Tamil Nadu Tourism Development Corporation Limited

DRAFT CONCESSION AGREEMENT (DCA)

SELECTION OF CONCESSIONAIRE FOR UPGRADATION, OPERATION, MANAGEMENT AND MAINTENANCE OF HOTEL AT TIRUCHIRAPALLI ON PPP MODE

JANUARY, 2026

TAMIL NADU TOURISM DEVELOPMENT CORPORATION LIMITED
Tamil Nadu Tourism Development Corporation
Tamil Nadu Tourism Complex,
No. 2 Wallajah Road, Triplicane
Chennai - 600 002,
Tamil Nadu, India
Tel: 044 - 25619270
E-mail: pe.ttdc@gmail.com
Website: www.ttdconline.com

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CONCESSION AGREEMENT

This CONCESSION AGREEMENT ("**Agreement**") is executed on this [●] day of [●] 202__ at Chennai, Tamil Nadu ("**Effective Date**"):

BETWEEN

Tamil Nadu Tourism Development Corporation, having its principal office at [●] represented by the Managing Director (hereinafter referred to as the "**Authority**", which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns) of **One Part**.

AND

[● Limited], a special purpose company incorporated under the provisions of the Companies Act, 2013 with Corporate Identity Number (CIN) [●] and having its registered office at [●], represented by its [●] authorized vide Board Resolution dated [●] (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes) of the **Second Part.**

*…….the Authority and the Concessionaire shall be collectively referred to as "**Parties**" and individually as a "**Party**"*

WHEREAS:

A. The Authority has envisaged development of a hotel on 4.34 acres land belonging to the Authority at *Tiruchirapalli* (the "**Site**") through Public Private Partnership (the "**PPP**") mode on Refurbish, Operate and Transfer (the "**ROMT**") basis, in accordance with the terms and conditions to be set forth in an Agreement (the "**Project**").

B. The Authority had accordingly invited Bids by prescribing technical and commercial terms and conditions by its Request for Proposal No. ……. dated ……. (the "**RFP**").

C. In response to the invitation referred to in recital 'B' above, the Authority received the bid dated ____submitted by the Bidder in accordance with the RFP;

D. After evaluation of the Bids received, the Authority had accepted the Bid of the {Selected Bidder} and issued its Letter of Award No. ……. dated ……. (hereinafter called the **"LOA"**) to the {Selected Bidder} requiring, inter alia, the

execution of this Agreement within 45 (forty-five) days of the date of issue thereof, subject to submission of all the requisite documents including the constitutional documents, as directed by Authority.

E. The {Selected Bidder} has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013 and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder under the LOA} including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.

F. By its letter dated _____, the Concessionaire has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.

G. The Authority has agreed to the said request of the Selected Bidder and the Concessionaire, and has accordingly agreed to enter into this Agreement with the Concessionaire for implementation of the Project on Design, Build, Finance, Operate & Transfer basis, subject to and on the terms and conditions set forth hereinafter.

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

PART I: PRELIMINARY

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 40) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

(a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and/ or in the State of Tamil Nadu, and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a **"person"** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;

(f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **"construct"** or **"build"** shall be construed accordingly;

(g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, and other activities incidental thereto, and **"develop"** shall be construed accordingly;

(h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(i) any reference to day shall mean a reference to a calendar day;

(j) Reference to a "**business day**" shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business;

(k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(l) references to any date or period or project milestones shall mean and include such date or period as-may be extended pursuant to this Agreement;

(m) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(n) the words importing singular shall include plural and vice versa;

(o) References to any gender shall include the other and the neutral gender;

(p) "**lakh**" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);

(q) "**Indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

(r) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

(s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

(t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

(u) the Schedules and Recitals to this Agreement and the Request for Proposals ("**RFP**") forms an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

(v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;

(w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and

(x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

(a) this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein,

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

(f) between any value written in numerals and that in words, the latter shall prevail.

PART II - THE CONCESSION

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

2.1.1 The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Concession Period:

(a) Plan, design, finance and construct the Project on the Site set forth in **Schedule-A** in accordance with the requirements specified in **Schedule-B** together with provision of Project Facilities as specified in **Schedule-C**, Applicable Laws, Applicable Permits (as required from time to time), the Project Development Plan and in conformity with the Specifications and Standards set forth in **Schedule-D**;

(b) operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement; and

(c) performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire, the concession set forth herein including the exclusive right, license and authority to upgrade, finance, operate and maintain the Project (the "**Concession**") during the Concession Period, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein and transfer the Project and the Project Assets to the Authority on the Transfer Date.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

(a) Right of Way, access, license rights to the Site for the purpose of developing the Project, to the extent conferred by the provisions of this Agreement;
(b) plan, design, finance and develop the Project;
(c) manage, operate and maintain the Project and regulate the use thereof by third parties;
(d) provide Hospitality Services in accordance with the standards and terms set out in this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice;
(e) determine, demand, collect and appropriate Revenue from Users for using the Project, the Project Facilities, for availing of Hospitality Services, and from sub-licensing of any part of the Project, in accordance with this Agreement. Any sub-licensing of spaces within the Project Facility shall require the prior intimation to the Authority in accordance with Clause 33.2.2 and Clause 5.12;
(f) perform and fulfill all the Concessionaire's obligations under and in accordance with this Agreement including payment of Annual License Fee, Fixed Annual Concession Fee and Revenue Share;
(g) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
(h) appoint Contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Agreement in accordance with its terms;
(i) upon Termination of the Concession Period transfer the Project to the Authority in accordance with the terms of this Agreement;
(j) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Site nor sell, transfer, exchange, lease, license or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement;

(k) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for safety, security, development, management, operation or maintenance of the Project and the Project Site, subject only to the terms of this Agreement and in accordance with Applicable Permits, Applicable Laws and Good Industry Practice;

(l) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to implement, manage, operate and maintain the Project; and

(m) do all things incidental or related thereto or which the Concessionaire considers desirable and appropriate to be carried out in connection therewith during the Concession Period.

3.2 Concession Period

3.1.1 Subject to early termination of this Agreement in accordance with its terms, the term of Concession for this Agreement is **25 (twenty-five) years** from the Appointed Date (the "**Concession Period**"). The Concession Period is inclusive of Upgradation Period of **12 (twelve)** months reckoned from the Appointed Date.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 21, 27, 37 and 39, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**").

4.1.2 The Authority shall be required to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 120 (one hundred and twenty) days from the Effective Date and the Conditions Precedent required to be

4.1.3 satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:

(a) Provided peaceful and vacant possession of the land comprising of the Project Site along with the Right of Way, license rights in respect of the same, clear and free from any encumbrances in accordance with the provisions of Article 10 of this Agreement;

(b) Appointed an Independent Engineer in terms of this Agreement;

(c) Reviewed by the Independent Engineer and the Authority, the Project Development Plan submitted by the Concessionaire and given its comments and observations, if any, within 15 (fifteen) days of its submission to the Authority by the Concessionaire, from the perspective of its compliance with the (i) Applicable Laws; (ii) scope of the Project developments as set out under Schedule-B together with provision of Project Facilities as specified in Schedule-C in conformity with the Specifications and Standards set forth in Schedule-D; (iii) provisions of this Agreement.

(d) Approved the updated/ modified the Project Development Plan submitted by the Concessionaire after incorporating the comments/ suggestions of the Independent Engineer, within a period of 15 (fifteen) days. Provided however, the approval granted herein does not constitute the statutory approval/ Applicable Permits that the Concessionaire would be required to otherwise seek as per Applicable Laws from the concerned Government Instrumentality(s) in relation to the Project;

(e) executed the Escrow Agreement along with the Concessionaire, Lenders' Representative and Escrow Bank;

(f) executed the Substitution Agreement along with the Concessionaire and Lenders' Representative.

Provided, that upon request in writing by the Authority, the Concessionaire may, in its discretion, waive any or all of the Conditions Precedent set forth in this Clause 4.1.2.

4.1.4 The Conditions Precedent required to be satisfied by the Concessionaire prior within a period of 120 (one hundred and twenty days) from Effective Date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

(a) prepared detailed Project Development Plan of the proposed developments at the Project Site in adherence to the requirements set out under Schedule-B together with provision of Project Facilities as specified in Schedule-C in conformity with the Specifications and Standards set forth in Schedule-D and Applicable Laws. The detailed design shall be submitted to Authority for its review and approval within 30 (thirty) days of the Effective Date;

(b) addressed the comments, observations and incorporated the revisions suggested by the Authority within a period of 7 (seven) days from receipt of the same from the Authority;

(c) procured all the Applicable Permits as specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect for commencing Upgradation Works after the Appointed Date;

(d) executed and procured execution of the Escrow Agreement in the form provided in **Schedule-M**;

(e) executed and procured execution of the Substitution Agreement in the form provided in **Schedule-O**;

(f) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire. However, in case the Project is to be financed entirely (100%) through Equity by the Concessionaire then the Concessionaire shall inform the Authority in writing (duly attested by a Director of the Concessionaire) about the same and shall have deposited an amount equal to at least 30% (thirty percent) of the total Equity in advance in the Escrow Account prior to the Appointed Date;

(g) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; Provided that the Project is financed entirely through 100% Equity, the Concessionaire shall submit the Financial Model along with supporting documents as required by the Authority;

(h) appointed a qualified and professionally experienced person (having prior experience of managing similar properties) as its representative who shall be designated as the "Project Manager";

(i) delivered to the Authority confirmation of the correctness of the representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and

(j) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;

(k) submitted to the Authority a draft Hotel Management Agreement proposed to be entered into with the identified O&M Partner, within [30] days from the Effective Date, for review and approval by the Authority[1].

(l) executed the Hotel Management Agreement with the O&M Partner and submit a copy of the executed agreement to the Authority. The Hotel Management Agreement shall be for a minimum initial term of ten (10) years, commencing from the Operations Date[2].

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any or all of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

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

4.1.6 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire, Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

Provided further that in the event of delay by the Concessionaire in procuring fulfillment of the Conditions Precedent specified in Clause 4.1.3, no Damages shall be due or payable by the Authority under this Clause 4.2 until the date on which the Concessionaire shall have procured fulfillment of the Conditions Precedent specified in Clause 4.1.3.

[1] Applicable where the Selected Bidder has qualified based on Development Experience with undertaking to onboard O&M Partner.

[2] Applicable where the Selected Bidder has qualified based on Development Experience with undertaking to onboard O&M Partner

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, to a maximum of 20% (twenty percent) of the Performance Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfillment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfillment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Commencement of Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied or waived, as the case may be, shall be the **Appointed Date** which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence upgradation on the Project.

4.5 Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3 and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before **210** days from the Effective Date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, procurement, upgradation, operation and maintenance of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

(b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project including for building plans, infrastructure facilities, utilities including power, water supply, drainage, sewerage, fire-fighting, telecommunications, etc;

(c) carry out design and upgradation of the Project Facility in compliance with the approved Development Plan, Applicable Laws, Applicable Permits, with any amendments thereon, and the provisions of this Agreement;

(d) perform and fulfill its obligations under the Financing Agreements or ensure compliance with the Equity Financing and Deposit Requirements in terms of Clause 5.13, as the case may be;

(e) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

(f) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

(g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

(h) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement or Applicable Laws and Applicable Permits;

(i) carry out its obligations and duties with regard to the operation and maintenance of the Project in accordance with the provision of this Agreement. The obligations shall include all works arising from any obligation of the Concessionaire, and all duties not mentioned in this Concession Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project;

(j) ensure and procure that its Contractor(s)/ sub-licensees complies with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

(k) shall obtain and maintain minimum 4-star classification for the Project Facilities from the Ministry of Tourism, Government of India within eighteen (18) months from the Operations Date;

(l) make payment of the Annual License Fee, Fixed Annual Concession Fee and Revenue Share to the Authority in accordance with Article 22;

(m) pay all taxes, duties and outgoings, including utility charges relating to the Project Facilities (Property tax shall be reimbursed to the Authority as per Clause 36.3.1);

(n) transfer the Project Assets to the Authority upon expiry of the Concession period or termination of this Agreement, in accordance with the provisions of this Agreement;

5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or Agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document

shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4 Notwithstanding anything to the contrary contained in any other clause of this Agreement, the Concessionaire shall not sell, assign or in any manner create an Encumbrance on any Project Asset / Project Facilities forming part of the Project Site, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny under this Agreement or Applicable Laws;

5.2.5 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.6 Deleted.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire agrees and acknowledges that:

a. in case of a Single Bidder, the Selected Bidder shall hold a minimum issued and paid-up equity capital of 100% (one hundred percent) in the Concessionaire till the 5th (fifth) anniversary of the Operation Date and atleast 51% (fifty one percent) till the 10th (tenth) anniversary of the Operation Date; Provided further that any Company acquiring more that 51% of the subscribed and paid-up equity

share capital of the Concessionaire during the concession period shall be required to fulfil the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Concession, subject to the prior written approval of the Authority;

b. In case of a Consortium, the members of the Consortium shall collectively hold 100% of the subscribed and paid-up equity of the SPV with the Lead Member of the Consortium holding not less than 51% of the equity shareholding of the SPV, and the other Consortium Member holding not less than 26% of such equity until the fifth (5th) anniversary of the Operations Date. Thereafter, the Consortium Member meeting the O&M Experience Criteria during the RFP stage shall, in any event, hold not less than 26% (twenty six percent) of the equity shareholding of the SPV until the tenth (10th) anniversary of the Operations Date. Subsequent to this period, any replacement of the Consortium Member that fulfilled the O&M Experience Criteria shall be permitted only with an entity meeting the O&M Experience considered for evaluation of the successful bidder (specified in the RFP), subject to the prior written approval of the Authority.

Any transfer, assignment, dilution, encumbrance or arrangement, whether direct or indirect, that results in breach of the above equity holding requirements shall be deemed to constitute a **"Change in Ownership**" for the purposes of this Agreement.

5.3.2 Deleted.

5.4 Engagement of O&M Contractors

The Concessionaire may engage any O&M contractor possessing the requisite skill, expertise and capability for operation and maintenance of the Project Facilities and Associated Services, including but not limited to housekeeping and linen management, laundry services, concierge and travel desk services, valet parking, spa or salon operations, food and beverage services including restaurant operations, and other routine hospitality-related services.

Provided:

i. the Concessionaire shall at all times be solely responsible for all its obligations under this Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of this Agreement;

ii. the Concessionaire should have obtained requisite security clearance if required for the Contractor the Concessionaire intends to engage;

iii. the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and

iv. any contract that it enters with an Affiliate in respect of the Project shall be on an arm's length basis.

5.5 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it or by its Contractors in the performance of its obligations under this Agreement are duly qualified and at all times properly trained with adequate and state of art training for their respective functions.

5.6 Branding of Project

5.6.1 The Concessionaire shall have the right to name, brand, promote, and market the Project and/or any part of the Project Facilities in its discretion, in accordance with Applicable Laws and Applicable Permits. The Concessionaire may display its brand name, logo, and signage at suitable locations within the Project Site and in all marketing, advertising, and promotional materials.

