by the office of the land department to give full effect to the lease of the Land.

4.2. The Lessee shall be responsible for registration fees and stamp duties in relation to the registration of the lease of the Land at the relevant office of the land department

4.3. The Parties shall use all best endeavors, in good faith, to cooperate with each other Party to ensure the validity and enforceability of this lease throughout the Lease Period.

### **5. RENTAL**

5.1. During the Main Lease Period and subject to the terms of this Agreement, the Lessee shall pay the Lessor an annual rent of 17,000,000 Thailand Bath (seventeen million THB) (the “Annual Rent”) to be paid in ~~monthly~~quarterly installments in advance, no later than ~~the [fifth~~the 15<sup>th</sup> (fifteenth) day] of the beginning of each ~~month~~Calendar Quarter, by transferring to the Lessor's bank account having details as to be notified by the Lessor in writing at least 30 (thirty) days prior to the date for payment, provided that:

(a) the first quarterly payment of the Annual Rent shall be a prorated amount of quarterly installment applicable to the period from the Lease Start Date until the next quarterly payment; and

(b) the last quarterly payment shall be a prorated amount of quarterly installment applicable to the period from the beginning of the last applicable Calendar Quarter until the termination date of this Agreement.

If a due date for any payment is not a Business Day, such payment shall then be due and paid on the next Business Day. ~~[Comment to Damac: Proposed change to be in line with LOI]~~

For the purpose of this Agreement, “**Business Day**” means any day other than a Saturday or Sunday on which commercial banks are open for general business in Dubai and Thailand; and, “**Calendar Quarter**” means the respective periods of 3 (three) consecutive calendar months beginning 1<sup>st</sup> (first) of January, April, July, and October of each year.

~~5.1-5.2.~~ Within [3 days] after a ~~monthly~~quarterly payment of the Annual Rent has been duly deposited into the Lessor’s bank account, the Lessor must deliver the original executed receipts, confirming receipt of the payment from the Lessee, in a form reasonably acceptable to the Lessee.

~~5.2-5.3.~~ The Lessor agrees that the Lessee may withhold any such withholding tax as may be required by law from each amount of Annual Rent that is paid under this Agreement.

~~5.3-5.4.~~ ~~The~~For the avoidance of doubt, the Parties agree that no rent shall be payable by the Lessee to the Lessor ~~in the period from the Lease Start Date until for the last day of the eighteenth (18<sup>th</sup>) month following such date (the “Rent-Free Lease Period”).~~ Such circumstance was taken into account in the overall assessment of the terms and conditions of this Agreement. ~~The first monthly payment of the Annual Rent shall be a prorated amount of monthly installment of the Annual Rent applicable to the period from the lapse of Rent-Free Period until the next monthly payment.~~

~~5.4-5.5.~~ From the 6<sup>th</sup> anniversary of the Lease Start Date and for every 5 years thereafter until termination of this Agreement, the Annual Rent will be increased in the amount equal to 5% of the rent amount of the previous year.

~~6. [Comment to Damac: Proposed to delete this clause because the owner cannot accept this as they already handed over the land to Damac. Thus, the force majeure should be the risk of operation of Damac and cannot cease the payment of rental to the land owners.]~~ **GRATUITY**

#### 6. Subject to Lease **GRATUITY**

~~Within 5 Business Days after the Rent Free Start Date on and subject to the date that registration of the Lease has been duly registered~~Lease with the land department in accordance with Clause 44], the Lessee must pay to the Lessor the amount of THB .....260,000,000 (two hundred and sixty million Thai Baht) (the “**Gratuity**”) by wire transfer to the Lessor’s bank account instructed by the Lessor at least 5 Business Days prior to the ~~Lease Start Date~~payment date. Unless stipulated otherwise in this Agreement or agreed in writing by the Parties, the Gratuity is non-refundable. ~~[Comment to Damac: Proposed to discuss internally between the Parties]~~

### **7. SUBLEASE**

7.1. The Lessee may sublease or grant the right to use the Land, wholly or partially, to any parties which is an Affiliate of the Lessee, without prior written consent of the Lessor without additional charge or rent. ~~[Comment to Damac: Proposed to amend this clause to reflect the LOI]~~

7.2. In case of a sublease, the Lessee shall procure that the Land must be used by the relevant sub-lessee for the Lease Purpose.

7.3. The Lessee and its sub-lessee shall have in any case the right, without notifying the Lessor or obtaining the Lessor’s consent, to enter into subleases, or any other similar agreements (collectively a “**Third Party Agreement**”) with their customers, suppliers, service providers or other third parties in order to avail themselves of the services provided by the Lessee, or for the purpose of development, management and operation of the businesses set out in Clause 1.2 so long that the Third Party Agreement shall not have a term longer than the Total Lease Period. ~~[Comment to Damac: If it is not the sublease of land to third party, there should be fine for the land owners].~~

~~8. **RIGHT OF FIRST OFFER** [Comment to Damac: The owners would like to simply this clause by proposing an option to the lessee to purchase the land plots at any time they want to sell the land regardless of whether there is a third party purchaser or not. If the lessee refuses to purchase the land, the lessor is entitled to sell the land to any third party at the price that both parties agree to.]~~