Notwithstanding the foregoing, the Concessionaire shall ensure that the Authority's name and logo are prominently displayed at one designated location within the Project Site, in a manner approved by the Authority, with a clear indication that the Project Site belongs to the Authority.

5.7 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.8 Deleted.

5.9 Security and Safety at the Project Site

For security and safety at the Project Site, the Concessionaire shall:

(a) provide and maintain perimeter fencing or other suitable protection around the Project Site and shall be responsible for the security arrangements in order to maintain safe and orderly conduct of its business and the security thereof;

(b) install and operate a closed circuit television system to monitor such parts of the Project as may be necessary and expedient for safe operations of the Project Facilities in accordance with Good Industry Practice;

(c) engage and depute trained personnel for maintaining the security and safety of Users inside the Project Site in accordance with Good Industry Practice;

(d) abide by and implement any instructions of the Authority or its authorized personnel including the Independent Engineer/ Authorized Representative for enhancing the security within and around the Project Site. The Concessionaire shall not be entitled

to any compensation for disruption of its operations or loss or damage resulting from the implementation of any instruction of the Authority or its authorized personnel including the Independent Engineer/ Authority's Representative;

5.10 Obligations relating to other charges

5.10.1 The Concessionaire shall make timely payments for all utility services in respect of the Project Site, including water, sewerage, solid & liquid waste, electricity, telecommunications, internet, cable charges, etc.

5.11 Obligations relating to Development Requirements

5.11.1 Minimum Development Obligations
The Concessionaire shall upgrade, operate, and maintain the Minimum Development Requirements at the Project Site as detailed in Schedule-C to this Agreement (the "**Minimum Development Obligations**").

5.11.2 **Deleted**

5.12 Sub-Licensing of spaces at the Project Facility

5.12.1 The Concessionaire shall not lease or sub-license any part of the Project Facilities. However, for spa / wellness center, gym, / fitness center, salon, retail outlets, bookstore, souvenir shops (Annexure 1 to Schedule C), sub-licensing shall be allowed upon prior intimation to the Authority in accordance with Clause 33.2.2. Such sub-licensing shall be undertaken through appropriate sub-license deeds executed with the respective sub-licensees.
For the avoidance of doubt, the Project Facility shall not include the underlying land, and no rights in the land forming part of the Project Site shall be transferred, sub-leased, licensed, or otherwise alienated by the Concessionaire.

5.12.2 The Concessionaire shall ensure that such sub-license deed shall, incorporate clauses, that

i. the sub-license deed(s) shall be co-terminus with this Agreement and shall stand terminated immediately upon Termination of this Agreement (either by efflux of time or pre- mature, as the case may be). In no event the term of such license(s) shall extend beyond the term of this Agreement and the Project Facility shall be handed back to the Authority free of such sub licenses;

ii. the sub-licensees shall not create any Encumbrance on the taken up Project Facility;

iii. the sub-license deed(s) shall become effective with the right to use allowed to sub-licensees, from the respective date(s) of issuance of the occupation certificate/ completion certificate from the concerned Government Instrumentality subject to the Concessionaire also having received or Completion Certificate from the Nodal Officer under this Agreement; and

iv. the terms of such sub-license(s) shall not be contrary to or in derogation of the terms of this Agreement.

5.13 Equity Financing and Deposit Requirements

5.13.1 In the event that the Total Project Cost is to be financed entirely (100%) through Equity by the Concessionaire, the Concessionaire shall be required to deposit thirty percent (30%) of the total Equity in advance into the Escrow Account prior to the Appointed Date.

5.13.2 The remaining seventy percent (70%) of the total Equity shall be deposited by the Concessionaire into the Escrow Account progressively and in advance, in accordance with the approved Development Plan so as to ensure that sufficient funds are available for the implementation of the Project in accordance with the terms of this Agreement.

5.13.3 The deposits made by the Concessionaire under this provision shall be utilized exclusively for the development and implementation of the Project, as per the terms specified in the Concession Agreement and the Escrow Agreement.

5.13.4 Any failure to deposit the required equity funds in the manner prescribed above shall constitute an Escrow Default and be subject to the provisions governing defaults under the Escrow Agreement and the Concession Agreement.

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expenses undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:

(a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide Letter of Recommendation to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project, subject to the Concessionaire submitting its applications complete in all respect in a timely manner;

(b) transfer the Project Site on a license basis free from Encumbrance to the Concessionaire and ensure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;

(c) not do or omit to do any act, deed or thing which may, in any manner be violative of any of the provisions of this Agreement;

Notwithstanding anything in this Article, the Authority shall not be required to provide any financial support or financial assistance to the Concessionaire.

6.2 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

ARTICLE 7

REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

(a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(c) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(e) the Selected Bidder has the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

(f) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(g) it is subject to the laws of India, and hereby, expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;

(h) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

(i) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(j) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(k) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this

Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(l) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

(m) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and

a. in case of a Single Bidder, the Selected Bidder shall hold a minimum issued and paid-up equity capital of 100% (one hundred percent) in the Concessionaire till the 5th (fifth) anniversary of the Operation Date and at least 51% (fifty one percent) till the 10th (tenth) anniversary of the Operation Date; Provided further that any Company acquiring more that 51% of the subscribed and paid-up equity share capital of the Concessionaire during the concession period shall be required to fulfil the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Concession;

b. In case of a Consortium, the members of the Consortium shall collectively hold 100% of the subscribed and paid-up equity of the SPV with the Lead Member of the Consortium holding not less than 51% of the equity shareholding of the SPV, and the other Consortium Member holding not less than 26% of such equity until the fifth (5th) anniversary of the Operations Date. Thereafter, the Consortium Member meeting the O&M Experience Criteria during the RFP stage shall, in any event, hold not less than 26% (twenty six percent) of the equity shareholding of the SPV until the tenth (10th) anniversary of the Operations Date. Subsequent to this period, any replacement of the Consortium Member that fulfilled the O&M Experience Criteria shall be permitted only with an entity meeting the O&M Experience considered for evaluation of the successful bidder (specified in the RFP), subject to the prior written approval of the Authority.

(n) the Selected Bidder is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with itself/ the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(o) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

(p) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(q) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;

(r) all information provided by the Concessionaire/ Selected Bidder in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;

(s) all undertakings and obligations of the Concessionaire arising from the Request for Proposal or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

(b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;

(c) it has the financial standing and capacity to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) it has complied with Applicable Laws in all material respects;

(f) it has good and valid right to the Site, and has power and authority to grant a License in respect thereto to the Concessionaire.

(g) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;

(h) all information provided by it in response to the Request for Proposal, including amendments thereto or disclosures thereunder, in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects; and

(i) upon the Concessionaire paying the Concession Fee, Annual License Fee and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, except in accordance with this Agreement.

7.3 Disclosure

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

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Site, existing structures (if any), local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, it's Associates or any person claiming through or under any of them.

8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III Development and Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its Conditions Precedent and obligations hereunder during the Concession Period, provided to the Authority prior to signing of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakhs only) in the form set forth in Schedule-F (the "**Performance Security**"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 The Concessionaire shall keep and maintain the Performance Security Bank Guarantee valid and in full force and effect until the expiry of the Concession Period. The Performance Security shall have an initial validity period of 3 years, which must be renewed before the expiry of the 35th month, until the expiry of the Concession Period. The amount of the Performance Security shall be enhanced by ten per cent (10%) at the time of each renewal (every three years), calculated on the value of the Performance Security prevailing immediately prior to such enhancement. At the time of each such renewal, the Concessionaire shall furnish the Performance Security for the enhanced amount.

9.1.3 The Performance Security shall secure the due performance of the Concessionaire's obligations during the Concession Period. The cost of procuring the Performance Security shall be borne solely by the Concessionaire.

9.1.4 If the Performance Security is not renewed by the expiry of the 35th month during the Concession Period, with any enhancement thereof, then the Authority shall be entitled to draw down the total amount available under the Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Performance Security.

9.1.5 Upon receipt of a renewed or replacement Performance Security, the authority shall return the unutilized cash security amount for the Performance Security to the Concessionaire. The interest earned on any retained amounts or cash security shall be the property of the Authority and the Authority shall not be required to account to the Concessionaire for any such interest.

9.1.6 Failure of the Concessionaire to maintain the Performance Security in full force and effect throughout the term, in accordance with the provisions hereof, shall constitute an Concessionaire Default in terms hereof.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 30. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 30.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect throughout the period of Concession Agreement and shall be released within 4 (four) months after the expiry of Concession Period, provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement; in such an event, the Concessionaire shall keep the validity of the Performance Security alive and valid. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith.

ARTICLE 10

THE PROJECT SITE

10.1 The Project Site

The site of the Project shall comprise the land as described in Schedule-A; and in respect of which Right of Way shall be provided and granted by the Authority to the Concessionaire as a license under and in accordance with this Agreement (the **"Project Site"**). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land identified for the Project as set forth in Schedule-A.

10.2 License, Access and Right of Way to the Site

10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Upgradation Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, the exclusive right to upgrade, finance, operate, maintain and manage the Project for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 In consideration of the Annual License Fee, the Authority grants to the Concessionaire, commencing from the Appointed Date, license rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the "**Licensed Premises**"), on an "as is where is" basis, free of any Encumbrances, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the purpose of possession and occupation of the Licensed Premises for the duration of the Concession Period and for no other purpose whatsoever.

10.2.4 The license, access and right of way granted under this Agreement to the Concessionaire shall always be subject to existing rights of way. It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without

the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensee, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

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

10.2.6 It is expressly agreed that trees on the Project Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time but in any event no later than [10 (ten)] days prior to the Appointed Date, inspect the Site and prepare a memorandum containing an inventory of the Project Site including the vacant land, buildings, structures, road works, trees and any other immovable property on or attached to the Project Site, free from Encumbrances. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid Right of Way to the Concessionaire for free and unrestricted use and development of the Project Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that the Right of Way with respect to the parts of the Project Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2 In case of any dispute between the Concessionaire and the Authority in relation to the survey of the Project Site and the Appendix, the decision of the Authority shall prevail and shall be binding on the Concessionaire.

10.3.3 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right

of Way such that the Appendix shall not include more than [10% (ten per cent) of the total area of the Project Site required and necessary for the Project]. For avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the development of the critical elements or any part of the Project without which the Completion Certificate or Provisional Certificate may not be granted.

10.3.4 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.5 Upon receiving Right of Way to and in respect of any land included in the Appendix, the Concessionaire shall complete the Upgradation Works in accordance with this Agreement.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from Encumbrances

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

10.6 Special or temporary Right of Way

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

10.7 Access to the Authority and Independent Engineer

The license, right of way and right to the Project Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that:

(a) any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority;

(b) if required, the Authority shall, at its sole discretion, grant reasonable extension of the Project Completion Schedule for any delay caused as a direct consequence of any discovery, and any such delay shall not be attributable to the Concessionaire.

ARTICLE 11

UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, Right of Way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any Right of Way necessary for such diversion.

11.2 Shifting of obstructing utilities

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

11.3 New utilities and roads

The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3 shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the development, operation or maintenance of the Project. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be

excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

11.5 Reasonable Support of the Authority

The Parties agree that the Authority shall assist the Concessionaire with all reasonable support to the Concessionaire required for fulfilment of all obligations specified in Article 11.

ARTICLE 12

UPGRADATION OF THE PROJECT

12.1 Obligations prior to commencement of upgradation

12.1.1 Prior to commencement of Upgradation Works, the Concessionaire shall in compliance with the Project Development Plan:

(a) submit to the Authority and the Independent Engineer in line with its approved Project Development Plan, detailed design, Drawings, upgradation methodology, quality assurance procedures, and the procurement, engineering and upgradation schedule for completion of the Project by in accordance with the Project Completion Schedule as set forth in Schedule-G;

(b) submit all Drawings to the Independent Engineer as per Clause 12.2;

(c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of development under and in accordance with this Agreement, Applicable Laws and Applicable Permits including obtaining approvals from the Authority and other concerned Government Instrumentality(s) as required for commencement and completion of Upgradation Works.

(d) make its own arrangements for procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project as set forth in Schedule-H, the following shall apply:

(a) The Concessionaire shall prepare and submit, with reasonable promptness and in sequence as is consistent with the Project Completion Schedule, 3 (three) copies of each Drawing to the Independent Engineer for review. Upon completion of the review, the Independent Engineer shall share one copy of the reviewed Drawings with the Concessionaire for execution and provide one copy to the Authority for its review. The Independent Engineer shall retain one copy for its records.

(b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering are in conformity with the Scope of the Project, Specifications and Standards, Project Development Plan, Applicable Laws and Good Industry Practice.

(c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards.

(d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the

Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review within 7 (seven) days. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.

(e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.

(f) Within 90 (ninety) days of Operation Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of Drawings in respect of the upgradation, retrofitting, augmentation, replacement and works forming part of the Project, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority.

12.3 Development of the Project

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake upgradation of the Project as per the Project Development Plan as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. **The end of 12th month** the Appointed Date shall be the scheduled date for completion of the Project (the "**Scheduled Completion Date**") and the Concessionaire agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date.

12.3.2 The Concessionaire shall develop the Project in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestones within a period of 30 (thirty) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until the such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the date set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Operation Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to

the rights of the Authority under this Agreement, including the right of Termination thereof.

12.3.3 In the event that the Project is not completed and Operation Date does not occur within 180 (one hundred and eighty) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement. Without prejudice to the Authority's rights under this Agreement and/or any other right that it may have under Applicable Laws or equity, the Authority may in its sole discretion choose not to terminate this Agreement after the said period of [180 (one hundred and eighty)] days and allow for a weekly extension beyond such period of [180 (one hundred and eighty)] days; provided that the Concessionaire agrees and pays in advance, the Damages calculated in accordance with Clause 12.3.2 above, for each day of such extension. To the extent that the Authority has agreed to allow for an extension and the Concessionaire has paid the Damages in advance as stated above, the Authority shall not terminate this Agreement in accordance with the provisions of this Clause 12.3.3. Notwithstanding the foregoing, the Parties agree that this Article shall not prejudice, in any manner whatsoever, the Authority's right of Termination under any other provision of this Agreement.

12.4 Maintenance during Upgradation Period

12.4.1 During the Upgradation Period, the Concessionaire shall maintain, at its cost, the existing Project utilities (if any) and shall undertake the necessary repair and maintenance works for this purpose.

12.5 Permits for Operation

12.5.1 Prior to the Scheduled Completion Date, the Concessionaire shall obtain all operational permits required under Schedule E and ensure that such permits are valid, effective, and in full force and effect.

ARTICLE 13
MONITORING OF UPGRADATION

13.1 Monthly progress reports

During the Upgradation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress of the Upgradation Works and shall promptly give such other relevant information as may be required by the Independent Engineer and/or the Authority.