### 8. **RIGHT OF FIRST OFFER AND RIGHT OF FIRST REFUSAL**

- 8.1. If, at any time, the Lessor wishes to sell all or any part of the Land ("**Sale ROFO Land**") to any third party ~~purchaser ("Third-Party Purchaser")~~, prior to entering into negotiations with any third party, the Lessor must first offer to sell such **Sale ROFO Land** to the Lessee by notifying the Lessee in writing ("**Offer ROFO Notice**"). The **Offer ROFO Notice** shall contain the details of the **Sale ROFO Land**, the ~~identity of the Third-Party Purchaser, the proposed~~ price of the **Sale ROFO Land** and other terms and conditions ~~offered/proposed~~ by the ~~Third-Party Purchaser/Lessor~~.
- 8.2. Within 60 days ~~off from~~ the **Offer ROFO Notice**, the Lessee is entitled, but is not obliged, to serve a confirmation notice ("**Confirmation Notice**") to the Lessor confirming that it wishes to purchase or designate a qualified purchaser ("**Lessee's Designated Purchaser**") to purchase the **Sale ROFO Land** at the offered price and upon the terms specified in the **Offer ROFO Notice**. In this regard, the Lessee shall be entitled to designate a purchaser that is a Thai majority owned entity(ies) and/or a Thai citizen(s) to acquire the ROFO Land in accordance with applicable laws.
- 8.3. Subject to Clause 8.4, if the Lessee rejects the ROFO Notice in writing or does not serve the Confirmation Notice within the period specified under Clause 8.2, the Lessor shall be entitled to offer the ROFO Land to a third party purchaser, provided that the sale shall be for a price not lower than the price specified in the ROFO Notice and on terms and subject to conditions no more favorable than those specified in the ROFO Notice.
- 8.4. If, at any time in case the Lessee has not purchased the Land in accordance with Clause 8.1, the Lessor proposes to transfer or sell all or any part of the Land ("**Sale Land**") to a third party purchaser ("**Proposed Transfer**"), prior to entering into any definite agreement in relation to the Proposed Transfer with a third party purchaser ("**Third Party Purchaser**"), then the Lessor shall promptly give the Lessee written notice of the Proposed Transfer (the "**ROFR Notice**"). The ROFR Notice shall contain the terms of a third party offer that the Lessor is prepared to accept including the details of the Sale Land, the identity of the Third-Party Purchaser, the price of the Sale Land and all the other terms and conditions offered by the Third-Party Purchaser.
- ~~8.2-8.5.~~ Within 60 days of the ROFR Notice, the Lessee is entitled, but is not obliged, to serve a Confirmation Notice to the Lessor confirming that it wishes to purchase or designate the Lessee's Designated Purchaser to purchase the Sale Land at the offered price and upon the terms specified in the ROFR Notice. In this regard, the Lessee shall be entitled to designate a purchaser that is a Thai majority owned entity(ies) and/or a Thai citizen(s) to acquire the Sale Land in accordance with applicable laws.
- ~~8.3-8.6.~~ If the Lessee rejects the **Offer ROFR Notice** in writing or does not serve the Confirmation Notice within the period specified under Clause ~~8-28.5~~, the Lessor shall be entitled to sell the Sale Land to the Third-Party Purchaser, provided that such sale shall be completed within [90 days] of the **Offer ROFR Notice** and at ~~a price not less than the price and on~~ terms and ~~subject to~~ conditions ~~no more favorable than those specified reported~~ in the **Offer ROFR Notice**. It remains in any case agreed and understood that the Lessor shall not complete the transfer of the Sale Land unless the Third-Party Purchaser enters into an adherence agreement, in a form satisfactory to the Lessee, to become a party to this Agreement as the Lessor.
- ~~8.4-8.7.~~ Upon the Confirmation Notice is given by the Lessee of its intention to buy or designate the Lessee's Designated Purchaser to buy the **ROFO Land or the Sale Land** ~~(as the case may be)~~ from the Lessor, the Parties shall cause a written sale agreement to be executed and effect the registration of the transfer of the **ROFO Land or the Sale Land** ~~(as the case may be)~~ with the land department as soon as practicable but no later than [14] Business Days of the date of the Confirmation Notice ("**Transfer Registration Date**").
- ~~8.5-8.8.~~ For the settlement of the sale price of the **Sale ROFO Land** ~~or the Sale Land~~ ~~(as the case may be)~~ in the event that the Parties agree to buy and sell the **respective ROFO Land or the Sale Land** under ~~clause~~ **Clause 8.78-47**, the Lessor agrees to allow the Lessee to deduct the amount of the Gratuity in proportion to the remaining Lease Period of the **ROFO Land or the Sale Land**, ~~(as the case may be)~~, calculated from the date of Confirmation Notice up to the date that the Lease Period should have been expired, from the sale price of the **respective ROFO Land or the Sale Land** that is payable to the Lessor by the Lessee.