13.2 Inspection

During the Upgradation Period, the Independent Engineer shall inspect the Project works at least once a month and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Project Completion Schedule, Scope of the Project and Specifications and Standards. The Independent Engineer shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Upgradation Works conform to the Agreement, and Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten percent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. Provided, however, that the Independent Engineer may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Engineer for discharging its functions hereunder. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the

rectification of any defect or deficiency in upgradation shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any Tests conducted under this Clause 13.3 establish any defects or deficiencies in the Upgradation Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this regard. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Upgradation Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Upgradation Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during Upgradation

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not complete the Upgradation Works or the Independent Engineer shall have reasonably determined that the rate of progress of Upgradation Works is such that the Project is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve Project completion and the Operation Date.

13.5 Suspension of unsafe Upgradation Works

13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Upgradation Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users, public at large, natural ecology, flora or fauna or wild life nearby. Provided, however, that in case of an Emergency, the Authority may *suo moto* issue the notice referred to hereinabove.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Upgradation Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may, by notice, require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable

opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 27.7, all reasonable costs incurred for maintaining and protecting the Upgradation Works or part thereof during the period of suspension (the "**Preservation Costs**") shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4 If suspension of Upgradation Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

14.1.1 No later than 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof.

14.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Upgradation Works and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J (the "**Completion Certificate**"). The Completion Certificate shall be issued only upon the Concessionaire obtaining all necessary approvals, permits and operational licenses required for commencement of operations as specified in Schedule E.

14.3 Provisional Certificate

14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the

"**Provisional Certificate**") if the Tests are successful and the Project can be safely and reliably placed in operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**") provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority. Upon issuance of such Provisional Certificate the Concessionaire may shall be entitled to commence the operations of the Project Facilities and demand/collect the Revenue from the Users in accordance with this Agreement.

14.4 Completion of remaining works listed in Punch List

14.4.1 All remaining works listed in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at 0.1% (zero point one per cent) of the Performance Security. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5 Withholding of Provisional or Completion Certificate

14.5.1 If the Independent Engineer determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation; it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for service/ operation, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt

of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Operation Date

The Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the "**Operation Date**"). The Project shall enter into operation and service on the Operation Date whereupon the Concessionaire shall be entitled to demand and collect user charges in accordance with the provisions of Article 23.

15.2 Damages for delay

Subject to the provisions of Clause 12.3, if Operation Date does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until Operation Date is achieved. In the event, the Concessionaire fails to achieve Operation Date within a period of 180 (one hundred and eighty) days from Scheduled Completion Date, without prejudice to the other rights of the Authority under this Agreement, the Authority shall have the right to terminate the Agreement for Concessionaire Default.

ARTICLE 16

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ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

(a) permitting and ensuring safe, smooth and uninterrupted use of the Project, including prevention of loss or damage thereto, during normal operating conditions;

(b) ensuring safe, hygienic and efficient Hospitality Services and maintaining a high standard of cleanliness and hygiene generally at the Project Site;

(c) undertaking operation and maintenance of the Project Facilities in an efficient, coordinated and economical manner, in compliance with the Specification and Standards operation and maintenance manual provided by the OEMs and the terms of this Agreement to ensure that the Concessionaire is able to optimally use the Project Infrastructure during the Operation Period such that the Project is able to generate maximum Revenues;

(d) carrying out periodic preventive maintenance and periodic renovation of the Project Facilities;

(e) undertaking routine maintenance including prompt repairs of all elements and components of the Project Facilities so as to ensure compliance with the Maintenance Requirements and the Specification and Standards;

(f) undertaking as and when required major maintenance, replacement of components and parts, repairs to structures, refurbishment of interiors, repairs, etc. of Project Facilities;

(g) undertaking as and when required upgradation in Associated Services for the benefit of the Users;

(h) providing round the clock security at the Project Site and preventing with the assistance of the concerned law enforcement agencies, any encroachments on or unauthorized entry on the Project Site;

(i) protection of environment and provision of equipment and materials therefor in accordance with the Applicable Laws, Applicable Permits, terms of this

Agreement and Good Industry Practice;

(j) operation and maintenance of all communication, control and administrative systems including CCTVs necessary for the efficient operation of the Project Facilities and for providing Hospitality Services in conformity with the Good Industry Practice;

(k) complying with the Safety Requirements including taking all measures relating to fire precautions in accordance with Applicable Laws, Applicable Permits and Good Industry Practice;

(l) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement.

17.1.2 The Concessionaire shall remove promptly from the Project Site, all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice and Applicable Laws and Applicable Permits, the connecting road/ approach road(s), or other structures situated on the Project Site.

17.1.4 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Authority. For avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to and independent of the Damages payable under this Agreement.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period; the Project Facilities are maintained in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits, Good Industry Practice (the "**Maintenance Requirements**") more specifically set out in Schedule-K.

17.3 Safety, breakdowns and accidents

17.3.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, closures, diversions, breakdowns and accidents, it shall follow the relevant operating procedures including the setting up of temporary lights and removal of

obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.3.2 The Concessionaire's responsibility for rescue operations on the Project shall be limited to an initial response to any particular incident until such time as the competent authority takes charge and shall include prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the use of the Project.

17.4 De-commissioning due to Emergency

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

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

17.5 Project closure

17.5.1 The Concessionaire may close any part of the Project for undertaking maintenance or repair works and complete the maintenance works or repairs in a reasonable time.

17.6 Overriding powers of the Authority

17.6.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause any material hardship or danger to the Users or the environment, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.6.2 In the event that the Concessionaire, upon notice under Clause 17.6.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.6.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M

Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions under the Escrow Agreement.

17.6.3 In the event of a national emergency, civil commotion or any other act specified in Clause 27.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 27. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.6, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.7 Restoration of loss or damage to the Project

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

17.8 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project Facilities, save and except where such modifications are necessary for the Project Facilities to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Authority of the proposed modifications along with particulars thereof at least [15 (fifteen)] days before commencing work on such modifications and shall reasonably consider any suggestions which the Authority may make within [15 (fifteen)] days of receiving Concessionaire's proposal. For avoidance of doubt if the modification has a Material Adverse Effect on the safety thereof or the safety of Users and other persons, the same shall be subjected to inspection as specified in Clause 13.2. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.9 Excuse from performance of obligations

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

(a) a Force Majeure Event;

(b) measures taken to ensure the safe use of the Project Facilities except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

(c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project.

Provided, that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Engineer/ Authority Representative without any delay;

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project open to Users, provided services including Hospitality Services can be provided safely.

17.10 Installation and operation of CCTV

The Concessionaire shall install and operate closed-circuit television system to monitor such parts of the Project as may be necessary and expedient for a safe, secure and smooth operation thereof.

17.11 Advertising on the Site

The Concessionaire may undertake or permit any form of commercial advertising, display or hoarding at any place on the Project Site in conformity with Applicable Laws and generate Revenue therefrom. The Concessionaire is prohibited from displaying any advertisement that is indecent or objectionable or against moral decency or prohibited by Applicable Laws.

17.12 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Project except for reasons of Emergency, national security, law and order or collection of taxes. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions of traffic from, or closing down of approach roads to the Project that may cause a material adverse effect on the accessibility by users to and from the Project.

17.13 Quality of Hospitality Services

The Concessionaire shall:

a) procure that all Users in the Project receive quality services in accordance with the provisions of this Agreement and Good Industry Practices;

b) procure and ensure that all personnel engaged in the provision of Hospitality Services including security guards, are suitably qualified and receive sufficient

training and instructions in accordance with Good Industry Practice and standards of their relevant professional body, if any, for execution of their duties.

c) regularly supervise and monitor the performance of the personnel to ensure that they comply with this Agreement, Applicable Laws and Good Industry Practice.

d) shall address to any complaints received by the Users in a prompt and effective manner and take all reasonable efforts to accommodate the requests of the Users.

ARTICLE 18

SAFETY REQUIREMENTS

18.1 Safety Requirements

18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users and Project Facilities. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety program for providing a safe environment on or about the Project Site, and shall comply with the safety requirements set forth in Schedule-L (the "**Safety Requirements**").

18.2 Expenditure on Safety Requirements

Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Annual Status Reports

19.1.1 During the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority, an annual report, in a mutually agreed format, stating in reasonable detail the condition of the Project Facilities including its compliance or otherwise with the Maintenance Requirements and Safety Requirements, and shall promptly give such other relevant information as may be required by the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Inspection

The Authority shall inspect the Project Facilities at least once a year. It shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements and Safety Requirements and send a copy thereof to the Concessionaire. The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report referred to in Clause 18.2 and furnish a report in respect thereof to the Authority within [15 (fifteen)] days of receiving the O&M Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than [15 (fifteen)] days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.3 Reports of unusual occurrence

The Concessionaire shall send to the Authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and the Project, as and when it happens. For the purposes of this Clause 19.2, accidents and unusual occurrences on the Project shall include:

(a) death or injury to any person;
(b) smoke or fire;
(c) flooding of the Project; and
(d) such other relevant information as may be required by the Authority.

ARTICLE 20

INDEPENDENT ENGINEER

20.1 Appointment and Term of Independent Engineer

20.1.1 The Authority shall appoint a consulting engineering firm, substantially in accordance with the selection criteria set forth in Schedule-M, to be the independent consultant under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 180 (one hundred eighty) days from the date of this Agreement.

20.1.2 The tenure of the Independent Engineer shall be for the Upgradation Period plus 3 months (the "**IE Tenure**"), post which the Project shall be monitored by the Authority itself or through its Authorized Representative.

20.2 Duties and functions

20.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-N.

20.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-N.

20.2.3 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

20.2.4 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

20.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule-M, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

20.4 Termination of appointment

20.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time.

20.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner during the IE Tenure, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the

Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 20.1.

20.5 Authorized signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons, employed in its firm, to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

20.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

20.7 Interim arrangement

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 20.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

Part IV Financial Covenants

ARTICLE 21

FINANCIAL CLOSE

21.1 Financial Close

21.1.1 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 120 (one hundred and twenty) days from the date of this Agreement. In the event of delay in achieving the Financial Close, the Concessionaire shall be entitled to a further period not exceeding 60 (sixty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 120 (one hundred and twenty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

21.1.2 The Concessionaire shall provide to the Authority, at least 3 (three) true copies of the Financial Package and the Financial Model furnished by it to the prospective Senior Lenders. As and when such Financial Package is agreed with the Senior Lenders, with or without modifications, and such agreement is confirmed by the signing of the agreed Financial Package by both the Concessionaire and the Senior Lenders, a copy of the same shall be furnished by the Concessionaire to the Authority forthwith. Where the Project is proposed to be financed through 100% Equity by the Concessionaire, then the Concessionaire shall furnish confirmation to this effect in writing to the Authority along with the Financial Model and supporting documents as required by the Authority, forthwith within the time period specified in Clause 21.1.1.

21.2 Termination due to failure to achieve Financial Close

21.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 27.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 21.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

21.2.2 Upon Termination under Clause 21.2.1, the Authority shall be entitled to encash an amount equal to the Bid Security from the Performance Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure or as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, release the Bid Security or Performance Security, as the case may be, forthwith along with the Damages due and payable under Clause 4.2.

ARTICLE 22

PAYMENT TO THE AUTHORITY

22.1 Fee Payable to the Authority

22.1.1 In consideration of the grant of Concession i.e. the right to upgrade, operate & maintain the Project, the Concessionaire shall during the Concession Period, pay to the Authority by way of Concession Fee ("**Concession Fee**"), the following in the manner laid down in this Article 22:

a. Fixed Annual Concession Fee; and
b. Revenue Share.

22.1.2 In consideration of license rights over the Project Site, the Concessionaire shall during the Concession Period, pay to the Authority a fixed annual fee ("**Fixed Annual License Fee**") in the manner laid down in this Article 22.

22.2 Fixed Annual License Fee

22.2.1 Commencing from the Appointed Date, the Concessionaire shall pay to the Authority for the grant of Licensed Premises, an annual fee (the "**Annual Licensed Fee**") of Rs.1/- (Rupees one) per year, till the end of the Concession Period. The License Fee shall be payable every year, on or before the Anniversary of the Appointed Date.

22.2.2 The Parties clearly agree that any liability arising on account of GST and all other applicable taxes and levies on the License Fee payable by the Concessionaire to the Authority, shall be borne by the Concessionaire only.

22.3 Fixed Annual Concession Fee

22.3.1 The Concessionaire shall pay to the Authority, a fixed **Annual Concession Fee (ACF)** for every year of the Concession Period, commencing from the Appointed Date **("Fixed Annual Concession Fee")**. The ACF shall be escalated at the rate of ten percent (10%) every three (3) years, over the ACF applicable in the immediately preceding year.

Timeline	Amount
Appointed Date = A	INR 150.00 Lakhs
A + 12 months	INR 150.00 Lakhs
A + 24 months	INR 150.00 Lakhs
A + 36 months	INR 165.00 Lakhs
A + 48 months	INR 165.00 Lakhs

A + 60 months	INR 165.00 Lakhs
A + 72 months	INR 181.50 Lakhs
A + 84 months	INR 181.50 Lakhs
A + 96 months	INR 181.50 Lakhs
A + 108 months	INR 199.65 Lakhs
A + 120 months	INR 199.65 Lakhs
A + 132 months	INR 199.65 Lakhs
A + 144 months	INR 219.62 Lakhs
A + 156 months	INR 219.62 Lakhs
A + 168 months	INR 219.62 Lakhs
A + 180 months	INR 241.58 Lakhs
A + 192 months	INR 241.58 Lakhs
A + 204 months	INR 241.58 Lakhs
A + 216 months	INR 265.73 Lakhs
A + 228 months	INR 265.73 Lakhs
A + 240 months	INR 265.73 Lakhs
A + 252 months	INR 292.31 Lakhs
A + 264 months	INR 292.31 Lakhs
A + 276 months	INR 292.31 Lakhs
A + 288 months	INR 321.54 Lakhs

22.3.2 The Fixed Annual Concession Fee payable every year under the provisions of this Article 22.3 shall be due and payable yearly and the first such payment shall be made within 7 (seven) days of the declaration of the Appointed Date. Thereafter, the ACF payment shall be due and payable by the Concessionaire to the Authority every year on or before the dates mentioned in 22.3.1 above. In the event of delay beyond such period, the Concessionaire shall pay interest for the period of delay, calculated at the rate specified in Clause 39.4.

22.3.3 The Fixed Annual Concession Fee payable as per 22.3.1 shall be exclusive of GST, if any applicable. The Parties clearly agree that any liability arising on account of applicable taxes (including GST) and levies on the Fixed Annual Concession Fee payable by the Concessionaire to the Authority, shall be borne by the Concessionaire only.

22.4 Revenue Share

22.4.1 The Concessionaire shall pay to the Authority, ____ % of the Gross Revenue generated from the Project (the "**Revenue Share**") commencing from the Operation Date.

22.4.2 The payment towards revenue share has to be made to the Authority on quarterly basis. The Gross Revenue generated till 30th June, 30th September, 31st December and 31st March of every year shall be the basis for estimation of Revenue Sharing Payment and the GST invoice made till the end of the quarter shall form the basis.

Quarter	Due date for remittance of revenue sharing payment
Apr-Jun	15th July
Jul-Sep	15th Oct
Oct-Dec	15th Jan
Jan-Mar	15th Apr

22.4.3 Within 15 (fifteen) days of the close of each quarter, the Concessionaire shall pay to the Authority, the Revenue Share payable for that quarter, calculated on the basis of Gross Revenue earned during such quarter and final settlement thereof, based on audited accounts of the Concessionaire, shall be made within 120 (one hundred and twenty) days of completion of the respective Accounting Year. Provided that, for the last quarter of the final year of Concession Period, the Concessionaire shall pay the provisional Revenue Share in advance, within 10 (ten) days of commencement of such last quarter, calculated on the basis of the Gross Revenue of the immediately preceding quarter. The final settlement thereof shall be made upon completion of the audited accounts.

22.4.4 The Revenue Share payable under 22.4.1, shall be exclusive of GST, if any applicable. The Parties clearly agree that any liability arising on account of applicable taxes

(including GST) and levies on the Revenue Share payable by the Concessionaire to the Authority, shall be borne by the Concessionaire only.

22.5 Payment of Concession Fee

22.5.1 The Concessionaire shall, with each payment of the Revenue Share & Fixed Annual Concession Fee submit: (a) a certificate that the amounts paid are correct and in accordance with the provisions of the Agreements; (b) detailed calculations of the Revenue Share based on the Gross Revenue; (c) details in respect of Taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (d) details in respect of other Damages payable in accordance with the provisions of this Agreement; and (e) net amount payable under the provisions of this Agreement.

22.6 Mechanism of Payment

22.6.1 The payment of all payments listed in 22.1 above shall be through the Escrow Account as per Article 24 of this Agreement.

22.7 Delayed Payments

22.7.1 All amounts due and payable by the Concessionaire under the provisions of this Agreement shall be paid on or before the time period stipulated in Clause 22.2, 22.3 & 22.4. In the event of delay beyond such period the Concessionaire shall pay interest for the period of delay, calculated at the rate specified in Clause 39.4.

22.8 Disputed Amounts

22.8.1 The Authority shall, within [10 (ten)] days of receiving the Revenue Share/ Annual Concession Fee, notify the Concessionaire of the disputed amounts along with details thereof (the "**Disputed Amounts**"). Within [7 (seven)] days of receiving such notice, the Concessionaire shall present any information or evidence as may be reasonably required for determining that such Disputed Amounts are not payable. The Authority may, if necessary, meet a representative of the Concessionaire for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure in accordance with Article 37 shall apply.

22.8.2 If any amount is payable by either Party upon determination of a dispute regarding any Disputed Amount such amount shall be deemed to be payable on the date when it first became due and interest for the period of delay shall be due and payable at the rate specified in Clause 39.4.

22.9 Set-off

22.9.1 Except as provided in Article 26, the Concessionaire shall not be entitled to retain or set-off any amount due to the Authority by it, but the Authority may retain or set-off any amount owed to it by the Concessionaire under this Agreement which has fallen due and payable against any amount due to the Concessionaire under this Agreement.

22.9.2 If the payment or deduction of any amount pursuant to Article 26 is disputed, then any undisputed element of that amount shall be paid, and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure in Article 37.

22.10 Verification of Annual Gross Revenue

22.10.1 The Authority by itself or through its Authorized Representative, shall have the right to inspect the Revenue records of this Project, during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments. If during such inspection, any discrepancy or error is identified, the Concessionaire shall rectify the same and make payment of any shortfall along with interest at 3% above the SBI MCLR for the intervening period. The rectified figures shall thereafter form the basis of

payments by either Party. The Authority may, if it considers necessary, exercise its right under Clause 26.2.3 to appoint an Additional Auditor for further verification.

ARTICLE 23

TARIFF

23.1 Determine, Charge, Collection and Appropriation of Tariff

23.1.1 On and from the Operation Date of the Project till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Tariff and other fee, charges, etc. from the Users of the Project Facilities available to the Users on the Project Site, in accordance with this Agreement. However, all Taxes and duties shall be paid by the Concessionaire. All applicable taxes and duties shall be borne and paid by the Concessionaire.

23.1.2 The Concessionaire acknowledges and agrees that upon payment of tariff, User charges, etc., any User shall be entitled to use the Project and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

23.1.3 The Concessionaire shall be free to determine and charge the Tariff in respect of the use of any part of the Project Facility or services/ facilities thereat, by the Users/ visitors, as it deems fit, from time to time.

23.1.4 The Concessionaire may offer such special discounted tariffs or charges to any individual or class of clients as it may deem necessary for promotion of its business.

23.1.5 The Concessionaire may, for occupancy of Keys in the Project by Users, levy and recover such tariffs as it may determine from time to time and shall also be entitled to charge market related rates for other services such as telephone, telefax, laundry, food, beverages, , recreation amenities (outdoor pool, health club, spa, sauna, fitness facility etc.), outdoor catering, vending machines, banquet, Wi-Fi services and any other service (the "**Associated Services**"). The Concessionaire may also recover rent or fee and/ or revenue share from third parties for use of spaces of every description and kind, provided by the Concessionaire.

23.2 Service Charges

The Concessionaire may levy and recover an additional service charge for and in respect of any facility or service as it may deem fit.

ARTICLE 24

ESCROW ACCOUNT

24.1 Escrow Account

The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-O.

24.2 Deposits into Escrow Account

24.2.1 The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

(a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of subordinate debt and the Authority;

(b) all funds received by the Concessionaire from its shareholders and/or licensees, in any manner or form including deposit of the required Equity funds in the manner prescribed under Clause 5.13;

(c) all funds constituting the Financial Package;

(d) all Gross Revenues from the usage of the Project;

(e) all proceeds received pursuant to any insurance claims;

(f) all fees, charges, duties, etc. levied and collected by the Concessionaire; and

(g) all payments by the Authority, if any, after deduction of any outstanding payments.

Provided that the Senior Lender may make direct disbursements to the Contractors in accordance with the express provisions contained in this behalf in the Financing Agreements.

24.3 Withdrawals during Concession Period

24.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

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

(b) all payments relating to development of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) Annual License Fee payable to the Authority;

(d) Concession Fee in form of Fixed Annual Concession Fee and Revenue Share due and payable to the Authority;
(e) Reimbursement of property tax to the Authority under Clause 36.3.1;
(f) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
(g) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
(h) monthly proportionate provision of Debt Service due in an Accounting Year;
(i) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
(j) Any reserve requirements set forth in the Financing Agreements; and
(k) Balance, if any, in accordance with the instructions of the Concessionaire.

24.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 24.3.1, except with the prior written approval of the Authority.

24.4 Withdrawals upon Termination

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

(a) all taxes due and payable by the Concessionaire for and in respect of the Project;
(b) outstanding Annual License Fee;
(c) outstanding Concession Fee comprising of Fixed Annual Concession Fee and Revenue Share due and payable to the Authority in terms of the Agreement;
(d) reimbursement of property tax to the Authority under Clause 36.3.1;
(e) 90% of Debt Due less Insurance Cover;
(f) all payments and/ or Damages certified by the Authority as due and payable to it by the Concessionaire;
(g) retention and payments relating to the liability for defects and deficiencies set forth in Article 32;
(h) outstanding Debt Service including the balance of Debt Due;
(i) incurred or accrued O&M Expenses;
(j) any other payments required to be made under this Agreement; and
(k) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 24.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 31.

24.4.2 The provisions of this Article 24 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 24.4.1 have been discharged.

ARTICLE 25

INSURANCE

25.1 Insurance during Concession Period

The Concessionaire shall affect and maintain at its own cost, during the Upgradation Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also affect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Upgradation Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues.

25.2 Insurance Cover

Without prejudice to the provisions contained in Clause 25.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

(a) loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
(b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project Site;
(c) the Concessionaire's general liability arising out of the Concession;
(d) liability to third parties for goods or property damage;
(e) workmen's compensation insurance; and
(f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items(a) to (e) above.

25.3 Notices to the Authority

No later than 45 (forty five) days prior to commencement of the Upgradation Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 25. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure provided in Article 37 shall apply.

25.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 25 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

25.5 Remedy for failure to insure

If the Concessionaire shall fails to effect and keep in force all insurances which it is required to obtain pursuant hereto, the Authority shall have the option (not obligation) to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

25.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 25 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

25.7 Concessionaire's waiver

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

25.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 24.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement and delivery of the Project

Facilities, payment of Damages and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

25.9 Compliance with conditions of insurance policies

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

ARTICLE 26

ACCOUNTS AND AUDIT

26.1 Audited accounts

26.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Revenues from the Keys, restaurants, sale of food and provision of various Associated Services, Optional Facilities, and all incomes derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the Revenue records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

26.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

26.1.3 On or before the 31st (thirty-first) day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project, and such other information as the Authority may reasonably require.

26.2 Appointment of auditors

26.2.1 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm having at least 5 (five) practicing Chartered Accountants on its rolls. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

26.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of [45 (forty-five)] days to the Authority, subject to the replacement Statutory Auditors being appointed in accordance with the Clause 26.2.1.

26.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint, at its cost, from time to time and at any time, another firm (the "**Additional Auditors**") to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

26.2.4 In the event that the Gross Revenue reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same the Concessionaire shall pay charges reported by the Additional Auditor. The Concessionaire shall also pay interest at 3% above the SBI MCLR rate on the difference amount for the intervening period. Further, the Concessionaire shall reimburse all costs, charges and expenses related to the Special Audit. Without prejudice to the aforesaid, if the difference between the Gross Revenue reported by the Additional Auditor and that reported by the Statutory Auditor is higher than 5% (five percent), the Concessioning Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

26.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

26.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 26.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

26.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditor and the certification provided by the Statutory Auditor, the Auditor of the Concessionaire shall meet with Additional Auditor of the Authority to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Parties by recourse to the Dispute Resolution Procedure.

Part V Force Majeure and Termination

ARTICLE 27

FORCE MAJEURE

27.1 Force Majeure

As used in this Agreement, the expression **"Force Majeure"** or **"Force Majeure Event"** shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 27.2, 27.3 and 27.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

27.2 Non-Political Event

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

(a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 27.3;

(c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

(e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

(f) any event or circumstances of a nature analogous to any of the foregoing.

27.3 Indirect Political Event

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

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the development or operation of the Project to be financially unviable or otherwise not feasible;

(c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(d) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

(e) failure of the Authority to permit the Concessionaire to continue the Upgradation Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

(f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(g) any Indirect Political Event that causes a Non-Political Event; or

(h) any event or circumstances of a nature analogous to any of the foregoing.

27.4 Political Event

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

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 34 and its effect, in financial terms, exceeds the sum specified in Clause 34.1;

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

(c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;

(d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

27.5 Duty to report Force Majeure Event

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

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 27 with evidence in support thereof;

(b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event;

(d) Any other information relevant to the Affected Party's claim.

27.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

27.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 27.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

27.6 Effect of Force Majeure Event on the Concession

27.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfillment of Conditions Precedent and in Clause 21.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

27.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

(a) before Operation Date, the Upgradation Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

(b) after Operation Date, whereupon the Concessionaire is unable to provide services in relation to the Project Facilities despite making best efforts or it is directed by the Authority to suspend the aforesaid services during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, as certified by its statutory auditor along with supporting

documents, equal in length to the period during which the Concessionaire was prevented from providing the aforesaid services on account thereof.

27.7 Allocation of costs arising out of Force Majeure

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

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

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event as certified by its statutory auditor along with supporting documents, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

(c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event as certified by its statutory auditor along with supporting documents, shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Upgradation Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Revenues from operation of Project Facilities or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

27.7.3 Save and except as expressly provided in this Article 27, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

27.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 27, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days

period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

27.9 Termination Payment for Force Majeure Event

27.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 85% (eighty five percent) of the Debt Due less Insurance Cover.

27.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

a. Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% of such unpaid claims shall be included in the computation of Debt Due; and
b. 110% (one hundred and ten percent) of the Adjusted Equity.

27.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 30.3.2 as if it were an Authority Default.

27.10 Dispute resolution

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

27.11 Excuse from performance of obligations

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

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

ARTICLE 28

COMPENSATION FOR BREACH OF AGREEMENT

28.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 28.5, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 28.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

28.2 Compensation for default by the Authority

Subject to the provisions of Clause 28.4, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Revenues from room charges, restaurants and sale of food and all incomes derived or collected by it from or on account of the Project Facilities, debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

28.3 Extension of Concession Period

Subject to the provisions of Clause 28.4, in the event that a material default or breach of this Agreement set forth in Clause 28.2 causes delay in achieving Operation Date, the Authority shall, in addition to payment of compensation under Clause 28.2, extend the Concession Period, such extension being equal in duration to the period by which Operation Date was delayed.

28.4 Compensation to be in addition

Compensation payable under this Article 28 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

28.5 Mitigation of costs and damage

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

ARTICLE 29

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

29.1 Suspension upon Concessionaire Default

Upon occurrence of an Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement, including the Concessionaire's right to collect Revenue and all other incomes received by it from or on account of any activities, facilities and services pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

29.2 Authority to act on behalf of Concessionaire

29.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect Revenue under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 24.3.

29.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 29.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project Facilities and its design, upgradation, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

29.3 Revocation of Suspension

29.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

29.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

29.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 29.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

29.5 Termination

29.5.1 At any time during the period of Suspension under this Article 29, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 29.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 30 as if it is an Concessionaire Default under Clause 30.1.

29.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 29.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 30

TERMINATION

30.1 Termination for Concessionaire Default

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

(a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;

(c) the Concessionaire does not complete the Upgradation Works in accordance with the provisions of Schedule-G and continues to be in default for [180 (one hundred and eighty)] days;

(d) the Concessionaire abandons or manifests intention to abandon the upgradation or operation of the Project without the prior written consent of the Authority;

(e) Operation Date does not occur within the period specified in Clause 12.3.3;

(f) the remaining works as set forth in the Provisional Certificate have not been completed within the period set forth in Clause 14.4.1;

(g) the Concessionaire is in continuous and regular breach of the Maintenance Requirements or the Safety Requirements, as the case may be;

(h) the Concessionaire has failed or delayed making three consecutive Quarterly Revenue Share payments or five such payments within any rolling period of two years or if the Concessionaire defaults in the payment of the Fixed Annual Concession Fee for two consecutive years, within the period specified in this Agreement;

(i) the Concessionaire has failed to make any single Quarterly Revenue Share payment or Fixed Annual Concession Fee payment, and such payment remains unpaid for a period exceeding ninety (90) days from its due date;

(j) the Concessionaire has failed to make payment of Annual License Fee to the Authority within the period specified in this Agreement;

(k) the Concessionaire has failed to reimburse the Authority for the payment of property taxes as per Clause 36.3.1;

(l) Diversion of any revenues and receipts from the project facilities to other bank accounts;

(m) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;

(n) the Concessionaire has failed to obtain Star classification from Ministry of Tourism, Government of India within 18 (eighteen) months from the Operation Date;

(o) there is a lapse in the applicable star classification or such classification expires, and the Concessionaire fails to obtain renewal thereof within a period of eight (8) months from the date of such lapse or expiry;

(p) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

(q) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

(r) the Concessionaire creates any Encumbrance in breach of this Agreement;

(s) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

(t) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

(u) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

(v) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

(w) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;

(x) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

(y) occurrence of any Insolvency Event;

(z) the Concessionaire has been or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

(iii) each of the Project Agreements remains in full force and effect;

(aa) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;

(bb) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(cc) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;

(dd) the Concessionaire issues a Termination Notice in violation of this Agreement; or

(ee) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

30.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of an Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall, by a notice, inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 30.1.3.