~~8.6.8.9.~~ In the event that the ROFO Land or the Sale Land transferred to the Lessee or the Lessee's Designated Purchaser pursuant to Clause 8.78.47 constitutes all the leased Land under this Agreement, the Parties shall enter into a novation agreement to novate all rights and obligations of the Lessor under this Agreement to the Lessee or the Lessee's Designated Purchaser. In this regard, the Lessor shall be entitled to receive the pro rata Annual Rent until the Transfer Registration Date. The Lessor shall return any Annual Rent received by it for the period after the Transfer Registration Date to the Lessee or the Lessee's Designated Purchaser.

~~8.7.8.10.~~ In the event that the ROFO Land or the Sale Land transferred to the Lessee or the Lessee's Designated Purchaser pursuant to Clause 8.78.47 constitutes parts (and not all) of the leased Land under this Agreement, the Parties shall discuss in good faith on the proportionate reduction of the Annual Rent under this Agreement to reflect the reduction in the Land area. The Parties shall enter into any necessary document or agreement to evidence the agreed Annual Rent reduction-~~1~~.

## 9. CONDITIONS PRECEDENT

- 9.1. The obligation of the Lessee to take on the lease and the possession of the Land contemplated under this Agreement shall be subject to the conditions precedent as stipulated in Annex 2, which are for the benefit of the Lessee ("**Conditions Precedent**") being fulfilled and/or waived on or before the Long Stop Date.
- 9.2. The Lessor shall use all commercially reasonable endeavors, in good faith, within their respective powers, to ensure the satisfaction of the Conditions Precedent set out in Annex 2, as soon as practicable on or before ~~the date failing 6 (six) months after the date of this Agreement~~ (the "**Long Stop Date**"), and none of the Parties and their representatives takes any action that could reasonably be expected to adversely affect the satisfaction of the Conditions Precedent. ~~[Comment to Damac: Please determine the time for Long Stop Date for consideration of the Land Owners]~~
- 9.3. If at any time any of the Lessor becomes aware of any event, circumstance or condition that would be reasonably likely to prevent or delay a Condition Precedent from being satisfied, the Lessor shall promptly and without undue delay inform the Lessee..
- 9.4. The Lessee may, upon its sole discretion and to such extent as it thinks fit and is legally entitled to do so, waive in whole or in part any of the Conditions Precedent by giving notice in writing to the Lessor.
- 9.5. If each Condition Precedent is not fulfilled or waived by Lessee on or before the Long Stop Date, this Agreement shall be automatically terminated in accordance with Clause 13 without any further action by any of the Parties, except that any rights, obligations or liabilities of any of the Parties which had accrued prior to such termination date shall not be affected.

## 10. REPRESENTATION AND WARRANTIES

- 10.1. The Lessee hereby represents, warrants and covenants to the Lessor that as ~~follows as~~ at the date of this Agreement, at the Rent-Free Lease Start Date, and at the Lease Start Date, and, if applicable, the lease renewal date:
  - (a) it is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation, and has all necessary corporate power and authority and all requisite governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Agreement;
  - (b) its execution and performance of this Agreement will not give rise to a breach of any applicable laws or its memorandum and articles of association or any contract by which it or its assets is bound;
  - (c) there are no actions, suits, proceeding or investigations, pending or, to the best of its knowledge, threatened, that will have a material adverse effect on its ability to fulfill its obligations under this Agreement; and
- 10.2. The Lessor hereby represents, warrants and covenants to the Lessee that as ~~follows as~~ at the date of this Agreement, at the Rent-Free Lease Start Date, at the Lease Start Date, and if applicable, the lease renewal date:

- (a) it is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation, and has all necessary corporate power and authority and all requisite governmental licenses, authorizations, consents and approvals to execute, deliver and perform its obligations under this Agreement;
- (b) its execution and performance of this Agreement will not give rise to a breach of any applicable laws or its memorandum and articles of association or any contract by which it or its assets is bound;
- (c) there are no actions, suits, proceeding or investigations, pending or, to the best of its knowledge, threatened, that will have a material adverse effect on its ability to fulfill its obligations under this Agreement;
- (d) it is in compliance with the requirements of all laws and all order, writs, injunctions and decrees applicable to it or its business, except in such instances in which: the failure to so comply, either individually or in the aggregate, will not have an adverse effect to its performance of this Agreement;
- (e) it has full legal ownership of the Land and has full authority and right to grant the lease and all renewals thereof on the terms and conditions of this Agreement;
- (f) the Land is not subject to expropriation, and it is free and clear from, occupancy, or any Encumbrances of any nature and kind to any third party, and there is no actions, suits, proceeding or investigations, pending or, threatened on or in connection with the use of the Land by any person or governmental authority and that the Lessee may enjoy the possession and use of the Land according to the Lease Purposes without third-party disturbances or eviction; for the purposes of this Agreement **"Encumbrances"** means any mortgage, pledge, non-disposal undertaking, escrow, charge (whether fixed or floating), lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect, option, pre-emptive right, adverse claim, title retention agreement, conditional sale agreement, co-sale agreement, trust (other title exception of whatsoever nature) or other encumbrance of any kind, or a contract to give or refrain from giving any of the foregoing.
- (g) ~~[Comment to Damac: Proposed to delete the above clauses from zoning of the agreement. The Lessee should check Land is suitable for construction and confirm them by itself.]~~ operation of a Data Center and the Land is in compliance with the applicable zoning law and town planning law;
- (h) the Land has or is able to have access to electricity and power connection. water supply, other telecommunications services including fiber connectivity and any other utilities that are deemed necessary and adequate for the Lease Purpose; and
- (i) the Land is and will be free from any contamination and is not subject to any environmental legal liabilities. **Comment to Landlord: Propose to bring back to align with the LOI**