30.1.3 The Authority shall, if there be Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 30.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for

enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

30.1.4 Upon termination of this Agreement on account of Concessionaire Default, the Performance Security shall stand forfeited in full.

30.2 Termination for Authority Default

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

(a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

(b) The Authority fails to provide, within a period of 90 (ninety days) from the Appointed Date, the Right of Way for development of the Project; or

(c) The Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

30.3 Termination Payment

30.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, (a) an amount equal to 90% (ninety percent) of Debt Due less Insurance Cover;

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 70% (seventy percent) of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the Concessionaire herby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to Operation Date.

30.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

a. Debt Due; and
b. 120% (one hundred and twenty percent) of the Adjusted Equity.

30.3.3 Termination Payment shall become due and payable to the Concessionaire within 60 (sixty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the SBI MCLR on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

30.3.4 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire. At the end of the Concession Period, all Project Assets shall be transferred to the Authority free of cost.

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

30.4 Certain limitations on Termination Payment

30.4.1 Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost, in accordance with the provisions of this Agreement. For avoidance of doubt, it is agreed that within a period of [60 (sixty)] days from Operation Date, the Concessionaire shall notify to the Authority, the Total Project Cost and its disaggregation between Debt Due and Equity, and only the amounts so conveyed

shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that, notwithstanding anything contained in this Agreement, for the purposes of computing Termination Payment, the Debt Due shall at no time exceed [70% (seventy per cent)] of the Total Project Cost.

30.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

(a) take possession and control of the Project forthwith;
(b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Project Site;
(c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Site or any part of the Project;
(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 31.1; and
(e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

30.6 Survival of Rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 30.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment

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

ARTICLE 31

DIVESTMENT OF RIGHTS AND INTEREST

31.1 Divestment Requirements

31.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

(i) notify to the Authority forthwith the location and particulars of all Project Assets;

(ii) deliver forthwith the actual or constructive possession of the Project and Project Site, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

(iii) cure all Project Assets of all defects and deficiencies, so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Upgradation Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;

(iv) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, upgradation, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date, provided that in the event the Concessionaire has used the brand name and/or logo of the {Selected Bidder}, if any, in relation to the Project or otherwise, the Concessionaire shall not be obliged to deliver and transfer such brand name and/or logo to the Authority. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;

(v) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

(vi) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

(vii) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

31.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their

obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

31.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Authority/ Authority Representative shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 32 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 31.

31.3 Cooperation and assistance on transfer of Project

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

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

31.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value, determined by a reputed firm mutually agreed upon and appointed by the Parties, and free from any Encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 31.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

31.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-Q (the "**Vesting Certificate**"), which will

have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

31.5 Divestment costs etc.

31.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favor of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such Divestment shall be borne by the Authority.

31.5.2 In the event of any Dispute relating to matters covered by and under this Article 31, the Dispute Resolution Procedure shall apply.

ARTICLE 32

DEFECTS LIABILITY AFTER TERMINATION AND HANDOVER OF PROJECT ASSETS

32.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority/ Authority Representative/ Authority's authorized personnel in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 32.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 32 shall not apply if Termination occurs prior to Operation Date.

32.2 Retention in Escrow Account

32.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.2.3, a sum equal to the average of monthly Gross Revenue during the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 32.1.

32.2.2 Without prejudice to the provisions of Clause 32.2.1, the Authority/ Authority Representative shall carry out an inspection of the Project at any time between 180 (two hundred and eighty) and 150 (one hundred and fifty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 32.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Authority/ Authority Representative shall be retained in the Escrow Account for the period specified by it.

32.2.3 The Concessionaire may, for the performance of its obligations under this Article 32, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 32.2.1 or 32.2.2, as the case may be, and for the period

specified therein, substantially in the form set forth in Schedule-F (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 32. Upon furnishing of a Performance Guarantee under this Clause 32.2.3, the retention of funds in the Escrow Account in terms of Clause 32.2.1 or 32.2.2, as the case may be, shall be dispensed with.

32.3 Handing Over of the Project Assets

Upon the expiry of the Concession by efflux of time and in the normal course, the Concessionaire shall at the end of the Concession Period, hand over encumbrance free and peaceful possession of the Project Assets in working conditions including Project Site and Facilities at no cost to Authority.

Part VI Other Provisions

ARTICLE 33

ASSIGNMENT AND CHARGES

33.1 Restrictions on assignment and charges

33.1.1 Subject to Clauses 33.2 and 33.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

33.1.2 Subject to the provisions of Clause 33.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

33.2 Permitted assignment and charges

33.2.1 The restraints set forth in Clause 33.1 shall not apply to:

(a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project or liens or encumbrances required by any Applicable Laws;

(b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement; and

(c) assignment of rights, interest and obligations of the Concessionaire to or in favor of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements.

33.2.2 The Concessionaire shall not, directly or indirectly, transfer, mortgage, pledge, assign, hypothecate, encumber, let or sub-let or part with the occupation of the Project Facilities or any part thereof and/or the benefits arising out of this Agreement or any part thereof in any manner whatsoever to any person. However, sub-licensing shall be permitted for spa / wellness center, gym / fitness center, salon, retail outlets, bookstore, souvenir shops, upon prior intimation to the Authority. Such sub-licensing shall be undertaken through appropriate license deeds executed with the respective licensees. For the avoidance of doubt, the Project Facility shall not include the underlying land, and no

rights in the land forming part of the Project Site shall be transferred, leased, sub-licensed, or otherwise alienated by the Concessionaire. The Concessionaire shall ensure that such license deed shall, incorporate clauses, that

i. the sub-license deed(s) shall be co-terminus with this Agreement and shall stand terminated immediately upon Termination of this Agreement (either by efflux of time or pre- mature, as the case may be). In no event the term of such sub-license(s) shall extend beyond the term of this Agreement and the Project Facility shall be handed back to the Authority free of such sub-licenses;
ii. the sub-licensees shall not create any Encumbrance on the taken up Project Facility;
iii. the sub-license deed(s) shall become effective with the right to use allowed to licensees, from the date of having received Completion Certificate from the Nodal Officer under this Agreement; and
iv. the terms of such license(s) shall not be contrary to or in derogation of the terms of this Agreement.

33.3 Substitution Agreement

33.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-R.

33.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

33.4 Assignment by the Authority

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

33.4.2 Any assignment under this Article 33 shall be subject to the approvals and consents required therefore under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

ARTICLE 34

CHANGE IN LAW

34.1 Costs

Any increase in costs or reduction in net after tax return or other financial burden, due to Change in Law shall be borne by the respective parties. Provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

34.2 No Claim

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law.

ARTICLE 35

LIABILITY AND INDEMNITY

35.1 General indemnity

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

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

35.2 Indemnity by the Concessionaire

35.2.1 Without limiting the generality of Clause 35.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

(a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

(b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or

(c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors; or
(d) its omissions or acts of fraud, gross negligence and willful misconduct; or
(e) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
(f) loss of or physical damage to property of the Authority or any third party cause by, arising out of or in connection with the performance of this Agreement.

35.2.2 Without limiting the generality of the provisions of this Article 35, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project/ Project Facilities or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

35.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 35 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

35.4 Defense of claims

35.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 35, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

35.4.2 If the Indemnifying Party has exercised its rights under Clause 35.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

35.4.3 If the Indemnifying Party exercises its rights under Clause 35.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party;

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 35.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

35.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 35, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

35.6 Limitation of Liability

Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, save and except where amounts exceeding the Total Project Cost are specifically prescribed in this Agreement as Termination Payment, shall not exceed the Total Project Cost. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to:

(a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and wilful misconduct;

(b) breach of any Applicable Laws or any Applicable Permits;

(c) any claims or loss on account of Intellectual Property rights violation by the Concessionaire;

(d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or

(e) any loss of or physical damage to property of the Authority or any third part caused by, arising out of or in connection with the performance of this Agreement.

35.7 Survival on Termination

The provisions of this Article 35 shall survive Termination.

ARTICLE 36

RIGHTS AND TITLE OVER THE SITE

36.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as a Licensee subject to and in accordance with this Agreement, and to this end; it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

36.2 Access rights of the Authority and others

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

36.3 Property taxes and stamp duty

36.3.1 All property taxes due and payable during the Concession Period with respect to the Project Site shall be paid by the Authority and the Concessionaire shall reimburse the Authority for such payment within 30 days of receiving written demand from the Authority.

36.3.2 The Parties agree that stamp duties, if any, due and payable on the grant of license under this Agreement shall be paid by the Concessionaire and shall not be reimbursed by the Authority.

36.4 Restriction on sub-letting

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

ARTICLE 37

DISPUTE RESOLUTION

37.1 Dispute Resolution

37.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 37.2.

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

37.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer/ Authority Representative to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer/ Authority Representative or without the intervention of the Independent Engineer/ Authority Representative, either Party may require such Dispute to be referred to the Secretary/ Additional Chief Secretary of the Administrative Department of the Authority and the Chairman of Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 37.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute for Adjudication in accordance with the provisions of Clause 37.4.

37.3 Deleted

37.4 Adjudication by regulatory authority, tribunal or commission

In the event of constitution of a statutory regulatory authority, tribunal or commission or other forum, as the case may be, with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an

appellate tribunal or court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Laws.

ARTICLE 38

Deleted

ARTICLE 39

MISCELLANEOUS

39.1 Governing law and jurisdiction

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

39.2 Waiver of immunity

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgment or Award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

39.3 Depreciation

(a) For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

39.4 Delayed payments and Interest

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

recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

39.5 Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

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

39.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the upgradation, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and

(b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in sub-clause (a) above.

39.7 Exclusion of implied warranties etc.

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

39.8 Survival

39.8.1 Termination shall:

(a) Not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

39.9 Entire Agreement

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

39.10 Severability

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

39.11 No partnership

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

39.12 Third parties

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

39.13 Successors and assigns

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

39.14 Notices

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

(a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the < Insert Location> may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority.
{Attention:
Designation:
Address:
Fax No:
Email ;}

(b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Independent Engineer/ Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in the < Insert Location> it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.
{Name:
Designation:
Address:
Fax No:
Email :}; and

(c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the

case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

39.15 Language

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

39.16 Confidentiality

39.16.1 Each Party shall keep the Confidential Information confidential and shall not disclose the same to any other person without the prior written consent of the other Party.

39.16.2 Sub-Clause 39.16.1 shall not apply in the following circumstances:

(i) any disclosure required by Applicable Laws or in respect of information already in the public domain;
(ii) any disclosure required by any applicable stock exchange listing rule; and
(iii) disclosure to under a Financing Agreement, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.

39.16.3 Either Party shall have the right to disclose Confidential Information pursuant to this Agreement or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.

39.16.4 In the event a disclosure is required by Applicable Law, upon reasonable request by the non-disclosing Party, the disclosing Party shall use all reasonable efforts and cooperate with other Party's efforts to obtain confidential treatment of material so disclosed.

39.16.5 Each Party shall utilize the same degree of care to preserve and protect the other Party's Confidential Information from disclosure that they use to protect their own Confidential Information, which shall not be less than reasonable care.

39.16.6 Confidential Information disclosed shall be and remain the property of the disclosing Party. The obligations of the Parties to protect Confidential Information shall survive [3 (three) years] from Termination.

39.17 Stamp Duty

Any stamp duty, registration charges (if required) or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Concessionaire.

39.18 Counterparts

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

ARTICLE 40

DEFINITIONS

40.1 Definitions

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

"**Accounting Year**" means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

"**Adjusted Equity**" means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "**Reference Date**"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

(a) on or before Operation Date, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

(b) From Operation Date till the expiry of the Concession Period, an amount equal to the Adjusted Equity as on Operation Date shall be deemed to be the base (the "**Base Adjusted Equity**") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each year following Operation Date to the extent of variations in WPI occurring between Operation Date and Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made.

"**Affected Party**" shall have the meaning as set forth in Clause 27.1;

"**Agreement**" or "**Concession Agreement**" means this Agreement, its Recitals, and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"Annual License Fee" shall have the meaning as set forth in Clause 22.2;

"**Appendix**" shall have the meaning as set forth in Clause 10.3.1;

"**Applicable Laws**" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and

obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement. The term "Applicable Laws" also includes any by-laws or regulations of the Authority, The Tamil Nadu Tourism Policy, development control regulations, as applicable to the Project herein;

"**Applicable Permits**" means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the upgradation, operation and maintenance of the Project during the subsistence of this Agreement;

"**Appointed Date**" means the date on which Financial Close is achieved and every Condition Precedent is satisfied or waived, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

"**Associate**" or "**Affiliate**" means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and Policies of such person, whether by operation of law or by contract or otherwise);

"**Associated Services**" refers to supplementary facilities and support services provided by the Concessionaire at the Project Site to enhance the guest experience while aligning with the overall commitment of the Project; these services may include, but are not limited to, Food & Beverage, guided tours, transportation services/travel desk, event planning/management, banquet, concierge services, communication facilities, eco-friendly laundry services, vending machines, Wi-Fi services, recreational activities, childcare, spa, kiosks etc;

"**Authority**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

"**Authority Default**" shall have the meaning as set forth in Clause 30.2.1;

"**Authority Indemnified Persons**" shall have the meaning set forth in Clause 35.1.1;

"**Authority Representative**" means such person or persons as may be authorized in writing by the Authority to act on its behalf under this Agreement and shall include any

person or persons having authority to exercise any rights or perform and fulfill any obligations of the Authority under this Agreement;

"**Bank**" means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

"**Bid**" means the documents in their entirety comprised in the bid submitted by the {selected bidder} in response to the Request for Proposals in accordance with the provisions thereof and "**Bids**" shall mean the bids submitted by any and all pre-qualified bidders;

"**Bid Date**" means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

"**Bid Security**" means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

"**Change in Law**" means the occurrence of any of the following after the Bid Date:

(a) The enactment of any new Indian law;
(b) The repeal, modification or re-enactment of any existing Indian law as applicable to the State;
(c) The commencement of any Indian law, as applicable to the State, which has not entered into effect until the Bid Date;
a change in the interpretation or application of any Indian law, as applicable to the State, by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date;

"**Change in Ownership**" shall have the meaning as set forth in Clause 5.3;

"**Company**" means the company acting as the Concessionaire under this Agreement;

"**Completion Certificate**" shall have the meaning as set forth in Clause 14.2;

"**Concession**" shall have the meaning as set forth in Clause 3.1.1;

"Concession Fee" shall have the meaning as set forth in Clause 22.1;

"**Concession Period**" means the period starting on and from Appointed Date and ending on the Transfer Date;

"**Concessionaire**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

"**Concessionaire Default**" shall have the meaning as set forth in Clause 30.1.1;

"**Conditions Precedent**" shall have the meaning as set forth in Clause 4.1.1;

"**Contractor**" means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract or any other material agreement or contract for upgradation, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

"**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
(c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer/ Authority Representative, as the case may be, to accord their approval;

"**Damages**" shall have the meaning as set forth in Sub-clause (w) of Clause 1.2.1;

"**Debt Due**" means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

(a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "principal") but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;
provided further that the Debt Due, on or after Operation Date, shall in no case exceed 70% (seventy percent) of the Total Project Cost;

"**Debt Service**" means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

"**Dispute**" shall have the meaning as set forth in Clause 37.1.1;

"**Dispute Resolution Procedure**" means the procedure for resolution of Disputes as set forth in Article 37;

"**Divestment Requirements**" means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 31.1;

"**Document**" or "**Documentation**" means documentation in printed or written form, or in tapes, discs, drawings, computer programmers, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

"**Drawings**" means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-H, and shall include 'as built' drawings of the Project;

"**EPC Contract**" or **"Works Contract"** means the engineering, procurement and upgradation contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and upgradation of the Project in accordance with the provisions of this Agreement;

"**EPC Contractor**" or **"Works Contractor"** means the person with whom the Concessionaire has entered into an EPC Contract or Works Contract;

"**Emergency**" means a condition or situation that is likely to endanger the security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

"**Encumbrances**" means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1;

"**Equity**" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

"**Escrow Account**" means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

"**Escrow Agreement**" shall have the meaning as set forth in Clause 24.1;

"**Escrow Bank**" shall have the meaning as set forth in Clause 24.1;

"**Escrow Default**" shall have the meaning as set forth in Schedule-O;

"**Financial Close**" means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements or ready availability of an amount equal to atleast 30% (thirty percent) of the entire (100%) Equity committed by the Concessionaire for financing the Total Project Cost in the Escrow Account in terms of Clause 5.13;

"**Financial Default**" shall have the meaning as set forth in Schedule-R;

"**Financial Model**" means the financial model setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined, and includes a description of the assumptions and parameters used for making calculations and projections

(a) where the Project is partly or wholly financed through debt, the Financial Model shall be the model adopted and approved by the Senior Lenders; or

(b) where the Project is financed entirely (100%) through Equity, the Financial Model shall be the model prepared and submitted by the Concessionaire to the Authority, together with supporting documents as required under this Agreement;

"**Financial Package**" means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and

approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements;

"**Financing Agreements**" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

"Fixed Annual Concession Fee" shall have the meaning set forth in Clause 22.3;

"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Clause 27.1;

"**GOI**" means the Government of India;

"**Good Industry Practice**" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced Concessionaire engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

"**Government**" means the Government of the State;

"**Government Instrumentality**" means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

"**Gross Revenue**" or "**Annual Gross Revenue**" of the Project for and in respect of any Accounting Year shall mean the total amount of gross Revenues and receipts of every kind (from both cash and credit transactions computed prior to payment of any commission or service charge or fee thereon) derived by the Concessionaire from the operation of the Project and its facilities and provision of Associated Services, Hospitality Services and/or any other activity related to the Project, as certified by the statutory auditors of the Concessionaire, and shall include Revenues and receipts from and on account of room occupancy charges, food, beverages, banquet, recreational

amenities, provisioning of Associated Services, various Project Facilities, parking, use of commercial or other spaces for rent or fee of every description and kind, revenue from advertisements, licensing and any other services or facility provided by the Concessionaire within the Licensed Premises/ Project Site, but shall exclude all statutory applicable indirect Taxes such as, GST, expenditure tax, and the like by whatever name called now or in future, which the Concessionaire is bound to pay.

For avoidance of doubt, Gross Revenue shall also include any amount received by the Affiliate to whom the Concessionaire has contracted any associated services, Hospitality Services and/or any other activity related to the Project, and any amount received by the Concessionaire from a third party to whom it has contracted any associated services, Hospitality Services and/or any other activity related to the Project;

"**Hospitality Services**" shall mean the services performed under this Agreement such as reception of Users, provision of food and beverages, room services and any other services performed by the Concessionaire towards creating Revenue from the Project Facilities;

"**Indemnified Party**" means the Party entitled to the benefit of an indemnity pursuant to Article 35;

"**Indemnifying Party**" means the Party obligated to indemnify the other Party pursuant to Article 35;

"**Independent Engineer**" shall have the meaning as set forth in Clause 20.1;

"**Indirect Political Event**" shall have the meaning as set forth in Clause 27.3;

"Insolvency Event" in respect of a Party means: (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party's ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 ("Code"); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been

passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days or (C) directions with the same or similar effect happen under the provisions of the Companies Act, 1965 or the Companies Act, 2013 or the Code in relation to the winding up of the company;

"**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 25, and includes all insurances required to be taken out by the Concessionaire under Clause 25.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

"**Intellectual Property**" means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programs and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

"**LOA**" or "**Letter of Award**" means the letter of award referred to in Recital (D);

"**Lenders' Representative**" means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

"**License Premises**" shall have the meaning as set forth in Clause 10.2.3;

"**Maintenance Requirements**" shall have the meaning as set forth in Clause 17.2;

"**Material Adverse Effect**" means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

"**Mandatory Facilities**" or "**Mandatory Development Obligations**" shall mean the mandatory facilities to be developed, operated, managed and maintained mandatorily by the Concessionaire prior to the Scheduled Completion Date as per Project Development Plan and drawings, at its cost in accordance with the provisions of this Agreement as defined in Schedule C.

"**Nominated Company**" means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

"**Non-Political Event**" shall have the meaning as set forth in Clause 27.2;

"**O&M**" means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Revenue in accordance with the provisions of this Agreement;

"**O&M Contract**" means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

"**O&M Contractor**" means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

"**O&M Experience Criteria**" shall mean the technical eligibility criteria as per Clause 2.2.2 A (a) of the RFP;

"**O&M Expenses**" means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premier for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

"O&M Partner" means the Operating partner who was proposed during the bid stage and whose credentials were evaluated for the bid[3].

"**Operation Date**" shall have the meaning as set forth in Clause 15.1;

"**Operation Period**" means the period commencing from Operation Date and ending on the Transfer Date;

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

[3] Applicable in case the Selected Bidder has qualified using the Development Experience and has submitted an undertaking to onboard an O&M Partner.

"**Performance Guarantee**" shall have the meaning as set forth in Clause 32.2.3;

"**Performance Security**" shall have the meaning as set forth in Clause 9.1.1;

"**Political Event**" shall have the meaning as set forth in Clause 27.4;

"**Project"** means the planning, upgrading, operation and maintenance of the Project Facilities on the Project Site along with Associated Services, on ROMT basis in accordance with the provisions of this Agreement & Schedules hereof, and includes all works, services and equipment relating to or in respect of the Scope of the Project and subsequent transfer of the same to the Authority at the end of the Concession Period or prior on termination of the Concession Agreement;

"**Project Agreements**" means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, hire purchase agreements, implementation agreements, license deeds, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to Rs. 20 Lakhs (Rupees Twenty Lakhs only)[4];

"**Project Assets**" means all physical and other assets relating to and forming part of the Project Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works including foundations, drainage works, pavements, electrical systems, communication systems, tariff/ revenue collection systems, rest areas and administrative offices, (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds and (h) Applicable Permits and authorizations relating to or in respect of the Project;

"**Project Completion Schedule**" means the schedule for completion of Upgradation Works as set forth in Schedule-G for completion of the Project Facilities on or before the Scheduled Completion Date;

"**Project Development Plan**" means the detailed plan for upgradation of the Project Site in terms of this Agreement, approved by the Authority/ Independent Engineer, under Clause 4.1.2 of this Agreement;

"Project Facilities" mean and include all the developments and facilities designed, upgraded as per Project Development Plan, as a part of the Project, by the

Concessionaire during the Concession Period on the Project Site and includes Mandatory Facilities, along with any infrastructure considered ancillary and incidental to it Project Site, which are operated, managed and maintained by the Concessionaire in terms of this Agreement;

"**Provisional Certificate**" shall have the meaning as set forth in Clause 14.3;

"**RBI**" means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

"**Re**.", "**Rs**." or "**Rupees**" or "**Indian Rupees**" means the lawful currency of the Republic of India;

"**Reference Exchange Rate**" means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

"**Request for Proposal**" or "**RFP**" shall have the meaning as set forth in Recital (C);

"**Revenue**" shall mean all amounts charged and recovered by the Concessionaire from the Users on mutually agreed terms and shall include user charges for use of the Project Facilities and Hospitality Services by the Users and shall also include but not be limited to all charges, rent, license fees, tariff, fee, compensation, benefits, deposits (whether long term or short term and whether refundable or not), capital receipts, insurance claims, any proceeds earned by the Concessionaire from display of advertisements, from organizing of events and parties, proceeds from sale of products, consumables, etc. at the Project Facility and license fee in the form of monthly fee/ charge/ rent or revenue share, security deposit, premium and advances as the case may be, collected from the vendors/ licensees, or any other similar payment by whatever name called, received by or paid to the Concessionaire or receivable by the Concessionaire or payable to the Concessionaire or due and realisable by the Concessionaire, for or with respect to use of the Project Facilities and any of the Hospitality Services. For the avoidance of doubt, all Revenue from the Project shall be deposited into the Escrow Account;

"**Revenue Share**" shall have the meaning set forth in Clause 22.4;

"**Right of Way**" means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for upgradation, operation and maintenance of the Project in accordance with this Agreement;

"**Safety Requirements**" shall have the meaning as set forth in Clause 18.1.1;

"**Scheduled Completion Date**" shall have the meaning as set forth in Clause 12.3.1;

"**Scope of the Project**" shall have the meaning as set forth in Clause 2.1;

"**Senior Lenders**" means the financial institutions, banks, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

"**Site**" or "**Project Site**" shall have the meaning as set forth in Clause 10.1;

"**Specifications and Standards**" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

"**State**" means the State of Tamil Nadu and "**State Government**" means the government of that State;

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 26.2.1;

"**Substitution Agreement**" shall have the meaning as set forth in Clause 33.3.1;

"**Suspension**" shall have the meaning as set forth in Clause 29.1;

"**Taxes**" means any Indian taxes including Goods and Service Tax (GST), local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"**Termination**" means the expiry or termination of this Agreement and the Concession hereunder;

"**Termination Notice**" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"**Termination Payment**" means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

"**Tests**" means the tests set forth in Schedule-I to determine the completion of the Project in accordance with the provisions of this Agreement;

"Total Project Cost" or "TPC" means the capital cost incurred on upgradation and financing of the Project and shall be limited to lowest of:

(a) the capital cost of the Project, as set forth in the Financial Package in case the project is being funded through debt, or in the Financial Model where such cost is being financed entirely through Equity by the Concessionaire; and

(b) the actual capital cost of the Project upon completion of the Project as certified by the Independent Engineer;

"**Transfer Date**" means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"**Upgradation Period**" or **"Development Period"** means the period beginning from the Appointed Date and ending on Operation Date;

"**Upgradation Works**" or "**Development Works**" means all works and things necessary to complete the Project in accordance with this Agreement;

"**User**" means a person who uses or intends to use the Project or any part thereof in accordance with the provisions of this Agreement and Applicable Laws;

"**Vesting Certificate**" shall have the meaning as set forth in Clause 31.4; and

"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder;

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

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:	THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the [ ] day of [ ]20[ ] hereunto affixed in the presence of …….. Director, who has signed these Presents in token thereof and, ……., Company Secretary/Authorized Officer who has countersigned the same in token thereof[5]:
(Signature)	
(Designation)	
(Name)	
(Address)	
(Fax No.)	(Signature)
(e-mail)	(Designation)
	(Name)
	(Address)
	(Fax No.)
	(e-mail)

In the presence of:

1. 2.

[5] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

SCHEDULES

SCHEDULE A - SITE OF THE PROJECT

Site of the Project shall include the land as described in this Schedule A.

A. Site Description:



Figure 1: Site Location & Layout

Existing Infrastructure: [TTDC to provide details of built up area]

Site Area: 4.34 acres

Built up area – XXX sqm.

Rooms – 110 nos.

Restaurant –

Bar –

Banquet Halls –

Sl.No.	Dertails	Constructed Area (Sq.ft)	Year of construction	Type of construction	Type of Roof	Type of Floor
01.	**Hotel Building**					
	i) Ground Floor	26,355	2002	RCC framed structure	RCC	Marble
	ii) Mezzanine Floor	23,972	2002	-do-	RCC	Marble
	iii) First Floor	20,731	2002	-do-	RCC	Marble
	iv) Second Floor	20,731	2002	-do-	RCC	Marble
	v) Third Floor	20,731	2002	-do-	RCC	Marble
	vi) Fourth Floor	20,731	2002	-do-	RCC	Cement
	vii) At Open terrace					
	- RCC	1,757	2002	RCC framed structure	RCC	Cement
	- A/C sheet	1,500	2002	-do-	A/C sheet	Cement
02.	Car shed	1,134	2002	Steel Pillar	A/C sheet	Cement
03.	Two Wheeler shed – I & II	1,171	2002	Steel Pillar	A/C sheet	Cement
04.	P.R Catering	628	2002	R.R.Masonry	A/C sheet	Cement
05.	Generator Room	751	2002	R.R.Maosnry	A/C sheet	Cement
06.	Maintenance Room					
	- Ground Floor	1,025	2002	RCC Pillar	RCC	Cement
	- First floor	1,025	2002	RCC Pillar	RCC	Cement
07.	Swimming Pool Room	645	2002	R.R.Masonry	RCC	Cement
08.	Gardening Room	247	2002	R.R.Masonry	A/C sheet	Cement
09.	Administration & Shopping					
	- Ground Floor	4,263	2002	RCC Pillar	RCC	Cement
	- First Floor	3,307	S00s	RCC Pillar	RCC	Cement
10.	Laundry Building - (i)	4,811	1995	R.R.Masonry	RCC	Cement
	- (ii)	520	1995	R.R.Masonry	A/C sheet	Cement
11.	Villa – 1 to 13	7,956	1995	RCC Pillar	RCC	C.Tiles
12.	Villa – 14 to 17	2,269	1995	RCC Pillar	RCC	C.Tiles
	Total	1,66,260sq.ft				

B. Land Revenue Details:

1. Survey No. : [XXX]
2. Village : XXX
3. Taluk : XXX
4. District : Tiruchirapalli
5. Project Area : [4.34] Acres

C. Location Details of the Site:

Latitude	**Longitude**	**Altitude**

D. Access to the Site:

1. National Highway : NH 40 – 3 km
2. Distance from Coimbatore : 68 Kilometers

3. Nearest Airport :

4. Nearest Railway Station :

Tentative List of Inventory:

Conditions Precedent

An inventory of the Project Site including the land, buildings & structures – if any, road works, trees and any other immovable property on, or attached to, the Project Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.