## 11. LESSEE'S COVENANTS AND UNDERTAKINGS

- 11.1. On the ~~Lease~~Ren-Free Start Date and throughout the Lease Period and any renewal thereof, the Lessee covenants and undertakes to fully perform and comply with all of the following provisions:
- (a) the Lessee must and shall procure sub-lessee to use the Land in accordance with the Lease Purpose;
  - (b) ~~The~~the Lessee must pay for all charges for electricity and power, water supply, and other telecommunication services, wastewater treatment, maintenance and utilities supplied to it at the Land directly to the relevant service providers including any security deposit additionally required by them;
  - (c) the Lessee must not do or permit to be done any act or thing in the Land which is illegal or immoral; and

- (d) the Lessee must pay the any taxes imposed on the utilization of the Land (including the building and land tax), as per the assessment and collection carried out by the government.

## 12. LESSOR'S COVENANTS AND UNDERTAKINGS

12.1 On the Rent-Free Lease Start Date and throughout the Lease Period and any renewal thereof, the Lessor covenants and undertakes to fully perform and comply with all of the following provisions:

- (a) the Lessor must allow the Lessee to hold, occupy and enjoy the Land peacefully and quietly without any interruption or disturbance whatsoever from or by the Lessor, its representative or any third parties. The Lessor and its representative(s) must not intentionally inspect nor examine the Land without the prior written consent from the Lessee, unless there is an order of the court or of the authorized governmental officer for such inspection;
- (b) the Lessor must immediately notify the Lessee of any matters which might adversely affect the lease contemplated under this Agreement or the use of the Land by the Lessee pursuant to the Lease Purpose, or any event which might adversely affect the Lessor's ownership of the Land and in such a case it has to cause that the Lessee will not suffer any adverse effect from such matters and continue to hold, occupy and enjoy the Land peacefully and quietly without any interruption or disturbance whatsoever ;
- (c) the Lessor must not create or permit to create any Encumbrance of or on the Land;
- (d) the Lessor, in its capacity as the owner of the Land, must promptly take all necessary actions and execute all necessary documents as may be reasonably requested by the Lessee or any government authority, to allow the Lessee to:
  - (i) enjoy the possession and use of the Land according to the Lease Purposes;
  - (ii) access or connect with electricity, network and communication infrastructures or other facilities, which may be necessary for the Lease Purpose;
  - (iii) obtain the electricity meter, water supply meter and other utility meter;
  - (iv) registration for VAT needed for the normal business practice;
  - (v) obtain any construction permit or the permission in connection of the Land with Chaturathit Road;
  - (vi) obtain confirmation letter or construction permit from the competent authorities for the construction of Data Centre;
  - (vii) obtain all permission for connection of Soi Talay Bangkok with a public road;  
[Note to Landlord: These were moved from CPs]
  - (viii) obtain all permission and license required to use the Land according to the Lease Purposes; and
  - ~~(vii)~~(ix) perform any other actions as required to facilitate the Lessee's use, possession and occupancy of the Land under this Agreement-, including, but not limited, provision of any authorisation and/or consent of any kind whatsoever that is necessary in order to allow the Lessee to create any Encumbrance over the Building for the purpose of obtaining financing.

~~[Comment to Damac: The lessor will facilitate the lessee to request for all permission required to operate the Data Center]~~

## 13. PARTIES' COVENANTS AND UNDERTAKINGS

13.1. If the Lessee has not communicated the Renewal Notice in accordance with Clause 2.2 (a) above or in the other cases of termination of this Agreement in accordance with Clause 14.1 below, the Lessee shall: (a) remove and/or demolish any Building, infrastructure, or any immovable property constructed on the Land in accordance with a demolition plan prepared by the Lessee and communicated to the Landlord ("Demolition Plan"), and (b) deregister all Encumbrances registered over the Building on or before the expiration of the Lease Period.



13.2. If applicable, the Parties shall jointly use their best efforts to implement the Demolition Plan, including procuring all necessary consent to deregister the mortgage of Building before the expiration of the Lease Period.

13.3. The Lessee agrees to be responsible for the costs with respect to the deregistration of mortgage pursuant to Clause 13.1.