SCHEDULE B - SCOPE OF THE PROJECT

1. Development of the Project

Development of the Project shall include upgradation as described in this Schedule-B and in Schedule-C.

2. Project Facilities

Project facilities shall be developed in conformity with the Schedule – C.

3. Specification and Standards

The Project shall be developed in conformity with the Specifications and Standards specified in Schedule-D.

ANNEX I (SCHEDULE B): Description of the Project

(See Clause 2.1)

Development of the Project shall include refurbishment and upgradation of the Hotel, including supporting and ancillary infrastructure, so as to achieve and maintain operational standards of 4-Star or above classification as per the norms of the Ministry of Tourism, Government of India..

The facilities shall include accommodation facilities, associated services, and project infrastructure. The scope of works shall cover:

- preparation of development plan, designs, drawings, and relevant documents;
- refurbishment, upgradation, and commissioning of the facilities;
- financing of the overall Project; and
- operation and maintenance of the Project Facility post-commissioning in accordance with this Agreement.

The Concessionaire shall:

a. During Development/Upgradation Phase

i. Take over the Project Facility free of encumbrances and plan, design, finance, and execute the necessary refurbishment, upgradation and enhancement works, including provision of relevant assets, equipment, facilities, and ancillary services, obtaining applicable clearances/approvals, and ensuring all amenities are upgraded in accordance with the terms of this Agreement and Schedules.

ii. Complete the upgradation works in a timely manner in accordance with the timelines and specifications set forth in this Agreement and Schedules, ensuring that the refurbished Project Facility meets the required operational and service standards of a 4-star hotel as defined by Ministry of Tourism, Govt of India.

iii. Ensure adherence to all Applicable Laws, regulations, and Permits, environmental and safety requirements, and other statutory or regulatory compliances relevant to refurbishment and operation of the Project Facility.

iv. Ensuring timely completion of all development works and achieving the Minimum Development Obligations as defined in Schedule C, in accordance with the terms of this Agreement.

v. Obtaining all relevant Operational Permits as per Schedule E.

b. Operations and Maintenance

1. Operate and maintain the Project Facility in accordance with the provisions of this Agreement and Schedules, ensuring continuous provision of services, upkeep of facilities, and compliance with operational standards.
2. To maintain all service levels, facilities, standards, and compliance requirements throughout the Concession Period at a level comparable to a minimum 4-Star hotel as per the norms of the Ministry of Tourism, Government of India.
3. To obtain and renew the 4-Star classification from Ministry of Tourism, Government of India on a periodic basis.
4. To make payment of all applicable existing and future taxes, charges, fees, levies, Concession Fee etc. as may be applicable to the Project and/ or any activities in pursuance of the Concession Agreement during the Concession Period.
5. Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

c. Handover Stage

1. Hand over the Project Facility to the Authority at the end of the Concession Period in good working condition, free of defects except for normal wear and tear, in accordance with the Divestment Requirements set forth in this Agreement.
2. Ensure that no advances, loans, dues or outstanding balances, statutory dues, utility bills payments etc. are there as on date of completion.

3. The Project Facility & Project Assets shall be handed-over to the Authority clear and free of all encumbrances in compliance with the Divestment Requirements set forth in the Concession Agreement.

ANNEX -III (SCHEDULE B): Project Development Plan

The Project Development Plan to be prepared and submitted by the Concessionaire to the Authority for its consent shall include but not limit to the following:

The Project Development Plan to be prepared and submitted by the Concessionaire to the Authority for its consent shall include but not limit to the following:

a) **Comprehensive Layout and Refurbishment Plan** of the proposed refurbishment/upgradation of the Project Facilities, showing the distribution of spaces, internal circulation (entry/exit, corridors, internal roads), and landscape/hardscape modifications.
b) **Details of interior and exterior Architectural finishes** proposed for each of the Project Facilities, in alignment with culture and tradition of the Project Site's location.
c) **External area development plan** including landscape and hardscape improvements, along with details of materials, signage, lighting, garden furniture, plantation, etc.
d) **Note on all applicable laws and regulations** along with documents/methodology proposed for compliance to each of the regulations.
e) **Month wise development schedule** indicating plan for completion of upgradation works along with key milestones.
f) **Cost estimate** of the proposed development with Project Facilities wise cost details.
g) **Detailed plan and strategy for operation and maintenance** of the Project Facilities including categorization of facilities, tariff and footfall projections.
h) **Business Plan:** indicating target segments, proposed tariffs for accommodations, restaurants, conferences/events, packages; and
i) **Detailed Financial model** of the proposed development showing cash flow estimates for the entire duration of the Concession Period.

SCHEDULE C. PROJECT FACILITIES AND PROJECT INFRASTRUCTURE

I. The facilities or amenities at the Project Site shall consist of the following:

(A) MANDATORY FACILITIES (MINIMUM DEVELOPMENT OBLIGATIONS/ MANDATORY DEVELOPMENT OBLIGATIONS)

- Refurbished hotel of at least 110 keys, with operational standards aligned with 4-Star or above norms as per Ministry of Tourism guidelines (obtaining official star certification is mandatory).
- Refurbishment/upgradation shall include:
  - Renovation of rooms and interiors
  - Upgradation of public areas and amenities (lobby, reception, F&B areas)
  - Improvements to exteriors, landscaping, and minor hardscape, as required to achieve operational standards.
- The Concessionaire shall maintain and, where necessary, upgrade all existing infrastructure (power, water, sewage, drainage, and internal pathways) to ensure proper functioning and compliance with operational standards.

(B) OPTIONAL FACILITIES: NIL

II. **Associated Services**

During the Operation Period, the Concessionaire shall have the right to develop **Associated Services** and to collect revenues and maintenance charges for such Associated Services. The Concessionaire shall have the right to enter into agreements with third party for allowing provisioning of these Services in accordance with the provisions of this Agreement. In the case where a conflict arises, this Agreement shall prevail over any such third-party service provider agreements.

Annexure 1 – Schedule C

List of Activities permitted for licensing.

- spa / wellness center
- gym, / fitness center
- salon
- retail outlets / bookstore /souvenir shops

SCHEDULE D. SPECIFICATIONS AND STANDARDS

1. The Concessionaire shall comply with this Schedule for planning, design, execution, and completion of all refurbishment and upgradation works at the Project Facility.

2. All drawings, material specifications, layouts, and work plans shall be submitted in hard and soft copies to the Authority for prior approval before commencement of works.

3. No structural alteration shall be carried out without the prior written approval of the Authority and compliance with Applicable Laws.

4. Refurbishment/upgradation shall include, without limitation:

a. **Rooms & Interiors**

- Renovation of all guest rooms, including flooring, wall finishes, lighting, furniture, fixtures, and sanitary fittings.

b. **Common Areas**

- Upgradation of lobby, reception, corridor areas, F&B dining spaces, common toilets, and service areas.

c. **Exterior Works**

- External façade refinement, painting/finishing.
- Landscaping and minor hardscape improvements (pathways, lighting, seating).

d. **Existing Infrastructure**
The Concessionaire shall maintain and, where required, upgrade:

- Electrical power supply system and distribution
- DG backup (if existing)
- Water supply and plumbing systems
- Sewage and drainage systems
- Internal pathways and circulation areas

e. **Safety Systems**

- Upgradation of fire-fighting and fire-safety systems to meet applicable norms.
- Installation or upgradation of emergency signage, alarms, and extinguishers.

5. **Operational Standards:** The refurbished property shall achieve and maintain operational service standards comparable to a minimum 4-Star category of the Ministry of Tourism, Government of India.

Obtaining a 4-Star certification is mandatory, and the Concessionaire shall maintain equivalent service, maintenance, and guest experience standards.

6. **Compliance with National Building Code (NBC)** provisions only for areas impacted by renovation, such as fire safety, structural interventions, or additions.

7. **Compliance with Bureau of Indian Standards (BIS)** norms as applicable to materials, electrical systems, water supply, sanitation fixtures, and safety systems used in the upgradation.

8. **Compliance with building permissions and renovation approvals** required from local planning authorities.

SCHEDULE E. APPLICABLE PERMITS

1. Applicable Permits –

1.1 **Pre-Development - part of Conditions Precedent**

The Concessionaire shall obtain, as required under Applicable Laws all the Applicable Permits required for carrying out Upgradation Works at the Site on or before the Appointed Date, which interalia shall include but not limited to:

(i) Building Plan Approval (if applicable)
(ii) TNPCB NOC (if applicable)
(iii) Fire NOC (if applicable)
(iv) Local Municipality NOC (if applicable)

1.2 Operation Licenses – To be obtained before Scheduled Completion Date / Operation Date

a. Occupancy Certificate / Completion Certificate (Local Body or competent Authority)
b. FSSAI
c. Lodging License / Hotel Trade License from Local Body or relevant authority
d. Fire NOC (Final) from Directorate of Fire and Rescue Services
e. Consent to Operate from TNPCB
f. Labour License and registration under applicable laws
g. Sanitary / Health License from Local Body
h. Bar License (if applicable)
i. Police Certificate
j. GST Registration
k. EPF Certificate
l. ESI Certificate

1.3 The list of Applicable Permits specified herein is **indicative only**. The Concessionaire shall obtain all permits, clearances, NOCs, and licenses as may be required under Applicable Laws, whether or not expressly listed in this Agreement.

SCHEDULE F. PERFORMANCE SECURITY

To,

<Insert Designation and Address of the Authority>

WHEREAS:

A. _____(the "**Concessionaire**") and Tamil Nadu Tourism Development Corporation Limited (the "**Authority**") have entered into a Concession Agreement dated _____ (the "**Agreement**") whereby the Authority has agreed to the Concessionaire undertaking Upgradation, Operation, Management and Maintenance of Hotel at Tiruchirapalli (the "**Project"**) through Public Private Partnership (PPP) on refurbish, operate and transfer ("**ROMT**") basis, subject to and in accordance with the provisions of the Agreement.

B. The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. _____ (Rupees _____ only) (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Concession Period (as defined in the Agreement).

C. We, _____through our Branch at _____ (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of _____(*mention designation)*, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Upgradation Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether

by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force throughout the Concession Period and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 4 (four) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall be released within 4(four) months after the expiry of Concession Period provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such

notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for the entire Concession period or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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

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

SCHEDULE G. PROJECT COMPLETION SCHEDULE

< insert Project Completion Schedule approved as a part of the Approved Development Plan>

The Concessionaire shall develop a Project execution plan in line with the requirements laid out in the Agreement and in the form of a detailed bar chart listing each of the activities along with start and end period as a part of the Project Development Plan. The execution plan shall be reviewed by the Independent Engineer and Authority. Upon mutual agreement of the execution plan, the Concessionaire shall execute the Project as per the plan and the same shall form the basis for monitoring of the development works.

SCHEDULE H. DRAWINGS

1. Drawings

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2. Additional drawings

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

Annex - I (Schedule-H) List of Drawings

The Concessionaire shall develop a detailed design and provide relevant detailed drawings for all the components for the Upgradation work at the project site including but not limited to the following:

(i) Proposed Room Layout Plans clearly indicating existing and upgraded layouts
(ii) Landscaping Drawings for both hard and soft landscapes, street / garden furniture, irrigation plan, etc.
(iii) MEP Design and Drawings (limited to upgradation or replacement works)
(iv) Details of materials and material specifications proposed to be used for the upgradation works
(v) Interior Design and Drawings
(vi) Furniture Layout and Fixtures / Appliances along with shop drawings.
(vii) Bill of Quantities
(viii) Rates Analysis and Cost Estimate

SCHEDULE I. TESTS

1. Schedule for Tests

1.1 The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Project, notify the Independent Engineer and the Authority of its intent to subject the Project to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Project.

1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Project to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

2. Tests

2.1 In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Engineer shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.

2.2 Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of the Project to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.3 Other Tests: The Independent Engineer may require the Concessionaire to carry out or cause to be carried additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

2.4 Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.5 Safety review: Safety audit of the Project shall have been undertaken by the Independent Engineer as set forth in Schedule-L, and on the basis of such audit, the Independent Engineer shall determine conformity of the Project with the provisions of this Agreement.

2.6 Quality Control Test – various quality control tests would be undertake by the Concessionaire in consultation with Independent Engineer for the Project Facilities as per the standard and good industry practices.

3. Agency for conducting Tests

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

4. Completion/Provisional Certificate

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

5. Tests during Upgradation Period

Without prejudice to the provisions of this Schedule-I, tests during upgradation shall be conducted in accordance with the provisions of Clause 13.3.1.

SCHEDULE J. COMPLETION CERTIFICATE

(See Clause 14.2 & 14.3)

COMPLETION CERTIFICATE

1. I/We, _____ (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated _____(the "**Agreement**"), for Upgradation, Operation, Management and Maintenance of Hotel at Tiruchirapalli (the "**Project"**) on Refurbish, Operate and Transfer (the "**ROMT**") basis, through _____(Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project can be safely and reliably placed in service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into operation on this the ****day of **** 20**.

SIGNED, SEALED AND DELIVERED
For and on behalf of
INDEPENDENT ENGINEER by:

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

PROVISIONAL CERTIFICATE

1. I/We,…… (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement Dated _____(the "**Agreement**"), for Upgradation, Operation, Management and Maintenance of Hotel at Tiruchirapalli (the "**Project"**) on Refurbish, Operate and Transfer (the "**ROMT**") basis, through _____(Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken for the Project/section _____ of the Project to determine compliance thereof with the provisions of the Agreement.
2. Upgradation Works forming part of the Project/section of the Project that were found to be incomplete and/or deficient have been specified in the list of remaining works appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. *[Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,]*[6] I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold operation of the Project/section…….. of the Project, pending completion thereof.
3. In view of the foregoing, I/We am/are satisfied that the Project/section of the Project can be safely and reliably placed in service of the Users thereof, and in terms of the Agreement, the Project/section of the Project is hereby provisionally declared fit for entry into operation on this the ____ day of _____ 20_____

ACCEPTED, SIGNED, SEALED AND DELIVERED

FOR AND ON BEHALF OF CONCESSIONAIRE by:

(Signature)

(Name and Designation)

(Address)

SIGNED, SEALED AND DELIVERED

FOR AND ON BEHALF OF INDEPENDENT ENGINEER by:

(Signature)

(Name and Designation)

(Address)

SCHEDULE K. MAINTENANCE REQUIREMENTS

(See Clause 17.2)

1. Maintenance Requirements

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

1.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2. Repair/rectification of defects and deficiencies

2.1. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in the Project within reasonable time limit in accordance with Good Industry Practices.

2.2. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. Other defects and deficiencies

3.1. In respect of any defect or deficiency, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.

3.2. In respect of any defect or deficiency, the Independent Engineer/ Authority Representative may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

3.3. The Independent Engineer/Authority Representative shall inspect the Project and make out an O & M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirement, Specification and Standards and Safety Requirements. In a separate Section of the O & M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project and set out the reasonable time required to rectify the same.