#### 14. EXPIRATION AND TERMINATION

14.1. This Agreement shall expire upon the following events:

- (a) the end of the Lease Period, without renewal, or, in case of renewal, at the end of the Renewed Lease Period;
- (b) mutual written agreement between the Parties;
- (c) by serving written notice in relation to the Force Majeure Event pursuant to Clause 14.4; ~~(Comment to Damac: The owners accepts the case of expropriation only, please amend)~~ 15.2
- (d) the Land or any part thereof is expropriated;

(d)(e) by serving the termination notice in writing by a non-defaulting Party, if any material breach or default by a Party of any of its obligations under this Agreement, including the falsity or inaccuracy in material respects of any representation and warranty made by that Party herein which is not remedied within [60 days] from the date of notice to that Party;

(e)(f) a legislative or governmental action shall have occurred or been taken which would prohibit the consummation of the lease of the Land or the use of the Land for the Lease Purpose; or

(f)(g) any of Conditions Precedent is not fulfilled on or before the Long Stop Date, except for any Condition Precedent that is waived in accordance with Clause 9.4.

14.2. Consequence of Termination

~~(a) Within [90 days] after the expiration or termination of the Agreement: (i) the Lessee shall promptly remove or demolish any Building, infrastructure, or any immovable property constructed on the Land and shall remove all its movable property, employees and representatives from the Building and the Land, provided in accordance with the Lessee shall be entitled to remove any Demolition Plan and deregister all furniture, fixtures and equipment (including any electrical wire, telecommunication equipment, from the Building; and (ii) deliver Encumbrances registered over the Building and the Land to the Lessor on an as-is basis.~~

(b)(a) ~~The Lessee shall not be responsible for removal or demolition of any Building, infrastructure, or any immovable property constructed on the Land and the Lessee is not responsible for any cost and expense in relation to such removal or demolition of the same, unless the Lessee notified in advance to the Lessor its intention to demolish the Building as well as any relevant infrastructure, or immovable property construed on the Land, before the termination at its costs and expenses, in such a case the Lessor shall not oppose to such demolition. [Comment to Damac: This should be the options for the Lessor to elect (1) to demolish the building or (2) to transfer the building free from any encumbrances. Please amend].~~

(e)(b) Upon termination of this Agreement, if the Lessee vacates the Land but fails to remove its ~~movable~~ property and belongings within [90/120 days] after expiration or termination of the Agreement, the legal ownership of any the Lessor's ~~movable~~ property and belongings shall be transferred to the Lessor, without cost or expense incurred to the Lessee.

(d)(c) Upon termination of this Agreement, each Party shall be released and discharged from its obligations under this Agreement other than the rights, obligations, claims or remedies hereunder or related hereto that may have subsisted or arisen prior to the termination of this Agreement or those which by the intention of this Agreement or the relevant provisions hereunder shall survive the termination hereof.

~~(e)~~(d) Notwithstanding anything to the contrary, upon the termination due to whatever reason not attributable to the fault of the Lessee, the Lessor must return to the Lessee, free of interest, the pro rata Gratuity in amount proportionate to the remaining Lease Period (i.e. 30 years) within [5] days of the termination. For illustration, *[insert sample calculation]*.

~~(f)~~(e) The obligations of the Parties under this Clause shall survive the termination or expiration of this Agreement.

~~15. [Comment to Damac: same as commented in the clause 5.6 and 13.1 (c).]~~**NOTICE**

## **15. FORCE MAJEURE**

~~15.1. Subject to the provisions hereof, the Lessee shall not be considered in default in the performance of its obligations hereunder to the extent that the performance of the same is delayed or prevented by a Force Majeure Event.~~

~~For the purposes of this Clause, "Force Majeure Event" shall mean any event the happening or pernicious result of which could not be prevented even though a person against whom it happened or threatened to happen were to take such appropriate care as might be expected from it in its situation and in such condition. [Note to Landlord: We have revised the definition and implication of "Force Majeure Event" to align with Thai CCC, please consider].~~

~~15.2. The Lessee whose performance is affected by a Force Majeure Event shall have the right, by giving notice to the Lessor to suspend performance of its obligations hereunder in whole or in part upon the occurrence of such Force Majeure Event, without any liability or cost whatsoever. It remains further agreed that if the Force Majeure Event continues for [•] months, the Lessee may terminate this Agreement by giving 15 days written notice to the affected Party.~~

## **16. NOTICE**

Any notice or other communication given or made under this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be sent by hand, registered mail, or electronic mail and shall be addressed to the addresses set out in this Clause ~~161516~~ or to such address as may be subsequently notified by these means as being its new address for receipt of notice. Any change of address shall be notified in writing to the other Party immediately.

Notices and other communications shall be deemed received if sent by hand at the time of delivery; if sent by registered mail after 3 Business Days from the date of registered posting; if sent by electronic mail at the time it is actually received by the recipient in readable form.

If to the Lessor:

### **SUPSUMPHAN CO., LTD**

Address: [No. 557 Rim Klong Samsen Road, Bang Kapi Sub-district, Huai Khwang District, Bangkok, Thailand.]

Telephone: [\*\*\*\*\*]

Email: [\*\*\*\*\*]

Attention: [\*\*\*\*\*]

If to the Lessee:

### **[DARIA DATA CENTRE AND CLOUD SERVICES CO., LTD]**

Address: ~~[~~No. 1788, Singha Complex, 30th Floor, Unit 3001-3003, 3009-3014, New Petchaburi Road, Bangkapi Sub-district, Huai Kwang District, Bangkok-~~]~~.

Telephone: [\*\*\*\*\*]

Email: [\*\*\*\*\*]

Attention: [\*\*\*\*\*]

**16.17. ASSIGNMENT**

- 15.16.1** The Lessor shall not be permitted to assign, transfer, or novate any of its rights or obligations under this Agreement to any other third party without the prior written consent of the Lessee.
- 15.16.2** Without prejudice to Clause 1.1 second paragraph and Article 7, the Lessee is free to assign, transfer or novate this Agreement and/or any of its rights or obligations under this Agreement to any other third party (including, but not limited to, Affiliates) without limitations.

**17.18. GOVERNING LAW**

This Agreement shall be governed by and construed in all respects in accordance with the laws of Thailand.

**18.19. DISPUTE RESOLUTION**

**18.1.19.1.** In the event of any doubt, dispute, controversy or claim arising out of or relating to any provision of this Agreement or the interpretation, enforceability, performance, breach, termination or validity hereof, the parties shall attempt in good faith to amicably resolve it.

**18.2.19.2.** Any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination shall be resolved by arbitration in accordance with the Rules of the Arbitration Rules of the Singapore International Arbitration Center ("**SIAC**"), in force on the date when the notice of arbitration is submitted in accordance with such rules (which are deemed to be incorporated herein by reference).

**18.3.19.3.** The following provisions shall apply to any arbitration proceedings commenced pursuant to clause 18.2.

- (a) the number of arbitrators shall be [3 (three)]. Lessor shall appoint [1 (one)] arbitrator and Lessee shall appoint [1 (one)] arbitrator. The 3rd (third) arbitrator, who shall act as chairman of the tribunal, shall be chosen by the 2 (two) arbitrators appointed by, or on behalf of, the Parties. If such 3rd (third) arbitrator is not chosen and nominated to the SIAC for appointment within 30 (thirty) days of the date of confirmation by the SIAC of the later of the 2 (two) Party-appointed arbitrators to be confirmed, such arbitrator shall be chosen by the SIAC;
- (b) the arbitration proceedings shall be conducted in the English language and the arbitrators shall be fluent in the English language;
- (c) the seat of the arbitration shall be Singapore. The place of the arbitration shall be Singapore;
- (d) the arbitral tribunal shall be authorized to award costs and lawyers' fees and to allocate them between the Parties. The costs of the arbitration proceedings, including lawyers' fees, shall be borne in the manner determined by the arbitral tribunal;
- (e) the arbitral award shall be made and payable in the denominated currency, free of any Tax or other deduction; and
- (f) the arbitrators' award shall be final and binding on the Parties from the day it is made. Judgment on the award may be entered in any court of competent jurisdiction. The Parties expressly agree to comply without delay with the arbitral tribunal's decisions, waiving, to the maximum extent admissible under Applicable Law, their right to appeal, challenge, or review, or any other means to object to, the validity, content, and nature of the award, as well as of any other decision of the arbitral tribunal.

**18.4.19.4.** Either Party may apply to a court of competent jurisdiction for interim measures (i) prior to the constitution of the arbitral tribunal (and thereafter as necessary to enforce the arbitral tribunal's rulings), or (ii) in the absence of the jurisdiction of the arbitral tribunal, to rule on interim measures in a given jurisdiction. The Parties agree that seeking and obtaining such interim measures shall not waive the right to arbitration. The arbitrators (or, in an emergency, the presiding arbitrator acting alone, in the event one or more of the other arbitrators is unable to be involved in a timely fashion) may grant interim measures, including injunctions, attachments, and conservation orders in appropriate circumstances, which measures may be immediately enforced by court order. Hearings on requests for interim measures may be held

in person, by telephone, by video conference, or by other means that permit the Parties to present evidence and arguments.

~~18.5.~~19.5. Any Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such sovereign immunity or any similar right or defense based on the supremacy of a sovereign. Such waiver includes immunity from (i) any expert determination, mediation, or arbitration proceeding commenced pursuant to this Agreement, (ii) any judicial, administrative, or other proceedings to aid any expert determination, mediation, or arbitration commenced pursuant to this Agreement, and (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order, or attachment (including pre-judgment attachment), which results from any expert determination, mediation, arbitration, or any judicial or administrative proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations hereunder are of a business or commercial and not a governmental nature.

## **19.20. MISCELLANEOUS**

~~19.1.~~20.1. The headings are inserted for ease of reference only and shall not affect the interpretation of this Agreement.

~~19.2.~~20.2. This Agreement and all related agreements shall be made in the English language. In case there is any translation thereof into any other language, the English language shall prevail.

~~19.3.~~20.3. If any provision of this Agreement shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any other legal and enforceable provision of this Agreement, which shall be construed as if such illegal or unenforceable provision or provisions had not been inserted in this Agreement.

~~19.4.~~20.4. Each Party agrees to keep in confidence and not to disclose any information that the other Party may disclose to it in connection with this Agreement or the transactions contemplated hereunder (the "**Confidential Information**") unless it has previously obtained the written consent of such other Party. The obligation to keep in confidence the Confidential Information shall not apply to (i) information already in the public domain or already within public knowledge prior to the execution of this Agreement; (ii) information obtained from a third party who is not under any obligation of confidence to the Party in possession of such information; and (iii) information required to be disclosed in compliance with the requirement of any applicable law, statute, ordinance, decree, judicial or administrative order, rule or regulation. The provisions under this Clause ~~20.3~~20.3 shall survive the termination of this Agreement for a period of [2 years].

~~19.5.~~20.5. Nothing in this Agreement is intended to, or shall be construed so as to, establish or imply any partnership or joint venture or a relationship of principal and agent between the Parties or constitute either Party as the agent of the other Party, or authorize either Party to make or enter into any commitments for or on behalf of the other Party.

~~19.6.~~20.6. The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or a waiver of any other rights or remedies. The remedies provided under this Agreement are to be considered cumulative and not exclusive of any other remedy under the Agreement. No waiver by either Party of any term or provision herein shall be deemed to have been made, unless expressed in writing and signed by such Party.

~~19.7.~~20.7. This Agreement and its annex constitute the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes any prior agreements, arrangements, or understandings between the parties, whether oral or written. This Agreement cannot be amended or modified except by a written instrument signed by duly authorized officers of the Parties.

~~19.8.~~20.8. This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

*[The remainder of this page is intentionally left blank]*



**IN WITNESS WHEREOF**, the Parties hereto have read, and understood the contents hereof and thereby have caused this Agreement to be executed by their duly authorized signature and affixed corporate seals in the presence of witness.

**LESSOR:**

**SIGNED** for and on behalf of

**SUPSUMPHAN CO., LTD.**

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By:  
Title:

---

By:  
Title:

---

Witnessed by:

---

Witnessed by:

**LESSEE:**

**SIGNED** for and on behalf of

**[DARIA DATA CENTRE AND CLOUD SERVICES CO., LTD]**

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

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

\_\_\_\_\_  
Witnessed by:

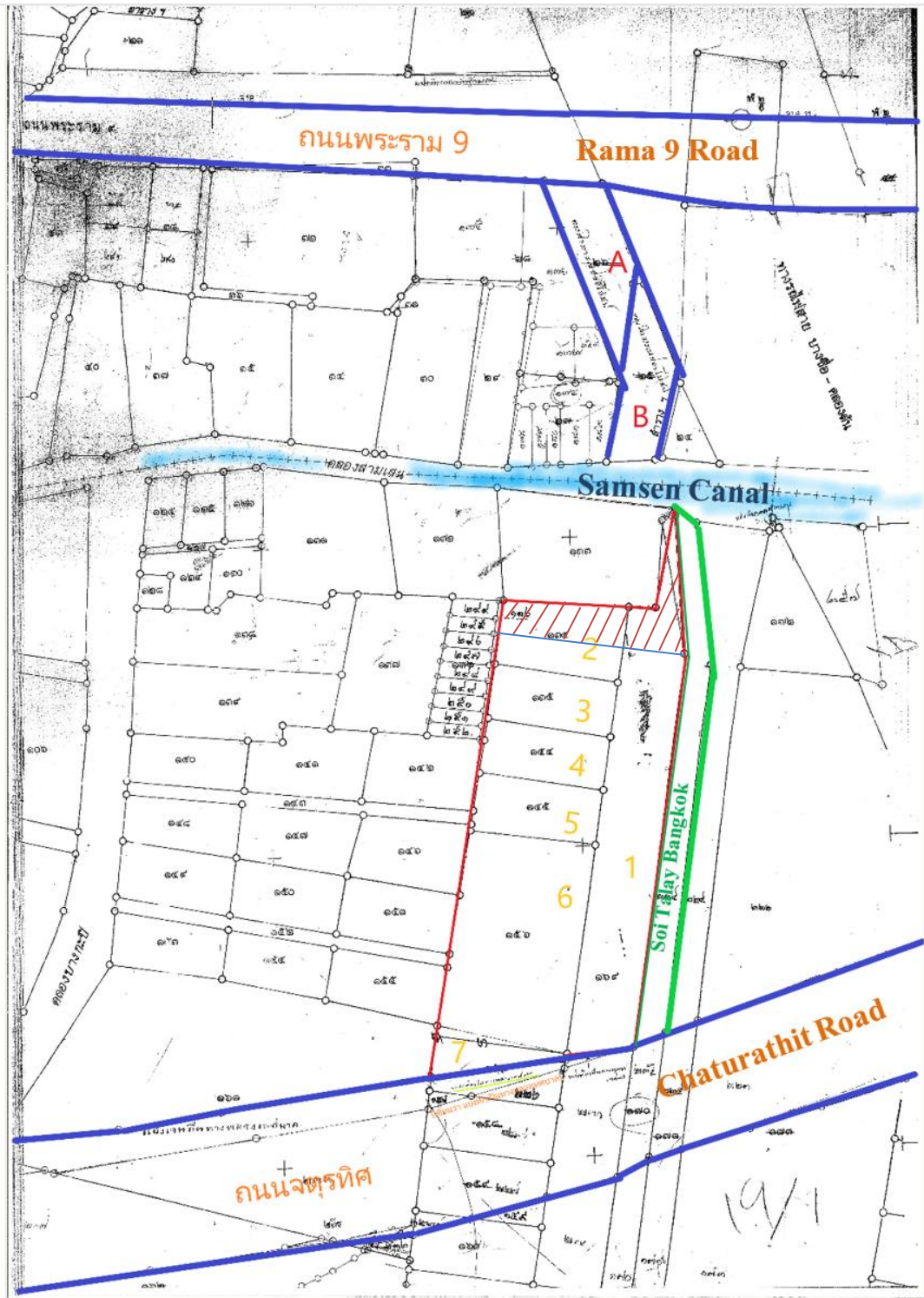
\_\_\_\_\_  
Witnessed by:

**Annex 1**

1. The Land consists of seven plots of land represented by the following title deeds:

Plot No.	Land Title Deed No.	Land No.	Survey Page No.	Size: Rai – Ngan – Square Wah	Location
(1)	231263	169	10170	1-3-58.6 partially, see the highlighted in the Map	Huai Khwang District, Bangkok
(2)	218244	134	10466	0-1-81.3 partially, see the highlighted in the Map	
(3)	218245	135	10467	0-1-60.7	
(4)	218246	144	10468	0-1-76.0	
(5)	218247	145	10469	0-1-75.7	
(6)	218248	156	10470	1-2-83.2	
(7)	218249	157	10471	0-1-8.5	
<b>Total</b>				5 Rai 2 Ngan 44 sq. Wah	-

2. Official Cadastral Map of the Land **[Note to Draft: To be updated to reflect the actual lease area]**



	The area as indicated by the red line (totaling 7 plots): the Land
	The area as indicated by the green line: the Soi Talay Bangkok Area (“ <b>Soi Talay Bangkok</b> ”)





3. Copies of title deeds of the Land

~~[to be insert]~~see overleaf

## **Annex 2**

### **Conditions Precedent**

The obligation of the Lessee to take on the lease of the Land contemplated under this Agreement shall be subject to the following conditions precedent being fulfilled and/or waived on or before the Long Stop Date:

1. the grant of servitude right over Soi Talay Bangkok as indicated in Annex 1 for the purpose of ~~[-]~~[(a) transportation, (b) placing electricity lines, utilities, and network and communication cables, and (c) accessing to a public road] shall have been duly registered in favour of the Land, without any charge and for the period covering the Lease Period, for transportation, for placing of electricity lines, network, communication cables, as well as to use as access/egress to a public road;
- ~~2. the permission for connection of Soi Talay Bangkok with the bridge over Samsen Canal, shall have been duly granted by the competent authority; [Comment to Damac: The bridge and road to Rama 9 were constructed by the purchaser of land in the past under the condition of sale land (construction of road from Rama 9 to Wat Uthatharam) and subsequently the purchaser gave some portion of road to Rama 9 (from bridge to Rama 9) and bridge to the public, so the lessor has no this permission. If the lessee still requires this, the owners can facilitate the lessee by signing any consent or application for this request]~~
- ~~3.2.~~ the connection of the Land to Chaturathit Road shall have been duly obtained. ~~[Comment to Damac: The land owners will have no obligation but will facilitate the Lessee for this request. However, it is the duty of the lessee to request and obtain the approval from the authority by itself]~~
- ~~4.3.~~ ~~[Comment to Damac: The administrator does not agree to grant the parking as requested]~~ the Lessor shall have demolished, at its own costs and expenses and at under its own liability, all existing building or structures on the Land, removed all the hoarding and/or billboard and/or board of whatever kind present on the Land or on the relevant boundaries, with full vacation of the same free and clear from any material, landfill of building materials, hoarding or billboard or board, and items of any kind whatsoever, as well as terminated of any contact of any kind related thereto;
- ~~5.4.~~ any mandatory clearance or permit regarding the consummation of the transaction contemplated in this Agreement shall have been obtained from any relevant governmental authority in full compliance with any applicable provisions of laws and regulations;
- ~~6.5.~~ the Lessor shall have obtained all consents, approvals and/or waivers under any existing licenses or permits the Lessor currently holds, from any relevant governmental authority, which is required as a result of the lease of the Land to the Lessee under this Agreement; ~~[Comment: According to the discussion, there will be no license or permit provided by the Lessor], if required;~~
- ~~7.6.~~ there shall have been no material adverse effect preventing or making it materially burdensome to the transaction contemplated under the Agreement;
- ~~8.7.~~ no legal action, suit or proceeding shall have been commenced by any government agency or other person seeking to enjoin any transaction contemplated at the Completion;
- ~~9.8.~~ no legislation or governmental action shall have been promulgated or taken effect after the date of this Agreement which will prohibit the consummation of the transactions contemplated under this Agreement; and
- ~~10.9.~~ all and each of the representation and warranty given by the Lessor contained in this Agreement shall have been true, accurate and not misleading in all respects on the date of this Agreement and shall be deemed to be repeated immediately before the Rent-Free Lease Start Date and the Lease Start Date.