4. Extension of time limit

4.1. Notwithstanding anything to the contrary specified in this Schedule-K, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity the Good

Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

5. Emergency repairs/restoration

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

6. Daily Inspection by the Concessionaire

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

7. Divestment Requirements

7.1. All defects and deficiencies shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the Transfer Date.

8. **Other Maintenance Requirements**

The Concessionaire shall at all times ensure that:

a) the hours of availability of all services provided by the Project Facilities conform to Good Industry Practice and are posted on its website;
b) all the Hospitality and Associated Services, as may be required in accordance with Good Industry Practice and Applicable Laws, are available 24 (twenty four) hours a day and on all days in a year;
c) the rooms are clean, hygienic and ensure pleasant and healthy environment for its Users;
d) all recreational amenities and infrastructure services are in working condition and are readily available for use to its Users.
e) proper room service is provided to maintain cleanliness & hygiene of Project Facilities;
f) there is adequate lighting within the Project in conformity with the Specifications and Standards; and
g) Hospitality and Associated Services are carried out in a manner that it conforms to the environment standards prescribed under Applicable Laws and Applicable Permits.
h) The facilities are maintained in compliance with requirement for a 4-star or above hotel as per Ministry of Tourism, Government of India.

SCHEDULE L. SAFETY REQUIREMENTS

(See Clause 18.1.1)

1. Guiding principles

1.1. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.

1.2. Safety Requirements apply to all phases of upgradation, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

1.3. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - 1 of this Schedule L.

2. Obligations of the Concessionaire

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

(a) Applicable Laws and Applicable Permits;

(b) provisions of this Agreement;

(c) relevant Standards/Guidelines contained in nationally accepted codes; and

(d) Good Industry Practice.

3. Safety measures during Operation Period

3.1. The Concessionaire shall develop, implement and administer a safety programme for the Project, staff, Users and other persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.

3.2. The Concessionaire shall keep a copy of every First Information Report (FIR) recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.

3.3. The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in 3 (three) copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Clause 3.1 of this Schedule L for averting or minimising such accidents in future.

4. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Clause 2 of this Schedule L, shall be borne by the Concessionaire in accordance with the provisions of Clause 18.2.

Annex - I (Schedule-L) Safety Guidelines

1. System integrity

In the design of the Project and Project Infrastructure, particular care shall be taken to minimise the likely incidence of failure.

2. Safety management

A safety statement shall be prepared by the Concessionaire once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. 2 (two) copies of the statement shall be sent to the Independent Expert within 15 (fifteen) days of the close of every year.

3. Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the Disaster Management Manual) to be prepared and published by the Concessionaire prior to the Operation Date. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the Independent Expert no later than 30 (thirty) days prior to Operation Date.

4. Fire safety

4.1. To prevent fire in the Project, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

4.2. To deal with incidents of fire, the Concessionaire shall provide a hydrant based fire-fighting system in conformity with the provisions of Schedule C.

5. Surveillance and Safety Manual

The Concessionaire shall, no later than 60 (sixty) days prior to Operation Date, evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection.

6. Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety of the Project and all persons affected by it.

SCHEDULE M. SELECTION OF INDEPENDENT ENGINEER

(See Clause 20.1)

1. Selection of Independent Engineer

1.1. The provisions of the Tamil Nadu Transparency in Tenders Act along with practices followed by Tamil Nadu Infrastructure Development Board, shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Engineer hereunder.

1.2. In the event of termination of an Independent Engineer appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule-M.

1.3. The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule-M.

2. Terms of Reference

The Terms of Reference for the Independent Engineer shall substantially conform to Schedule-N.

3. Fee and expenses

3.1. In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Upgradation Period plus 3 months, the Authority shall endeavor that payments to the Independent Engineer on account of fee and expenses do not exceed 2% (two per cent) of the Total Project Cost. Payments not exceeding such 2% (two per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.

3.2. Deleted.

4. Selection during Operation Period

The Authority may engage another firm as and when required during the operation period.

5. Appointment of government entity as Independent Engineer

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

SCHEDULE N. TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

(See Clause 20.2.1)

1. Role and functions of the Independent Engineer

The role and functions of the Independent Engineer shall include the following:

(i) review of the Drawings and Documents as set forth in Paragraph 2;
(ii) review inspection and monitoring of Development Works as set forth in Paragraph 2; and
(iii) undertaking all other duties and functions in accordance with the Agreement.

The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

2. Upgradation Period

2.1. The Independent Engineer shall undertake a review of the Drawings to be furnished by the Concessionaire along with supporting data. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within [7 (seven)] days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

2.2. The Independent Engineer shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within [7 (seven)] days of receiving such Drawings or Documents.

2.3. The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within [7 (seven)] days of receipt of such report.

2.4. The Independent Engineer shall inspect the Upgradation Works and equipment (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the [20th (twentieth)] day of succeeding month in any case, and make out a report of such inspection (the Inspection Report) setting forth an overview of the status, progress, quality, safety and conformity of Development Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within [7 (seven)] days of the inspection.

2.5. The Independent Engineer may inspect the Project Facilities at least once a month.

2.6. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of development and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project Facilities is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within [15 (fifteen)] days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.

2.7. If suspension of Development Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.

3. Assistance in Dispute resolution

3.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

3.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

4. Other duties and functions

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

5. Miscellaneous

5.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

5.2 A copy of all communications, comments, instructions, Documents sent by the Independent Engineer to the Concessionaire pursuant to this Schedule shall be furnished by the Independent Engineer to the Authority forthwith.

5.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.

5.4 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all communications, comments, instructions, Documents, and other relevant records, and hand them over to the Authority, or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form, or in such other medium, as may be acceptable to the Authority.

SCHEDULE O. ESCROW AGREEMENT

(See Clause 24.1.2)

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

AMONGST

1. [*****Limited], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ******* (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. ****(insert name and particulars of Lenders' Representative) and having its registered office at **** acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3. **** (insert name and particulars of the Escrow Bank) and having its registered office at **** (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4. The <Insert Name> represented by _____ and having its principal offices at <Insert Location > (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

(A.) The Authority has entered into a Concession Agreement dated _____with the Concessionaire (the "**Concession Agreement**") for Upgradation, Operation, Management and Maintenance of Hotel in Tiruchirapalli, Tiruchirapalli district through Public Private Partnership (PPP) on Refurbish, Operate and Transfer (**ROMT)** basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B.) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

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

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be

legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

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

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

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

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

"**Lenders' Representative**" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

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

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

1.2. Interpretation

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

2. ESCROW ACCOUNT

2.1. Escrow Bank to act as trustee

2.1.1. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2. The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2. Acceptance of Escrow Bank

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

2.3. Establishment and operation of Escrow Account

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

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

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

2.4. Escrow Bank's fee

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

2.5. Rights of the Parties

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

2.6. Substitution of the Concessionaire

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

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Concessionaire

3.1.1. The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

(a) All monies received in relation to the Project from any source, including the Senior Lenders and the Authority;

(b) All funds received by the Concessionaire from its shareholders, in any manner or form;

(c) all funds constituting the Financial Package;

(d) All Revenues from the usage of the Project;

(e) all rentals, deposits or capital receipts, as the case may be;

(f) All proceeds received pursuant to any insurance claims;

(g) All fees, charges, duties, etc. levied and collected by the Concessionaire; and

(h) All payments by the Authority, after deduction of any outstanding payments.

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

3.2. Deposits by the Authority

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

(a) Any monies disbursed by the Authority to the Concessionaire, if any;

(b) All Revenues collected by the Authority in exercise of its rights under the Concession Agreement; and

(c) Termination Payments.

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

3.3. Deposits by Senior Lenders

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

3.4. Interest on deposits

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

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1. Withdrawals during Concession Period

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

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

(b) all payments relating to development of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) Annual License Fee due and payable to the Authority;

(d) Concession Fee in form of Fixed Annual Concession Fee and Revenue Share due and payable to the Authority;

(e) Reimbursement of property tax under Clause 36.3.1;

(f) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

(g) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

(h) Monthly proportionate provision of Debt Service due in an Accounting Year;

(i) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

(j) Any reserve requirements set forth in the Financing Agreements;

(k) Balance, if any, in accordance with the instructions of the Concessionaire.

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

4.2. Withdrawals upon Termination

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

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

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

(c) outstanding Annual License Fee due and payable to the Authority in terms of the Agreement;

(d) outstanding Concession Fee comprising of Fixed Annual Concession Fee and Revenue Share due and payable to the Authority in terms of the Agreement;

(e) reimbursement of property tax under Clause 36.3.1;

(f) 90% of Debt Due less Insurance Cover;

(g) all payments and/ or Damages certified by the Authority as due and payable to it by the Concessionaire;

(h) retention and payments relating to the liability for defects and deficiencies set forth in Article 32;

(i) outstanding Debt Service including the balance of Debt Due;

(j) incurred or accrued O&M Expenses;

(k) any other payments required to be made under this Agreement; and

(l) balance, if any, in accordance with the instructions of the Concessionaire

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 4.2 until a Vesting Certificate has been issued by the Authority under the provisions of Article 31.

4.3. Application of insufficient funds:

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

4.4. Application of insurance proceeds

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

4.5. Withdrawals during Suspension

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

5. OBLIGATIONS OF THE ESCROW BANK

5.1. Segregation of funds

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

5.2. Notification of balances

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

5.3. Communications and notices

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

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

(d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4. No set off

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

5.5. Regulatory approvals

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

6. ESCROW DEFAULT

6.1. Escrow Default

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

(a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;

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

(c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

(d) the Concessionaire fails to deposit the required equity funds in the manner prescribed under Clause 5.13 of the Concession Agreement and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days.

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

7. TERMINATION OF ESCROW AGREEMENT

7.1. Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received

by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2. Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3. Closure of Escrow Account

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

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1. Supplementary escrow agreement

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

9. INDEMNITIES

9.1. General indemnity

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

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

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

9.2. Notice and contest of claims

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

10. DISPUTE RESOLUTION

10.1. Dispute resolution

10.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement shall, to the extent possible, be resolved amicably through mutual discussions between the Parties.

10.1.2. Failing such amicable resolution within thirty (30) days, the dispute shall be subject to the exclusive jurisdiction of the competent courts at Chennai.

11. MISCELLANEOUS PROVISIONS

11.1. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in <town/ city where Project Site is located> shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

11.3. Priority of agreements

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

11.4. Alteration of terms

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

11.5. Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

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

11.6. No third party beneficiaries

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

11.7. Survival

11.7.1. Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

11.8. Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9. Successors and assigns

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

11.10. Notices

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

11.11. Language

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

11.12. Authorized representatives

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

11.13. Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the by the Board of Directors of the Concessionaire has been affixed For and on behalf of pursuant to the resolution passed by the SENIOR LENDERS by the Board of Directors of the Concessionaire Lenders Representative: at its meeting held on the day of 20 hereunto affixed in the presence of , Director, who has signed these presents in token thereof and Company Secretary / Authorized Officer who has countersigned the same in token thereof[7]	SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lender's representative:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)
(Fax No.)	(Fax No.)
(E-mail address)	(E-mail address)
SIGNED, SEALED AND DELIVERED For and on behalf of THE ESCROW BANK by	SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by

[7] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)
(Fax No.)	(Fax No.)
(E-mail address)	(E-mail address)
In the presence of:	
1	2

SCHEDULE P. DELETED

SCHEDULE Q. VESTING CERTIFICATE

(See Clause 31.4)

VESTING CERTIFICATE

1. The _____, <Insert Name> (the **"Authority"**) refers to the Concession Agreement dated ******(the **"Agreement"**) entered into between the Authority and ****** (the **"Concessionaire"**) for undertaking the "Upgradation, Operation, Management and Maintenance of Hotel at Tiruchirapalli" (the **"Project "**) through Public Private Partnership (PPP) on Refurbish, Operate and Transfer (**"ROMT "**) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 31.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this **** day of ****, 20 at [****]

AGREED, ACCEPTED AND SIGNED, SEALED AND DELIVERED	AGREED, ACCEPTED AND SIGNED, SEALED AND DELIVERED
For and on behalf of CONCESSIONAIRE by:	for and on behalf of AUTHORITY by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)
In the presence of:	
1.	2.

SCHEDULE R. SUBSTITUTION AGREEMENT

(See Clause 33.3.1)

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

1. <Insert Name>, represented by the _____ and having its principal office at <Insert address>, Tamil Nadu, India (hereinafter referred to as the "**Authority**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. ***** Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at *****(Hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. ***** (insert name and particulars of Lenders' Representative) and having its registered office at *****, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes)

WHEREAS:

(A.) The Authority has entered into a Concession Agreement dated ***** With the Concessionaire (the "**Concession Agreement**") for the ***"Upgradation, Operation, Management and Maintenance of Hotel at Tiruchirapalli"*** (the "**Project**") and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B.) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C.) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

(D.) In order to enable implementation of the Project including its upgradation, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

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

"**Lenders' Representative**" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"**Nominated Company**" means a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

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

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

1.2. Interpretation

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

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

2. ASSIGNMENT

2.1. Assignment of rights and title

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

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1. Rights of substitution

3.1.1. Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2. The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favor of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2. Substitution upon occurrence of Financial Default

3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

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

3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 29 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3. Substitution upon occurrence of Concessionaire Default

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

3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the

Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4. Procedure for substitution

3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

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

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

(a) Accede to transfer to the Nominated Company the right to upgrade, operate and maintain the Project in accordance with the provisions of the Concession Agreement;

(b) Endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and

(c) Enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4. If the Authority has any objection to the transfer of Concession in favor of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event

of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5. The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5. Selection to be binding

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

4. PROJECT AGREEMENTS

4.1. Substitution of Nominated Company in Project Agreements

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

5. TERMINATION OF CONCESSION AGREEMENT

5.1. Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 30 of the Concession Agreement.

5.2. Termination when no Nominated Company is selected

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

5.3. Realization of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realization of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6. DURATION OF THE AGREEMENT

6.1. Duration of the Agreement

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

(a) Termination of the Agreement; or

(b) No sum remains to be advanced and no sum are outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1. General indemnity

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

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

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

7.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not

settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1. Dispute resolution

8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement shall, to the extent possible, be resolved amicably through mutual discussions between the Parties.

8.1.2. Failing such amicable resolution within thirty (30) days, the dispute shall be subject to the exclusive jurisdiction of the competent courts at Chennai.

9. MISCELLANEOUS PROVISIONS

9.1. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in <town/ city where Project Site is located> shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

9.3. Priority of agreements

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

9.4. Alteration of terms

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

9.5. Waiver

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

(a) Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

(c) Shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6. No third party beneficiaries

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

9.7. Survival

9.7.1. Termination of this Agreement:

(a) Shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

9.8. Severability

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

agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9. Successors and assigns

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

9.10. Notices

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

9.11. Language

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

9.12. Authorized representatives

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

9.13. Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ****day of the *****20**here unto affixed in to the presence of******the Director, who has signed these presents in token thereof, ****Company Secretary /Authorized Officer who has countersigned the same in token thereof [8]

SIGNED, SEALED AND DELIVERED
For and behalf of THE AUTHORITY by:

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

(Fax No.)
(E-mail address)

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

(Fax No.)
(E-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of

SENIOR LENDERS by Lenders' Representative:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

In the presence of:
1 2

[8] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors