

DRAFT CONCESSION AGREEMENT (DCA)

FOR

**DEVELOPMENT, OPERATION & MAINTENANCE AND MANAGEMENT OF LAKEVIEW RESIDENCY HOTEL,
BHOPAL ON DESIGN, BUILD, FINANCE, OPERATE, TRANSFER (DBFOT) MODE FOR 60 YEARS
(EXTENDABLE BY A PERIOD OF 10 YEARS)**



HOTELS & RESORTS
Your host in the heart of India
www.mpstdc.com

(National Competitive Bidding)

TABLE OF CONTENTS

Contents

TABLE OF CONTENTS.....	2
CONCESSION AGREEMENT	4
ARTICLE 1: DEFINITIONS AND INTERPRETATION.....	6
ARTICLE 2: SCOPE OF THE PROJECT	19
ARTICLE 3: GRANT OF CONCESSION	21
ARTICLE 4: CONDITIONS PRECEDENT	24
ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE	27
ARTICLE 6: OBLIGATIONS OF THE AUTHORITY	41
ARTICLE 7: REPRESENTATIONS AND WARRANTIES.....	43
ARTICLE 8: DISCLAIMER	47
ARTICLE 9: PERFORMANCE SECURITY	48
ARTICLE 10: RIGHTS AND TITLE OVER THE PROJECT SITE	50
ARTICLE 11: VARIATIONS	53
ARTICLE 12: FINANCIAL CLOSE.....	55
ARTICLE 12A: COMMENCEMENT TIME AND DELAYS	56
ARTICLE 13: MONITORING OF CONSTRUCTION	58
ARTICLE 13A: MORTGAGE OF PROJECT ASSETS.....	61
ARTICLE 14: COMPLETION OF PROJECT	62
ARTICLE 15: OPERATIONS AND MAINTENANCE PERIOD	63
ARTICLE 16: INDEPENDENT ENGINEER	67
ARTICLE 17: MONITORING OF OPERATION AND MAINTENANCE.....	70
ARTICLE 18: UTILITIES & LABOUR	72
ARTICLE 19: PROJECT CONSIDERATION.....	74
ARTICLE 20: ACCOUNTS AND AUDIT	76
ARTICLE 21: SUSPENSION	78
ARTICLE 21A: SUBSTITUTION	80
ARTICLE 22: TERMINATION	81
ARTICLE 23: DIVESTMENT OF RIGHTS AND INTEREST	86
ARTICLE 24: LIABILITY AND INDEMNITY	89
ARTICLE 25: ESCROW AGREEMENT	92
ARTICLE 26 INSURANCE	94
ARTICLE 27: FORCE MAJEURE.....	96
ARTICLE 27A: COMPENSATION FOR BREACH OF AGREEMENT	101
ARTICLE 28: DISPUTE RESOLUTION	102
ARTICLE 29: REDRESSAL OF PUBLIC GRIEVANCES.....	103

ARTICLE 30: USER CHARGES.....	104
ARTICLE 31: TRANSFER OF THE PROJECT	105
ARTICLE 32: CHANGE IN LAW	107
ARTICLE 33: MISCELLANEOUS PROVISIONS	108
SCHEDULE-I: PROJECT SITE DESCRIPTION.....	117
SCHEDULE-II: PROJECT FACILITIES	119
SCHEDULE-III: SCOPE OF WORK, TECHNICAL REQUIREMENTS & PERFORMANCE STANDARDS.....	121
SCHEDULE-IV: FORMAT OF PERFORMANCE SECURITY.....	132
SCHEDULE-V: LIST OF APPLICABLE PERMITS	134
SCHEDULE-VI: ESCROW AGREEMENT	135
SCHEDULE-VII: COMPLETION CERTIFICATE	150
SCHEDULE-VIII: VESTING CERTIFICATE	151
SCHEDULE-IX: SUBSTITUTION AGREEMENT	152
SCHEDULE-X: COMPLIANCE CERTIFICATE.....	162
SCHEDULE-XI: LEASE DEED.....	164
SCHEDULE-XII: SHAREHOLDERS AGREEMENT	171

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (the "Agreement") is entered into on this the _____ day of _____, 2025 at _____;

BETWEEN

MADHYA PRADESH HOTEL CORPORATION LTD. (MPHCL), a company incorporated under the Companies Act 1956 having its office at Paryatan Bhawan, Bhadbhada Road, Shastri Nagar, Bhopal, Madhya Pradesh- 462003, acting through its authorized representative, its Managing Director (hereinafter referred to as the "**Authority**" / "**MPHCL**", which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **First Part**;

AND

M/s. [insert the name of the Bidder], a private limited company incorporated under the Companies Act, 2013, and having its registered office at _____ [insert address of the registered office], acting through _____ its

[designation], duly authorized in this behalf by way of Power of Attorney dated _____ (hereinafter referred to as the "**Selected Bidder**" which expression shall, unless the context otherwise requires, include its successors, permitted assigns and substitutes) of the **Second Part**;

It is clarified that hereinafter that a single party individually will be referred to as "**Party**" and together referred to as "**Parties**".

RECITALS:

- A. WHEREAS** the Authority is the rightful owner of the MPT Lakeview Residency Hotel, Bhopal, Madhya Pradesh, India as marked in **Schedule I** (hereinafter referred to as "**Project Site**"), who possesses the leasehold rights over the land consisting of the Project Site granted through [*] under a lease deed dated [*] for a period of [*]. Presently the Authority intends to execute a contract to Develop, Operate & Maintain and Manage the Project Site/MPT Lakeview Residency Hotel, Bhopal, as a minimum 5-star Hotel along with a Banquet, Restaurant and other facilities on Design, Build, Finance, Operate and Transfer ("**DBFOT**") basis (the "**Project**") for a period of 60 years (extendable by a period of 10 years);
- B. AND WHEREAS** with an objective to seek private sector participation in the Development, Operation, Maintenance and Management of the aforesaid Project, the Authority undertook the process of selection of a suitable concessionaire through open competitive bidding, after issuing a Request for Proposal document (the "**RFP**") dated _____ thereby inviting Bids from prospective Bidders to implement the said Project, containing *inter alia* the minimum qualification(s) for a Bidder having certain technical, financial and commercial parameters for the Project along and the terms and conditions for the implementation of the Project. Upon detailed evaluation of the submitted Bids, the Authority has accepted the Financial Bid of the Selected Bidder [consortium/sole applicant as the case may be] and issued a Letter of Award ("**LoA**") dated _____ requiring *inter alia* the execution of this Agreement within 60 (sixty) days of issuance thereof.
- C. AND WHEREAS** pursuant to the issuance of LoA *vide* letter no. ____ dated _____, the Selected Bidder

has incorporated and constituted a Special Purpose Vehicle (hereinafter referred as "**Concessionaire**") for the sole purpose of implementing the Project.

- D. AND WHEREAS** the Concessionaire/ Selected Bidder acknowledges and confirms that it has undertaken due diligence and audit of all aspects of the Project Site and the Project including the entire scope of work involved, as well as technical and financial viability, legal due diligence, demand parameters and forecast, and on the basis of its independent satisfaction hereby accepts the Concession, inclusive of the lease, granted and agrees and undertakes to implement the Project at its own and sole cost and expense in accordance with the terms and conditions of this Concession Agreement.
- E. AND WHEREAS** the Concessionaire hereby accepts the Concession granted and undertakes to timely implement the Project in accordance with the provisions of this Concession Agreement.
- F.** The {Selected Bidder/ Consortium} has, in compliance of the LoA and RFP, furnished the following payments to the Authority:
- (i) Performance Security by way of Irrevocable Bank Guarantee No. _____ dated _____ for an amount of INR 7,50,00,000/- (Indian Rupees Seven Crores Fifty Lakhs only)}, as a pre-condition for signing of this Concession Agreement as security for performance of their obligations towards the Project.
 - (ii) The Annual Concession Fee for an amount of INR _____ (Indian Rupees _____ only in words) by way of {mention the mode of payment}, towards the first ACF to be tendered by the Concessionaire;
 - (iii) The Annual Lease Payment of INR _____ (Indian Rupees only in words) by way of {mention the mode of payment} by way of {mention the mode of payment};
- G. AND WHEREAS** the Authority shall execute and register a lease deed with the Concessionaire for the Project Site.

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 and acknowledge as follows:

ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement 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, unless not defined in the Schedule but hereunder:

1. **"Act"** means the Companies Act, 1956/2013, read in context with the manner of its usage in this Agreement.
2. **"Agreement"** or **"Concession Agreement"** means this Agreement, its Recitals, the Schedules, hereto, as well as the RFP and any amendments thereto made in accordance with the provisions contained in this Agreement and the Letter of Award issued by the Authority.
3. **"Agreement Date"** means the date of execution of this Concession Agreement.
4. **"Affected Party"** shall have the meaning set forth in Article 27.1.
5. **"Annual Concession Fee (ACF)"** means the consideration for the grant of rights by the Authority to the Concessionaire for the Project. ACF shall mean and comprise of the reserve price of Rupees 3 Crores only (Rupees 3,00,00,000/-) increasing at a compounding rate of 5% p.a. excluding GST and any other taxes applicable from time to time.

Please note, all such taxes shall be paid in addition to (i.e. over and above) the ACF by the selected Bidder to the Authority. The first Annual Concession Fee (ACF) will be due and payable before the time of signing of the Concession Agreement which stands paid as recorded in the recitals. Subsequent ACF payments shall be made annually, on or before the same date in each financial year, payable as a lump sum excluding GST and any other taxes applicable from time to time.

6. **"Applicable Laws"** shall mean all laws, brought into force and effect by the Government of India ("GOI") or the Government of Madhya Pradesh ("GoMP") which means and includes all acts, rules, regulations, notifications, directives, policies and office memorandums, made thereunder, and includes all judgements, decrees, injunctions, writs and orders of any court, applicable or having an effect on this Agreement, directly or otherwise, and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect.
7. **"Applicable Permits"** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals, and exemptions required to be obtained or maintained by the Concessionaire under Applicable Laws in connection with the implementation of the Project during the subsistence of this Agreement as detailed in **Schedule V** of this Agreement.
8. **"Associates"** means in relation to either Party and / or any member of the Consortium, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member. As used in this definition, the expression "control" means with respect to a person which is a corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
9. **"Authority"** means Madhya Pradesh Hotel Corporation Limited (MPHCL) through its Managing Director or any other authorized person, acting on behalf of Department of Tourism (DoT), Government of Madhya Pradesh.
10. **"Authority's Event of Default"** shall have the meaning as ascribed to it in Article 22.2.
11. **"Bid"** shall mean and include the documents in their entirety, comprised in / given along with the bid or thereafter submitted by the Selected Bidder to the Authority in response to the Request for Proposal by the Authority and as accepted by the Authority, along with all amendments / changes made thereto.

12. **"Bid Security" or "Proposal Security"** means the security provided by the Selected Bidder to the Authority along with the Bid / Proposal of the sum of INR 3,00,00,000/- (Rupees Three Crore only) in accordance with the Bid and which is to remain in force until substituted by the Performance Security.
13. **"Bank"** means a Scheduled Commercial Bank as defined under the Banking Regulation Act, 1949.
14. **"Bank Guarantee"** means an irrevocable and unconditional bank guarantee payable on demand issued by a schedule bank in favour of the Authority and furnished by the Concessionaire to Authority for guaranteeing the due performance of the obligations of the Concessionaire under this Agreement.
15. **"Bank Rate"** means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.
16. **"Building Plan Approval"/ "Layout Plan Approval"** means the statutory approval or sanction of the plans / drawings of a building by the competent local authority and as per Applicable Laws, which is a pre-condition to initiate construction work of the said Project under all applicable laws.
17. **"Business Day"** means a day on which banks are generally open for business in the city of Bhopal, Madhya Pradesh in India.
18. **"Change in Ownership"** means a transfer of Equity that causes a change in the shareholding of the Concessionaire as set forth in Article 5.2 and sub-clauses thereof.
19. **"Change in Laws"** means the occurrence of any of the following after the date of Bid:
- a. the enactment of any new Indian / Central law as applicable to the State or as enacted by the State of Madhya Pradesh;
 - b. the repeal, modification or re-enactment of any existing Indian law as applicable to the State or any law repealed, modified or re-enacted by the State of Madhya Pradesh;
 - c. the commencement / enforcement of any Indian / Central law, as applicable to the State or commencement or enactment of law by the State of Madhya Pradesh, which has not entered into effect until the date of Bid; and
 - d. a change in the interpretation or application of any law, as applicable to the State, by a judgment of a court of competent jurisdiction which has become final, conclusive and binding; or any change in the rates of any of the Tax(es)/fee(s)/cess (es) that have a direct effect on the Project.
20. **"Commercial Operations Date" or "COD"**: when the Authority has issued the Completion Certificate, and the necessary approvals have been obtained by the Concessionaire from the competent authorities, including the Occupancy Certificate from the Competent Authority and the Concessionaire certifies in writing to the Authority that all the facilities required for rendering Hospitality Services can be safely and reliably placed in commercial operation, the Authority shall, upon receipt of such certification from the Concessionaire and upon its satisfaction thereof, intimate to the Concessionaire the date when the Project shall enter into commercial operation and such date shall be the 'Commercial Operations Date'/'COD', whereupon the Concessionaire shall be entitled to demand and collect User Charges in accordance with the provisions of Article 30 of the Agreement.
21. **"Competent Authority"** means any agency, authority, department, ministry, public or statutory Person, working directly or indirectly for the Government of Madhya Pradesh or Government of India, or any local authority, or any other sub-division thereof with lawful authority over aspects of implementation of the Project 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 Concession Agreement.
22. **"Completion Certificate"** means the Certificate issued as per Schedule VII.
23. **"Compliance Date"** means the date on which every Condition Precedent shall have been satisfied or waived in writing by the Parties and the Certificate of Compliance has been signed and issued by both the Parties as per

Article 4, under the format given in Schedule X.

24. **"Concessionaire"** means a Company / SPV incorporated under the Companies Act, 2013 constituted by the Selected Bidder (consortium/sole applicant as the case may be) for the sole purpose of implementing this Project, having its registered office at _____ and includes its successors and permitted assigns (which may exempt the O&M operator who is only part of the Consortium to comply with the Technical Eligibility of the RFP to be part of such SPV).
25. **"Concessionaire Event of Default"** shall have the meaning as ascribed to it in Article 22.1.
26. **"Concessionaire's Equipment"** means all machinery, apparatus, and other things (other than Temporary Works) required for the execution and completion of the Project Works and the remedying of any defects, and includes any equipment referred to as "Construction Equipment" but does not include plant and materials.
27. **"Concessionaire's Representative"** means the Person appointed by Concessionaire under Article 5.4.
28. **"Concession Period"** is the period of 60 (years) years, for which this Concession is granted, commencing from the Compliance Date, which may be extendable for a period of 10 years by the Authority at its discretion.
29. **"Condition Precedent"** means the conditions set out in Article 4 hereof.
30. **"Consortium"** means the group of entities that have jointly submitted the Bid for the Project.
31. **"Consortium Members"** means _____ & _____ and also includes any such other member who has been expressly allowed by the Authority to replace an existing member of the consortium in terms of Article 5.2 and sub-clauses thereof.
32. **"Cost"** means all expenditure incurred or scheduled/proposed to be incurred by the Concessionaire, on the Project, including overheads and similar charges, but does not include profit.
33. **"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 commence from the date on which a Notice is delivered by one (non-defaulting) Party to the other Party asking the latter to cure the breach or default specified in such Notice as per the provisions of this Agreement.
34. **"Completion Period"** means the period of overall construction and development of the Project. The Completion Period is reckoned from the Compliance Date to the date of issue of Completion Certificate under Schedule VII.
35. **"Completion Date"** means the date by which the overall construction and development of the Project, which shall be at the expiry of a period of 36 (Thirty-Six) months from the Compliance Date, or as specifically extended in writing by the Authority, is completed in accordance with the provisions of this Agreement and when the Completion Certificate is issued by the Authority under Schedule VII, post its satisfaction.
36. **"Damages"** mean the damages payable by either Party to the other Party / Parties, as set forth in this Agreement, as a mutually agreed genuine pre-estimated loss and damage(s) likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.
37. **"Day"** means calendar day, **"Month"** means 30 (thirty) days and **"Year"** means 365 (three hundred and sixty-five) days.
38. **"Dispute"** shall have the meaning set forth in Article 28
39. **"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in Article 28
40. **"Drawings"** means all the detailed drawings, calculations and documents pertaining to the Project Facilities, prepared in line with the approved DPR (Detailed Project Report) and shall include 'as built' drawings of the Project Facilities.

41. **"Easementary Rights"** means all easements, reservations, right of way, utilities and other similar purposes, or zoning or other restrictions as to the use of the Project property, which are necessary or appropriate for the conduct of activities of the Concessionaire related (directly or indirectly) to the Project or which customarily exist on properties which are similarly situated and are engaged in similar activities.
42. **"Encumbrances"** means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security, interest, assignment, privilege or priority of any kind over the Project Site having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, including physical encumbrances or encroachments on the Project Site where applicable herein.
43. **"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;
44. **"Escrow Account"** means an account which the Concessionaire shall open and maintain with the Escrow Bank in which all inflows and outflows of cash, including on account of capital and revenue receipts and expenditures, as the case may be, shall be credited and debited, in accordance with the provisions of this Agreement and Schedule VI, and includes the sub-accounts of such Escrow Account, if any;
45. **"Escrow Agreement"** shall have the meaning set forth in Article 25;
46. **"Escrow Bank"** shall have the meaning set forth in Article 25;
47. **"Finance"** means the funds required to design, build, finance, operate, maintain and manage the Project and its components.
48. **"Financing Agreements" or "Financing Documents"** means the documents/ agreements executed by the Concessionaire in respect of Financial Assistance to be provided by the Senior Lenders to the Concessionaire by way of loans, guarantees, subscription to non- convertible debentures and other debt instruments including loan agreements, guarantees, notes, debenture bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Total Project Cost and includes any amendments or modifications made to it
49. **"Financial Close"** means the date on which the Financing Documents with respect to the Financing Package for the Project have been executed and become effective and the Concessionaire has fulfilled all the conditions needed for draw down of Financing and the Concessionaire has immediate access to such Financing, enabling commencement of construction as per Project Implementation Schedule and which shall, in any case be not later than 180 (one hundred and eighty) days from the Agreement Date hereof, unless specifically extended.
50. **"Financial Model"** means the financial model adopted by Senior Lenders setting forth the capital and operating costs of the Project and revenues there from on the basis of which the financial viability of the Project has been determined by the Senior Lenders and includes a description of the assumptions and parameters used for making calculations and projections therein.
51. **"Financial Year"** means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.
52. **"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, Subordinated Debt, if any;
53. **"Force Majeure" or "Force Majeure Event"** shall mean an act, event, condition, or occurrence specified in

Article 27.

54. **"Good Industry Practice"** means those practices, methods, techniques, designs, standards, skill, diligence, efficiency, reliability, good faith and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in construction and operation of projects akin to the Project and all incidental and ancillary activities in relation thereto. It would include good engineering practices in the demolition, design, engineering, construction and project management which would be expected to result in efficient performance of its obligation by the Concessionaire and in operation and maintenance of the Project in accordance with this Concession Agreement, Applicable Laws, permits and Clearances and includes prudent practices generally accepted by the Construction, Hotel and Hospitality Industry for ensuring reliable, safe, economical and efficient construction, operation and maintenance of the Project Facilities.
55. **"GoMP"** means the Government of Madhya Pradesh, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Madhya Pradesh and its administrators and assigns.
56. **"GoI"** means the Government of India.
57. **"Golden Share"** shall have the meaning as set forth in Clause 5.3
58. **'Gross Revenues'** for any Financial Year shall mean the total amount of revenue and receipts of any kind (from both cash and credit transactions either on accrual or cash basis computed prior to payment of any commission or service charge or fee thereon) derived by the Concessionaire or any received by any agency or agent appointed by the Concessionaire for operation or maintenance of any Project Facilities as certified by the statutory auditors of the Concessionaire, including but not limited to receipts from room occupancy charges, telephone, telefax and telex charges, laundry services, sale of food or beverages, sale of liquor, receipts from any recreational amenities (outdoor pool, health club, spa, sauna, fitness facility etc.), receipts from providing services such as but not limited to outdoor catering, receipts from vending machines; receipts by providing advertisement or advertisement rights, receipts from parking, receipts from lease or licensing commercial or other spaces on account of rent and fee of every description and kind (which would not be limited only to the licensing fee but also the receipts from services mentioned above), and the recovery in respect of any other service or facility provided by the Concessionaire to the users / guests of the said Project, which are availed/ realized by the Concessionaire from outside party(ies) at a consideration but shall exclude and be arrived at after deducting the following:-
- a) All statutory applicable indirect taxes such as luxury tax, sales tax, entertainment tax, expenditure tax, service tax, goods & services tax and the like by whatever name called now or in future, which the Concessionaire has agreed to pay or is bound to pay;
 - b) revenue on sale of assets of capital nature owned by the Concessionaire; and
 - c) interest income from investments made.

For the avoidance of doubt, Gross Revenue shall also include any amount received by any Affiliate/third party agency 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.

Please note, all such taxes shall be paid in addition to (i.e. over and above) the quoted Revenue Share basis the Gross Revenue by the Selected Bidder to the Authority. It is clarified that the Revenue Share payments shall be ascertained basis the audited financials certified by a chartered accountant as per the relevant 'Indian Accounting Standard' and be made annually, on or before 30th June of each year.

59. **"Hospitality Services"** shall mean the services performed under this Agreement such as reception of Users, organizing events, provision of food and beverages, room services, MICE facilities and any other services

performed by the Concessionaire towards creating revenue from the Project Facilities.

- 60. **"Indemnified Party"** means the Party entitled to the benefit of an indemnity pursuant to Article 24.
- 61. **"Indemnifying Party"** means the Party obligated to indemnify the other Party pursuant to Article 24.
- 62. **"Independent Engineer"** means a technical consultancy firm appointed by the Authority in accordance with Article 16 for supervision and monitoring of Works (limited to demolition, construction and other such allied and connected activities) by the Concessionaire to be in compliance with the terms and conditions set forth in this Agreement.
- 63. **"LoA"** means letter of award as per Clause 3.4 of RFP.
- 64. **"Maintenance Requirements"** shall mean the requirements as set out in Schedule-III of this Concession Agreement.
- 65. **"Material Adverse Effect"** shall mean 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.
- 66. **MOT (Ministry of Tourism)** shall mean the Ministry of Tourism, Government of India
- 67. **"Necessary Applicable Permits"** shall mean Applicable Permits which are necessary to be procured by the Concessionaire for execution of the Project, as a Condition Precedent in Article 4, unless waived by the Authority; and shall include permits as mentioned in Schedule V to this Agreement.
- 68. **"Notice of Breach"** means the notice issued by a Party intimating the other Party about a breach of its obligation as per this Agreement, on issue of which notice, the Cure Period shall commence as per provisions of Article 22.
- 69. **Occupancy Certificate** means the statutory approval by a competent local authority certifying a building's completion, compliance with applicable laws and building codes and fitness for occupancy.
- 70. **"O&M Period"** is the period commencing from the Commercial Operations Date and ending at the Transfer Date.
- 71. **"O&M Operator"** shall mean an operator/firm/company with whom the resultant SPV in continuation of this RFP/Concessionaire has entered into an O&M Contract/Agreement, if any; O&M operator shall be responsible for the operation and maintenance of the Overall Project covering Project Assets, Project Facilities and the Project Infrastructure and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of this Agreement.
- 72. **"Parties"** means the Parties to this Agreement collectively and **"Party"** shall mean any of the Parties to this Agreement individually.
- 73. **"Performance Standards"** means the standards for the operation and maintenance of the Project Site, as set forth in **Schedule III** of the Concession Agreement.
- 74. **"Performance Security"** means the Security as set out in Article 9 and Schedule IV from a Scheduled Bank

approved by the Authority.

75. **"Person"** means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name.
76. **"Project"** means, subject to the provisions of this Concession Agreement, the planning, set-up, design, demolition, construction, redevelopment, finance, operation and maintenance and management of MPT Lakeview Residency Hotel, Bhopal as a minimum 5-Star Category as per Guidelines of Ministry of Tourism, Government of India Hotel on Design, Build, Finance, Operate, Transfer (DBFOT) Mode as mentioned in Schedule III and such modification, alterations and extensions thereto as may be directed by the Authority from time to time, as per the terms and conditions of the RFP and this Concession Agreement and Schedules hereof and transfer of the same to the Concessioneing Authority at the end of the Concession Period or upon termination of the Concession Agreement on 'as is where is and in good condition' basis as a going concern including all movable and immovable assets.
77. **"Project Agreements"** means, collectively, this Concession Agreement, the Financing Documents, hire purchase agreements, implementation agreements, sub-contract agreements, construction agreements and operation & maintenance agreements, in each case as amended, supplemented, or otherwise modified from time to time.
78. **"Project Assets"** means all physical and other assets relating to and forming part of the Site including:
- a) Rights over the Project Site in the form of lease, Right of Way or otherwise;
 - b) Tangible assets such as civil works and equipment including foundations, embankments, pavements, interchanges, bridges, drainage works, electrical systems, communication systems, rest areas and administrative offices;
 - c) Project Facilities including the ancillary facilities situated on the Site;
 - d) Buildings and immovable fixtures or structures forming part of Project Facilities;
 - e) All rights of the Concessionaire under the Project Agreements;
 - f) Financial assets, such as receivables, security deposits etc.;
 - g) Insurance proceeds and
 - h) Clearances, approvals and authorizations relating to or in respect of the Project.
79. **Project Consideration** shall have the meaning ascribed to it in Article 19.1
80. **"Project Documents"** means and includes all drawings, calculations, computer application software (programs), samples, patterns, models, DPR (Detailed Project Report), operation and maintenance manuals, and other manuals and information of a similar nature prepared in relation to the Project.
81. **"Project Facilities"** means and includes all developments on the Project Site including those designed, developed and constructed as a part of the Project by the Concessionaire during the Concession Period
82. **"Project Implementation Schedule"** means the Concessionaire's Project implementation proposal and its time frame as accepted by the Authority in accordance with Article 5.6.
83. **"Project Insurance"** means the insurance taken out by or on behalf of the Concessionaire pursuant to Article 26 of this Concession Agreement.

84. **"Project Site" or "Site"** means the MPT Lakeview Residency Hotel Bhopal having 42 rooms and operated by MPHCL, along with the underlying land. The total Project Site area is approximately 7.16 Acres along with the other areas comprising the parking lots, Bhopal Express Restaurant, Spa & Pool, and Drive in theatre abutting the north section of the subject site and outer walkway, as given for reference in the Schedule I & II.
85. **"Revenue Share"** for the Project shall be Percentage of Gross Revenue as quoted by selected bidder (subject to a reserve price of 3% of Gross Revenue) excluding GST and any other taxes applicable from time to time. Please note, all such taxes shall be paid in addition to (i.e. over and above) the quoted Revenue Share by the selected Bidder to the Authority . Revenue Share payments shall be made annually, on or before 30th June of each year.
86. **"RFP"** means Request for Proposal document issued by the Authority. The term RFP and "Request for Proposal" are synonymous with "Tender Documents", "Bidding Documents" and "Detailed Notice Inviting Tender" (DNIT).
87. **"Right of Way"** means the constructive possession of the Project Site on 'lease' basis, where the concessionaire would undertake to demolish the present structures on the Site and thereafter plan, design, build and operate the envisaged Project as per the terms of this RFP and DCA, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for the redevelopment, operation and maintenance of the Project Facilities as well as any other work mentioned in this Agreement;
88. **"Rs." or "Rupees" or "INR"** refers to the lawful currency of the Republic of India.
89. **"Schedules"** mean the Schedules to this Concession Agreement.
90. **"Security Interest"** means any existing or future mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law.
91. **"Senior Lenders"** means financial institutions, trusts, funds, banks, agents or trustees of debenture holders and multilateral lending agencies including their successors and assigns, who have advanced or agreed to guarantee or advance 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.
92. **"Senior Lenders' Representative"** means the person duly authorized by the Senior Lenders to deal with the Parties to this Agreement with regard to the issues arising out of this Agreement.
93. **"Statutory Auditor"** means an independent, recognized, and reputable firm of the chartered accountants duly licensed to practice in India acting as independent statutory auditor of the Concessionaire under the provisions of the Companies Act including any statutory modification or re-enactment or replacement thereof, for the time being in force and appointed in accordance with this Concession Agreement.
94. **"Subcontractor"** means the person or persons, as the case may be, with whom the Concessionaire has entered into any agreement for construction, operation and/or maintenance of the Works or matters connected therewith or incidental thereto as well as any work under or related to the instant Agreement, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire.

95. **"Subordinated Debt"** means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:
- a) The principal amount of debt provided by Senior Lenders to the Concessionaire for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
 - b) All accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date; further, all penal interest or penalties for delayed principal repayments or any other defaults will not be included. Provided that if all or any part of the Subordinated Debt is convertible into equity at the option of the Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken.
96. **"Substitute Entity"** means the entity defined in the Substitution Agreement.
97. **"Substitution Agreement"** means the agreement set out in **Schedule IX**.
98. **"Tax"** means any tax, duty, levy, charge whatsoever charged, imposed or levied under Applicable Laws.
99. **"Technical Requirements"** means and includes the description of the scope, standards, design, criteria and performance criteria, specifications, drawings and similar information related to the design, development and implementation of the Project as set forth in Schedule III to this Concession Agreement and any alterations and modifications thereto.
100. **"Temporary Works"** means all temporary works of every kind (other than Concessionaire's Equipment) required for the development, operation and maintenance of the Project and Project Facilities and the remedying of any defects relating thereto.
101. **"Termination"** shall mean the expiry by efflux of time or termination of this Agreement and the Concession as defined in this Agreement hereunder.
102. **"Termination Date"** means the date on which this Concession Agreement terminates by efflux of time or by issuance of a Termination Notice, in which event the date as mentioned in the Termination Notice shall be the Termination Date.
103. **"Termination Notice"** means the communication issued in accordance with Article 22 of this Concession Agreement by a Party to the other Party for terminating this Concession Agreement.
104. **"Termination Payment"** means the amount referred to in Article 22.3., as payable by either the Authority or the Concessionaire to the other, depending on whosoever is the defaulting Party.
105. **"Third Party"** means any Person, real or judicial, or entity other than the Parties to this Concession Agreement.
106. **Tests"** means the tests to be carried out as set forth in Article 13 to this Concession Agreement
107. **"Total Project Cost"** means the highest of the following:
- a) Capital Cost of developments / development work as set forth in the Financing Documents;
 - b) Actual Capital Cost incurred on the Project prior to expiry of Development Period, as certified by Statutory Auditors;

c) A sum of INR 150 Crores (Indian Rupees One Hundred Fifty Crores only)

108. **"Transfer Date"** means the day immediately following the last day of the Concession Period, including any extensions thereto or earlier termination thereof, in accordance with Article 23 and the terms of the Concession Agreement.
109. **"Users"** means any person or group of persons (real or juridical) who uses the Project Facilities or any part thereof on payment of User Charges.
110. **"User Charges"** means the charges, levies, tariffs, prices, sub-contractor fees, or all sources of revenue or amounts of money by whatever name called levied, demanded, collected, retained and appropriated by the Concessionaire (directly or indirectly) from Persons, including Users or under subcontracting arrangements.
111. **"Vesting Certificate"** shall have the meaning set forth in Article 23.4
112. **"Variation"** means a modification, improvement or change in the Works, services, and facilities etc. to be carried out by the Concessionaire in concurrence with the Authority, as per the provisions of this Agreement.
113. **"Works"** means to set-up, design, build, redevelop, upgrade, finance, operate and maintain and manage the Project as the context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Concession Agreement.
114. **"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 WPI published for the period ending with the preceding month.

1.2 Principles of Interpretation

1.2.1 In this Concession Agreement, unless the context otherwise requires:

- a. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such for modification or reenactment or consolidation applies, or is capable of applying, to any transactions entered into hereunder, as on the concerned date.
- b. Reference to laws of Government of India or state laws or regulations shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in State of Madhya Pradesh and as maybe amended, modified, supplemented, extended from time to time.
- c. The Table of Contents, headings and sub-headings are for convenience and reference only and shall not be used in and shall not affect, the construction or interpretation of this Agreement.
- d. Terms and words beginning with capital letters shall have the meaning as defined in this Agreement including the Schedules.
- e. Words importing "Person" or "Parties" shall include firms and corporations and any organization having legal capacity to sue and be sued in its name.
- f. Words importing the singular shall include the plural and vice-versa where the Concession Agreement requires.
- g. Any reference to day shall mean a reference to a calendar day;
- h. Any reference to month shall mean a reference to a calendar month;
- i. Any reference to "hour" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- j. The Schedules of this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- k. 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;

- l. References to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- m. Reference to an "accounting year" shall mean 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;
- n. Any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hands of duly authorized representative of such party, as the case may be, in this behalf and not otherwise;
- o. References to "development" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, development and other activities incidental thereto, and "develop" shall be construed accordingly;
- p. Reference to "construction" or "building" shall 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.
- q. 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;
- r. 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 (the "**Business Day**"), then the period shall run until the end of next business day;
- s. References to any date, period shall mean and include such date or period as may be extended pursuant to this Agreement;
- t. "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
- u. References to a "Business Day" shall be construed as a reference to a day (other than a Sunday or a statutory holiday as declared by GoMP on which banks in Bhopal are generally open for business;
- v. 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.
- w. 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.
- x. Any reference to any period of time shall mean a reference to that according to Indian Standard Time
- y. References to the "winding-up", "dissolution", "insolvency", or "reorganization" 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, reorganization, dissolution, arrangement, protection of debtors.
- z. 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;

- aa. 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 metric system and calculations done in 2 (two) decimal places, with the third digit of 5 (five) or above rounded up and below 5 (five) rounded down except in Fee calculation which shall be rounded off to nearest Indian Rupee Hundred (100).

1.4 Ambiguities within Agreement

- 1.4.1 Subject to the provisions of Article 1.5.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a. between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other general Articles;
- b. between the Articles of this Agreement and the Schedules, the Articles shall prevail;
- c. between Schedules and Annexes, the Schedules shall prevail;
- d. between any two Schedules, the Schedule relevant to the issue shall prevail;
- e. between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- f. between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- g. between any value written in numerals and that in words, the latter shall prevail.

1.5 Priority of Documents

- 1.5.1 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 (including its Schedules);
- b. all other agreements and documents forming part hereof or referred to herein (beginning with the document which assumes most priority to the document with the least priority);
 - i. LOA issued to the Selected Bidder
 - ii. Written Addenda to the Bid
 - iii. RFP and Draft Concession Agreement
 - iv. The Bid Proposal as submitted by the Concessionaire comprising Technical and Financial bid
 - v. Lease Deed

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) in case of any conflict or need for interpretation of any provision between the Parties

1.6 General

Unless expressly provided otherwise in this Agreement, any documentation required to be provided or

furnished by the Concessionaire to the Authority and/or the agency or person appointed by the Authority shall be provided free of cost and in 2 (two) copies, and if the Authority and/or the person appointed by the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.

ARTICLE 2: SCOPE OF THE PROJECT

2.1 Scope of the Project

The Concessioneing Authority has selected the Concessionaire for development of the Project as per the Scope of the Project as outlined below. The Concessionaire shall develop, operate, maintain and manage the Project, in accordance with the provisions of this Concession Agreement

2.1.1 The Scope of the Project (the "Scope of the Project") shall mean as specified in Schedule III and shall include during the Concession Period, Development, Operation, Maintenance and Management of the Project during the Concession Period of 60 (Sixty) years (extendable by a period of 10 years at the discretion by the Authority) by undertaking the following activities:

- A.** To design, finance, construct and develop the Project (inclusive of any demolition activity which may be required to be undertaken on the Project) on the Project Site as set forth in Schedule I, along with the Project Facilities outlined in Schedule II, in adherence with the Specifications and Standards as set forth in Schedule III.
- B.** Operate and maintain the Project Facilities, within the specified Concession Period and as per the provisions of this Agreement and timely remit the Project Consideration to the Authority.
- C.** Performance and fulfilment of all other obligations of the Concessionaire in accordance with the Concession Agreement and matters incidental thereto, or necessary for the performance of any or all of the obligations of the Concessionaire under this Concession Agreement.
- D.** Transfer the Project to the Authority in the '**as is where is and in good condition**' basis including movable and immovable assets at the time of handover, upon Termination in accordance with the provisions of this Agreement; and
- E.** Construct a Hotel with a minimum 150 rooms and Banquet & Convention facility of 1000 pax with MICE facilities
- F.** The Concession Period shall start from the Compliance Date

Following development activities may also be incorporated in the Project by the Concessionaire:

- 1. Additional rooms to provide lodging facilities to the guests.
- 2. Theme Restaurants and Food Joints
- 3. Convention Centres
- 4. Facilities in the Hotel for Social and Corporate events including weddings/exhibitions.
- 5. Facilities in the Hotel to Promote and Market fairs, local cuisine, culture, folk music, dance, costumes, products, art, handicraft and heritage tourism.
- 6. Food & Beverages (Cafes, Retro Lounges Heritage/Luxury Dining etc)
- 7. Food Courts and/or Rooftop Restaurant
- 8. Any other projects as defined in Madhya Pradesh Tourism Policy 2025 as amended from time to time

2.2 Project Facilities

2.2.1 The Concessionaire shall develop the Project comprising of the Project Facilities as described in detail in Schedule II ("**Project Facilities**"), as per the terms of the Agreement, in accordance with Specifications and Standards listed in Schedule III and all Applicable Permits listed in Schedule V.

For detailed scope of work, refer to Schedule III of this Agreement.

2.3 Bye-Laws & Norms

- a. While undertaking development of the Project, the Concessionaire shall adhere to all the Applicable Laws inter alia the latest amended National Building Code of India, other relevant IS Codes and

practices, regulations and approvals under the Environmental Protection Act, 1986 and all other environmental clearances, permissions and approvals, and the principles of Good Industry Practices and any other norms as applicable from time to time at its own cost and sole responsibility.

- b. The Concessionaire shall be responsible for obtaining and maintaining all the Applicable Permits and the Clearances as may be required for the development and operations of the Project, at its own cost and sole responsibility. The Project shall be ready for operation after taking all the clearance(s), within 36 (Thirty Six) months of the Compliance Date.

ARTICLE 3: GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of 60 (Sixty) years (extendable by a period of 10 years at the discretion of the Authority) (the "**Concession Period**") commencing from the Compliance Date, including the exclusive right, license, authority and authorization during the subsistence of this Agreement, including extension thereof(if any), as well as a lease in favour of the Concessionaire, to design, build, finance, operate, maintain and manage the Project during the Concession Period.

3.1.2 It is expressly agreed and understood between the Parties that until the Compliance Date, the Authority shall operate the existing hotel namely 'MPT Lakeview' on the Project Site and realize the revenues therefrom.

3.1.3 Rights Associated with the Grant of Concession

Subject to, and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and the Applicable Permits, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire:

- a. the Right of Way, access and lease-hold rights to use the Project Site (by way of a separate lease deed with its terms and conditions provided therein) for the purpose of developing the Project, to the extent conferred by the provisions of this Agreement (these rights shall stand vested in the Concessionaire upon the execution of the instant Agreement). Leasehold right along with right of way to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- b. design, finance, demolish and construct/upgrade the Project Facilities;
- c. manage, operate and maintain the Project Facilities, and regulate the use thereof by third parties during the currency of the instant Agreement;
- d. to borrow or raise money or funding required for the due implementation of the scope of work mentioned in the instant Agreement, by way of mortgage, charge or create lien or encumbrance on the whole or part of the Project Facilities including the leasehold rights for the site in accordance with the provisions of Article 13A;
- e. Demand, collect and appropriate User Charges (and similar charges / fees) from guests and users, for using the Project Facilities or any part thereof ;
- f. Perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
- g. 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; and
- h. Neither assign, transfer or sublet, or create any lien or Encumbrance on this Agreement, or on the Concession hereby granted, or on the whole or any part of the Project; nor sell, transfer, exchange, lease or part with the possession of the Project Site thereof, save and except as expressly permitted by this Agreement;
- i. appoint Contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Agreement in accordance with its terms; provided that the absolute and ultimate

obligation and responsibility for the performance of this Agreement shall continue to vest with the Concessionaire;

- j. 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;
- k. 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
- l. do all things incidental or related to the hereinabove or which the Concessionaire considers desirable and appropriate to be carried out in connection therewith during the Concession Period, with the prior approval of the Authority

3.2 Actions in Support of the Concession

- a. The Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms of this Concession Agreement.
- b. The Authority undertakes not to terminate or repudiate this Agreement prior to the expiry of the Concession Period otherwise than in accordance with the provisions of this Agreement.
- c. Without incurring any obligation, the Authority shall provide assistance and recommendations to the Competent Authorities, including GoI in support of the Concessionaire's applications for clearances that may be needed from time to time for the implementation of the Project, provided that the Concessionaire has made the requisite applications and is in compliance with the necessary conditions for the grant of such clearances.

3.3 Concession Period

3.3.1. The Concession Period for the Project shall commence from the Compliance Date and shall extend for a period of **60 (Sixty)** years from such date (extendable by a period of 10 years at the discretion of the Authority) (the "**Concession Period**") during which the Concessionaire is authorized to implement the Project and operate and maintain the Hotel with Banquet and Restaurant facilities as well as Common Areas accordance with the provisions hereof during the Completion Period. For the avoidance of doubt, the Concession Period shall include the Completion Period and may be extendable at the instance of the Authority. It is clarified that any extension of the Completion Period by the Authority would not be automatic and would be at the discretion of the Authority.

3.3.2. It is hereby made clear that:

- a) In the event of the Concession Period being extended by the Concessioneing Authority beyond the said period, in accordance with the provisions of this Concession Agreement, the Concession Period shall include the period / aggregate period by which the Concession is so extended, and
- b) In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with such Termination.

3.3.3. At the end of the Concession Period or early termination of this Concession Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Site and Facilities, shall revert to the Authority on '**as is where is and in good condition**' basis as a 'going concern' including all and any movable and immovable assets without any obligation of the Authority to pay or adjust

any consideration or other payment to the Concessionaire or any other liability purportedly incurred by the Concessionaire for or in relation to the Project.

3.4 Completion Period

The “**Completion Period**” shall be a period of **36 (Thirty Six)** months commencing from the Compliance Date for the Project. The Concessionaire shall, within the Completion Period:

- i. Upgrade and complete the Project at the Project Site (post requisite demolition of the concerned existing structure, including the present Hotel) and make it fully operational in all respects with minimum 150 rooms and Banquet & Convention facility for atleast 1,000 pax.
- ii. Make all the necessary applications at its sole cost/expense/responsibility and itself procure all necessary/mandatory clearances whatsoever in law that are required for commencing the execution of the Works unconditionally or, if subject to conditions, then ensure satisfaction (at its sole cost/expense/responsibility) of all such aforesaid conditions in full and that such clearances are in full force and effect and operationalize the Project as per Applicable Law
- iii. It is clarified that the Authority reserves its rights under this Agreement to any action against the Concessionaire in case of any breach by the Concessionaire of its obligations to demolish, complete and operationalize the Project as per Applicable Law before the end of the Completion Period.

ARTICLE 4: CONDITIONS PRECEDENT

Subject to the express terms to the contrary (if any), the rights and obligations under this Concession Agreement shall take effect only upon fulfillment of all the Conditions Precedent as set out in Articles 4.1 and 4.2, on or before the expiry of a period of 180 (one hundred and eighty) days from the date of execution of this Agreement. However, the Authority may, at any time, at its sole discretion and in writing, waive, whether wholly or partially, or extend time for completion of, any of the Conditions Precedent.

4.1 Conditions Precedent for the Authority

- a. The Authority shall procure and provide the following documents to the Concessionaire:
 - Khasra
 - Land Survey and demarcation of the Project Land
 - NOC clearance from Airports Authority of India regarding the Height Clearance
- b. Procure the change in land use for the Project Site (if applicable).

It is clarified that the Authority shall have the absolute right to Operate and Manage the Lakeview Hotel till the time the Conditions Precedent of the Concessionaire are fulfilled and Compliance Certificate for the same is issued by the Authority. It is only after issuance of the Compliance Certificate is given by the Authority to the Concessionaire on their Compliance of the Conditions Precedent, that the Authority shall cease all Operations concerning the MPT Lakeview Hotel. Thereafter from the Date of execution of the instant Agreement and till the Compliance Date the Authority shall undertake steps to manage the operations of the MPT Lakeview Hotel in a manner wherein the Authority is in a position to handover the entire possession of the Lakeview Hotel to the Concessionaire for demolishing the same (in terms of Article 5 and Clause 5.10).

4.2 Conditions Precedent for the Concessionaire

- A. Necessary Applicable Permits: The Concessionaire shall obtain, as required under the Applicable Laws, the following Necessary Applicable Permits, as Conditions Precedent, on or before the Compliance Date,
 - I. Environmental Clearance – MoEF / State Environmental Impact Assessment Authority or other central or state body, Social Impact Assessment Report
 - II. No Objection Certificate (NOC) / Clearance – State Pollution Control Board
 - III. Layout Plan Approval / Building Plan Approval / Development Proposal Approval
 - IV. Permission for demolition of existing structure at Project Site and appropriate permission(s) and clearances from all utilities (electricity, water etc.) for such demolition and from any other concerned department if required
 - V. No Objection Certificate / Permission from Police Department

Any other approvals or No Objection Certificates or permits or clearances required under Applicable Laws, or as mentioned in Schedule V

- B. Achieve Financial Close, executed Financing Agreements and delivered to the Authority, 3 (three) true copies of the Financing Agreements;
- C. Deliver 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;
- D. Execute the Escrow Agreement and open and operationalize the Escrow Account
- E. Execute the Substitution Agreement and submit copies of the same to the Authority (in soft as well as hard copies) if applicable;
- F. Deliver to the Authority from the Selected Bidder and respective Consortium Members, if any, confirmation, in original, of the correctness of its representation and warranties set forth in Article 7 as on date of this Agreement and as on the Compliance Date and thereafter;

- G. Deliver 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;
- H. Prepare and submit the Detailed Project Report
- I. Provide copies (certified as true copies by an authorized officer of the Concessionaire) of the constitutional documents of the Concessionaire.
- J. Provide copies (certified as true by the Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Agreement by the Concessionaire;
- K. Execute a O&M Agreement with the member of the consortium which was part of the Bidding Consortium for its Technical Capability/Eligibility, if such is not a shareholder in the Concessionaire, ending not before atleast 10 years from the Commercial Operations Date and approved by the Authority;

4.3 Obligations to satisfy Conditions Precedent

- a. Each Party hereto shall use all reasonable endeavors at its cost and expense to procure the satisfaction, in full of its respective Conditions Precedent set out above 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.
- b. Upon full satisfaction of all Conditions Precedent for the concerned Party, the other Party shall forthwith issue to such Party a certificate of compliance (the **"Certificate of Compliance"**) (by counter signing the certificate of compliance as given in Schedule X) with Conditions Precedent, pursuant to which the obligations of the Parties related to Conditions Precedent shall be deemed to be fulfilled. The later of the date of issue of Certificate of Compliance to the Concessionaire or the Authority shall be the Compliance Date, whereupon the obligations of the Parties under this Concession shall commence and whereon the Authority shall issue the Certificate of Compliance to the Concessionaire.
- c. Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

4.4 Damages for Non-fulfillment of Conditions Precedent

4.4.1. Damages for delay by the Authority

In the event that:

- i. The Authority does not procure fulfilment or waiver of the Condition Precedent set forth in Clause 4.1 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 Event,

The Authority shall pay Damages to the Concessionaire of an amount calculated at the rate of 1% (one per cent) of the Performance Security for each week's delay until the fulfilment of such Conditions Precedent, subject to a maximum delay of 15 weeks, after expiry of which in case of failure of Authority to satisfy Conditions Precedent, the Concessionaire may issue a Notice to the Authority and the Performance Security, Lease Rent along with ACF shall be returned to the Concessionaire. The Agreement shall stand terminated on the expiry of 15 (fifteen) days from the date of issue of Notice.

4.4.2. Damages for Delay by the Concessionaire

In the event that

- i. the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent

set forth in Article 4.2 within the period specified in that clause, and

- ii. the delay has not occurred as a result of failure of the Authority to fulfill its obligations under Article 4.1 or other breach of this Agreement by the Authority, or due to Force Majeure

The Authority on its discretion may extend the time period for completion of the Condition Precedents of the Concessionaire by a period of no more than 60 (sixty) days, however, post any such period the Concessionaire shall pay to the Authority, Damages of an amount equivalent to i.e. 1% (one per cent) of the Performance Security for each week's delay, subject to a maximum delay of 15 weeks, after expiry of which in case of failure of Concessionaire to satisfy Conditions Precedent, the 100% of subsisting Performance Security, Lease Rent along with ACF shall be forfeited. Thereafter, the Authority may issue a Notice to the Concessionaire as per this Agreement. The Agreement shall stand terminated on the expiry of 15 (fifteen) days from the date of issue of the above-mentioned Notice.

4.5 Consequence of Termination

4.5.1. In the event the Authority has terminated this Agreement under Article 4.4.2 due to non-fulfillment of Conditions Precedent by the Concessionaire,

- a. The Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, agents and employees or any Third party contracted with by the Concessionaire and the Authority shall forfeit the Performance Security, ACF and Lease Rent of the Concessionaire.
- b. The Concessionaire shall transfer all of its rights, title and interest in the Project Assets to the Authority, and shall not be vested with any right over the Project or the Project Site, emanating from the instant Agreement. Thus, any / all rights, interests including leasehold rights of the which may vest or deemed to be vested in the Concessionaire under this Agreement shall immediately stand terminated / extinguished on the termination.

4.5.2. Upon termination of this Concession Agreement pursuant to delay / non-fulfilment of Conditions Precedent by the Authority:

- a. The Concessionaire shall unconditionally and immediately forthwith transfer all of its rights, title and interest in the Project Assets to the Concessioning Authority;
- b. The Performance Security, as subsisting along with ACF, without interest, shall be returned by the Authority to the Concessionaire;

In the event that the Project Site has been delivered to the Concessionaire on an '**lease basis**' prior to the fulfillment in full of the Conditions Precedent, upon the Termination of this Agreement the Project Site shall immediately revert to the Authority, free and clear from any Encumbrances on '**as is where is and in good condition**' basis, irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.

4.6 Commencement of Concession Period

4.6.1. The date on which all the Conditions Precedent specified in Article 4.1 & Article 4.2 are satisfied or expressly waived, as the case may be, and each Party has issued a Compliance Certificate to the other Party towards fulfillment of all Conditions Precedent required thereof, shall be the Compliance 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 Compliance Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence operations/ demolition and construction of the Project.

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General Obligations

Subject to and on the terms and conditions of this Agreement, the Concessionaire shall undertake the Development, Operation & Maintenance and Management of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

- 5.1.1** The Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person for the entire scope of work mentioned herein along with all ancillary and incidental activities.
- 5.1.2** The Concessionaire shall arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities for the demolition, construction, development, operation and maintenance of the Project, including procuring connection for and supply of electricity, water, gas and other utilities as may be necessary or required for the operation of the Project. The Concessionaire shall solely obtain all Applicable Permits and comply with the conditions thereunder for the procurement and use of such infrastructure facilities and utilities.
- 5.1.3** 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. Procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - b. Perform and fulfil its obligations under the Financing Agreements and achieve Financial Close and deliver complete evidence to the Authority that Financial Close has been accomplished, within a period of 180 (One Hundred and Eighty) days from the Agreement Date;
 - c. 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;
 - d. Ensure that its Sub-Contractors comply with all Applicable Permits and Applicable
 - e. Laws in the performance by it of any of the Concessionaire's obligations under this Agreement;
 - f. Obtain, post issuance of Completion Certificate:
 - i. Electricity approval
 - ii. No Objection Certificate – Fire
 - iii. No Objection Certificate – Lift
 - iv. No Objection Certificate / Permission from Police Department
 - v. Water Connection
 - vi. Drainage approval
 - vii. Occupation Certificate
 - viii. Any other certificate / approval which may be required
 - g. Procure and comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement. It is explicitly clarified that the Concessionaire shall be expected to comply with all the Applicable Laws, including any modifications to such Applicable Laws, during the Concession Period, without the Authority being liable or accountable for such changes.
 - h. Not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
 - i. Ensure that all the facilities and amenities within the Project are operated and maintained in accordance with Good Industry Practice and Schedule III;
 - j. Transfer the Project to the Authority upon expiry or termination of this Agreement, whichever date is earlier, in accordance with the provisions thereof;
 - k. Take all reasonable precautions for the prevention of accidents on or about the Project Site and the Project Facilities and provide all reasonable assistance and emergency medical aid to accident victims (if any);
 - l. The Concessionaire shall, at its own cost, pay all applicable existing and future taxes/ charges/ fees/ levies including the service tax, stamp duty, registration charges of lease deed and any other charges payable/ leviable in respect of the said Project and all penalties, charges, costs and interest relating to it.
 - m. Make its own arrangements for quarrying, if necessary, and observe and fulfil the environmental laws and other requirements under the Applicable Laws / Applicable Permits;

-
- n. Be responsible for safety, soundness and durability of the Project Facilities including all structures forming part thereof and their compliance with the Specifications and Standards governing them.
 - o. Take over the possession of the Project Site from the Authority, provided it is being delivered in accordance with the provisions of Article 4.1 and safeguard and use the Project Site solely for the purpose of discharging its obligations under this Concession Agreement;
 - p. Carry out the Works strictly in accordance with the provisions of this Concession Agreement, the Technical Requirements, Performance Standards, the Project Implementation Schedule and the Schedules of this Concession Agreement, and all works not mentioned in this Concession Agreement but which may be inferred to be necessary for safe, reliable and efficient completion and operation of the Project;
 - q. Undertake to complete the development within the specified Completion Period, provided that the Concessionaire shall not be in breach of this Concession Agreement if any such non-fulfillment or the delay of its obligation are caused by: the occurrence of an event of Force Majeure or (ii) any other act or omission of the Authority in contravention of its obligations under this Agreement;
 - r. Ensure that the minimum 5-star Hotel shall be used for the intended purpose only as per Article 2 and Schedule III, as agreed between the Parties;
 - s. Carry out its obligations/duties with regard to the O&M of the Project in accordance with the Schedules to this Concession Agreement. The obligations shall include all work which is necessary to satisfy the Schedules, Technical Requirements and Performance Standards or is directly implied by this Concession Agreement, or arises 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;
 - t. Operate and maintain the Project and all its components, including maintaining necessary records, for the periods stipulated herein after, as per the Technical Requirements and Performance Standards set out, and remedy any defects (at the earliest) during the Concession Period. The Concessionaire shall provide all superintendence, labour, plant, materials, equipment, and all such other things for such operation and maintenance (including remedying of defects at the earliest); The Concessionaire shall provide all machinery, plant and equipment necessary to complete the Works. All its Equipment shall, when brought on to the Project Site, be deemed to be exclusively intended for the execution of the works. The Concessionaire shall maintain an adequate inventory of consumable and spare parts and undertake periodic and preventive maintenance as required for the relevant equipment. The Concessionaire shall ensure continuous workflow as required under the Project Implementation Schedule. Breakdown of machinery or equipment shall not be a valid reason for any delay, extension in the Concession Period or addition of cost, towards the Project.
 - u. Be solely responsible from the date of issuance of the Certificate of Compliance for all liabilities arising out of development, operation and maintenance of the Project;
 - v. Submit to the Authority certified true copies of each of the Project Agreements and any further replacement, amendment or modifications within 7 (seven) days of their execution; prior express intimation of 7 (seven) working days shall be given by the Concessionaire to the Authority of any such intent to amend or modify.
 - w. Duly supervise, monitor and control the activities of Contractors, subcontractors, their employees and agents under their respective Project Agreements, as may be necessary;
 - x. Obtain and maintain in force all insurance policies in accordance with the provisions of this Agreement and Good Industry Practice in all aspects of the Works;
 - y. Not to permit any contractor, sub-contractors or other person, claiming through or under the Concessionaire, to create or place any Encumbrances or security interest (the "**Security Interest**") over all or any part of Project Site or the Project Assets (the "**Project Assets**") or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly permitted in this Agreement;

- z. Ensure that such Project Site remains free from all Encumbrances, encroachments and trespass during the entire Concession Period;
- aa. provide all assistance to the Independent Engineer as it may require for the performance of their duties and services;
- bb. The Lessee shall, during the Term, pay and discharge promptly all rates, taxes, charges, assessments, and property taxes of every nature and description that are or may become assessable, chargeable, or imposable on the Demised Land, the buildings erected or to be erected thereon, or on the Landlord or Tenant in respect thereof;

5.1.4 Specific obligations:

The Concessionaire shall, before commencement of construction of the Project:

- a) Have requisite organization and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project to be responsible for all necessary exchange of information required pursuant to this Agreement;
- b) Undertake, do and perform all such acts, deeds and things as may be necessary or required to achieve Project completion under and in accordance with this Agreement.
- c) At all times, afford access to the Project Site, to the authorized representatives of the Authority, Senior Lenders and officer of any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection 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.
- d) Be responsible for ensuring that any existing utility on, under or above the Project Site is kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent diversions.
- e) Solely bear all costs and charges for special or temporary rights of way required by it in connection with access to the Project 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.
- f) Not create any third-party rights on the Project Site in contravention of the provisions of this Agreement.
- g) Remain solely and primarily responsible to Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees, agents and representatives and further on behalf of the Sub- Contractors, their employees and agents and any person acting under, for or on behalf of the Concessionaire or the Sub-Contractors, as fully as if they were the acts or defaults of the Concessionaire, its agents or employees;

h) Obligations relating to aesthetic quality

The Concessionaire shall maintain a high standard in the overall appearance and aesthetic quality of the Project Facilities and achieve integration of the Project Facilities with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Concessionaire shall engage professional architects of repute for ensuring that the design of the Project Facilities meets the aforesaid aesthetic standards. Additionally, the Concessionaire along with the Operator shall ensure that the quality of Hospitality services rendered at the Project Facilities are at all times in compliance and adherence to the norms prescribed by MoT Guidelines as applicable for minimum 5-Star Category Hotels having MICE facilities.

i) Naming and Branding of the Project

The Concessionaire shall have the sole right to brand and / or name the Project or any part thereof.

j) Facilities for differently-abled and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of

Social Justice and Empowerment, or any similar Agency / authority, procure a barrier-free environment for the physically or visually challenged and for elderly persons using the Project Facilities.

k) Inception Report

Inception Report within 0.5 months from the signing of agreement

The Concessionaire shall, within 0.5 months (15 days) of the Agreement Date, prepare and submit the Inception Report for the Project to the Authority. The Report shall include, but not be limited to, the following:

- A. Allocation of areas for different usages in the Project Site;
- B. Concept Layout Plan for the Project & Site;
- C. Indicative phasing for development of various Project Facilities;
- D. Site study - Conceptual Planning and indicative lay-out of the infrastructure required for the site - Indicative Road network, Water supply network, Waste management and sewage system, drainage system, power supply network etc.
- E. Details of parking (open / covered / under-ground) for serving various Project Facilities
- F. Details of all the facilities and services to be provided in the Project
- G. PERT chart / Gantt Chart for Project implementation
- H. Indication of various Applicable Permits / approvals / clearances required for the Project
- I. Indication of support required from the Authority

In addition to the above, the Concessionaire may be required to provide any further information as may be reasonably required by the Authority.

Detailed Project Report (Detailed Layout Plan) – 4.5 Months from the signing of agreement

The Concessionaire shall submit Detailed Project Report (Detailed Layout Plan) of the project for approval from MPHCL along with the BOQ within 4.5 Months from the signing of agreement. The Authority shall review and approve the Detailed Project Report (Detailed Layout Plan) within a maximum period of 15 (fifteen) days from the date of its submission by the Concessionaire.

- A. Master Planning
 - 1. Site analysis: Assess the site's topography, climate, and environmental conditions.
 - 2. Hotel and banquet layout: Determine the optimal layout for the hotel, banquet, and other facilities.
 - 3. Room configuration: Plan the room layout, including guest rooms, suites, and public areas.
- B. Architectural Design
 - 1. Building design: Create a detailed design for the hotel and banquet buildings.
 - 2. Elevation and section: Prepare elevation and section drawings to illustrate the building's design.
 - 3. Interior design: Plan the interior design, including finishes, furniture, and fixtures.
- C. Engineering and Infrastructure
 - 1. Civil engineering: Design the site's infrastructure, including roads, parking, and utilities.
 - 2. Mechanical, electrical, and plumbing (MEP): Plan the MEP systems, including HVAC, electrical, and plumbing.

3. Fire safety and security: Design fire safety and security systems, including alarms, sprinklers, and access control.

D. Landscaping and Exterior Design

1. Landscape design: Create a landscape plan, including gardens, courtyards, and outdoor spaces.
2. Exterior finishes: Select exterior finishes, including materials, colors, and textures.
3. Lighting design: Plan the exterior lighting design, including site lighting, building lighting, and landscape lighting.

E. Sustainability and Energy Efficiency

1. Sustainability assessment: Conduct a sustainability assessment to identify opportunities for energy efficiency and environmental sustainability.
2. Energy-efficient design: Incorporate energy-efficient design principles, including natural lighting, ventilation, and insulation.
3. Water conservation: Design water-conserving systems, including low-flow fixtures and greywater reuse.

F. Accessibility and Universal Design

1. Accessibility assessment: Conduct an accessibility assessment to ensure compliance with relevant codes and standards.
2. Universal design principles: Incorporate universal design principles, including accessible routes, entrances, and amenities.

G. Regulatory Compliance

1. Zoning and land-use compliance: Ensure compliance with local zoning and land-use regulations.
2. Building code compliance: Ensure compliance with relevant building codes, including fire safety, accessibility, and structural integrity.
3. Environmental regulations: Ensure compliance with environmental regulations, including water and air quality standards.

Post Approval of Detailed Project Report (Detailed Layout Plans) – 0.5 months shall be given to the Concessionaire to submit the Good for Construction Drawings (GFC). The Authority shall review and approve the Good for Construction Drawings within a maximum period of 15 (fifteen) days from the date of its submission by the Concessionaire.

- l) Remain liable for and to indemnify, protect, defend and hold harmless the Authority, its officers, employees and agents from and against any and all demands, claims, suits and causes of actions and any and all liability(ies), costs, expenses, settlements and judgments arising out of the failure of the Concessionaire to discharge its obligations under this Article 5.1 or under any other provision of this Agreement and to comply with the provisions of Applicable Laws at all times;
- m) Acknowledge and recognize that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly;
- n) The Concessionaire may undertake development of Project by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the Scope of Work as mentioned in this Agreement;
- o) Pay in a timely manner the Annual Concession Fee and Revenue share at all times during the

Concession period;

- p) Timely furnish the Performance Security (and its renewals from time to time) and make good the shortfall in the Performance Security in a timely manner, as per the terms of the Concession Agreement;

5.1.5 Obligations relating to Project Agreements

- a) 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 shall excuse the Concessionaire from its obligations or liability hereunder.
- b) Before their finalization, the Concessionaire shall submit to the Authority the drafts of all Project Agreements and the operation and maintenance contract (if any) or any amendments or replacements thereto for its review and comments, sufficiently prior in time (atleast 7 working days) and the Authority shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, to the Concessionaire. Concessionaire shall appropriately consider / abide by all such comments/observations. 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 avoidance of doubt, it is agreed that the review and comments/ observations by the Authority on any Project Agreement or 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/or liabilities under this Agreement in any manner whatsoever nor shall the Authority be liable for the same in any manner whatsoever.
- c) 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 (whether directly or remotely) 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.
- d) The Concessionaire shall ensure 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") of this Agreement. 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, whereunder 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 such Termination or Suspension.
- e) Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-lease, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-lease, sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.

5.2 Obligations relating to Change in Ownership

The shareholding of the Concessionaire during the term of this Agreement shall be in accordance with Article 5.2

5.2.1 The shareholding of the Concessionaire during the term of this Agreement shall be as follows:

The aggregate shareholding of the Consortium Members in the subscribed and paid-up equity share capital of the Concessionaire shall be not less than:

- a. 100% (one hundred percent) for a period until the completion of the 10th anniversary of the Commercial Operations Date.
- b. Until the 10th (tenth) anniversary of COD i.e. **lock in period of the Commercial Operation Date** of the Project wherein the lead member shall subscribe and maintain a minimum equity shareholding of 51% (Fifty One percent). It is furthermore committed that all members, other than the Lead member shall hold not less than 10% of the subscribed and fully paid-up equity of the SPV;
- c. Post the 10th (tenth) anniversary of the COD i.e. **lock in period of the Commercial Operation Date** of the Project wherein the lead member shall maintain a minimum share holding of at least 26% (Twenty-Six per cent) of the fully paid up and subscribed equity of the SPV for the remainder of the concession period. It is furthermore committed that all members, other than the Lead member shall hold not less than 10% of the subscribed and paid-up equity of the SPV;

The Bidder or Consortium Members shall not effect any change in their shareholding pattern or consortium structure at any stage after the issuance of the Letter of Award by the Authority up until the Commercial Operation Date of the project. Any such change shall be deemed a material breach of this Agreement, entitling the Authority to terminate this Agreement pursuant to Article 22. Notwithstanding the foregoing, the Authority may, in its sole discretion, permit changes to the shareholding pattern or O&M Operator in exceptional circumstances, such as bankruptcy or insolvency of a consortium member (excluding the lead member), provided that the Authority is satisfied that such changes are in the best interests of the Project's implementation and do not prejudice the Authority's rights or interests.

It is clarified that the O&M Operator, part of the Consortium for only the purposes of fulfilling the Technical Eligibility although not required to be a shareholder in the Concessionaire, will be bound operate the Project for a period ending atleast 10 years from the Commercial Operations Date and execute a separate O&M as provided in Article 4 of this Agreement as a Condition Precedent.

5.2.2 The Concessionaire shall not undertake or permit any Change in Ownership, during the entire Concession Period, except with the prior written approval of the Authority.

Subject to the provisions of Clause 5.2.1(a), any other change in equity holding pattern or change in ownership of the SPV can take place only after the completion of tenth year from the Commercial Operations Date and shall be subject to the provisions of Clause 5.2.2 and Clause 5.2.3

5.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that during the Concession Period:

- i. All acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 25% (twenty-five per cent) of the total Equity of the Concessionaire; or
- ii. Acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person, either by himself or together with any person or persons acting in concert with him, the Concessionaire shall constitute a "Change in Ownership" requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board

of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Article 5.2.3:

- c. The expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- d. The indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- e. Power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire shall constitute acquisition of control directly or indirectly, of the Board of Directors of the Concessionaire.

5.2.4 Concessionaire shall inform the Authority about any change in equity shareholding of the Concessionaire within 15 days of such change taking place and shall share a copy of the latest version of the SPV Shareholder's agreement with the Authority.

5.2.5 Post the Lock-in-Period of 10 years from the Commercial Operations Date, any such approval regarding change in the shareholding pattern by the Bidder or Consortium Members may be granted by the Authority. On an application made for the purpose, Authority may permit the change of shareholding pattern, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority. However, no such change in the shareholding pattern shall be permitted by the Authority during the lock-in- period, which would make the Consortium Members non-compliant in accordance with the Bidding Documents.

At no stage during the Lock-in-Period shall any change in the shareholding pattern be made by the Bidder or Consortium Members without obtaining prior approval from the Authority. Such approval may be granted by the Authority only in exceptional circumstances of bankruptcy or insolvency of any of the member/s of the consortium except the lead member. On an application made for the aforesaid purpose, Authority may permit the change of shareholding pattern or O&M Operator, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority.

In exceptional circumstances, where there is to be a replacement of any Consortium member including O&M Operator and other than the Lead Member during the lock in period then the member replacing the outgoing member should have similar technical and financial experience, to be expressly allowed by the Authority. Whereas, in such a case it shall be the responsibility of the lead member to immediately furnish documents highlighting such aforesaid expertise, to the Authority to its complete satisfaction, inter alia, in accordance with the requirements highlighted in the RFP for a Bidder/Consortium.

5.2.6 Procedure for Changes in Equity Holding Pattern

- a) The Concessionaire shall submit a proposal to the Implementing Authority for any Change in

Ownership with justification and complete corporate profile of the proposed shareholder(s) to be inducted in the Concessionaire.

- b) The Authority shall have the right, but not the obligation, to undertake due diligence of such investor, ask for any additional information and / or documents to establish the credibility and competency of such investor.
- c) The decision of the Authority regarding such proposals as per Clause 5.2.6(a) shall be final, conclusive and binding on the Concessionaire, and the Concessionaire undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. The Authority shall not be liable in any manner on account of grant (which shall be given in the absolute discretion of the Authority), delay or otherwise of such approval and that such approval, delay, denial or otherwise thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

5.2.7 If the approval for Change of Ownership is granted by the Authority, then the Concessionaire shall fulfil all necessary tasks and obligations as required under the Indian Companies Act, 2013 and other Applicable Laws, if any, and submit the revised shareholder's agreement and necessary documentary evidence of the change of ownership from the Ministry of Corporate Affairs, Government of India to the Authority.

5.2.8 The Concessionaire further acknowledges and agrees that a breach of the aforesaid obligations hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such there under. For the avoidance of doubt, the provisions of this Article 5 shall apply only when the Concessionaire is a Consortium.

5.3 Golden Share

5.3.1 The Concessionaire shall issue and allot one non-transferable equity share of the Concessionaire (the "**Golden Share**") in favour of the Authority and shall provide for the following:

- a. Appointment of a nominee of the Authority on the Board of Directors of the Concessionaire;
- b. An irrevocable undertaking that the rights vested in the Authority shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Concessionaire or its Affiliates;
- c. An irrevocable undertaking that any divestment of equity in the Concessionaire shall not in any manner affect the rights of the Authority herein and that the successors, assigns and substitutes of the Concessionaire shall be bound by such undertaking; and
- d. Any and all other matters mutually agreed upon between the Parties.

It is understood and acknowledged by the Concessionaire that their Articles of Association and Memorandum of Articles of the Concessionaire contain the provisions regarding the Golden Share of the Authority as described above as a necessary and mandatory condition at the time of its incorporation.

5.3.2 The Parties expressly agree that so long as the Authority holds the Golden Shares, an affirmative vote of the Authority or the Director appointed by the Authority shall be necessary and required for the passing of, by the General Meeting of the Concessionaire or the meeting of Board of Directors thereof, as the case may be, any resolution providing for all or any of the following or any matter incidental or consequential thereto:

- a. to alter or add to the provisions of the memorandum of association;
- b. to alter or add to the articles of association;
- c. to change the name of the Concessionaire;
- d. to purchase the Concessionaire's own shares or specified securities;
- e. to issue sweat equity shares;
- f. to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
- g. to reduce the share capital;
- h. to remove the registered office of the Concessionaire outside the limits of the State;
- i. to commence any new lines of business;
- j. to keep registers and returns at any other place than within city, town or village in which the registered

- office is situated;
- k. to consent to a director or his relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the Concessionaire;
 - l. to make inter-corporate-loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10% (ten per cent) of the Concessionaire's paid-up share capital;
 - m. to apply to a Court to wind-up the Concessionaire;
 - n. to wind-up the Concessionaire voluntarily;
 - o. for various other matters pertaining to the winding up of the Company;
 - p. to change the name of the Project;
 - q. to approve the un-audited and audited financial statements of the Concessionaire; and
 - r. any other matter which is required by the Companies Act, 2013 (or the relevant Act in force) or any statutory re-enactment thereof to be passed by a special resolution of the shareholders of the Concessionaire.
 - s. The Parties agree that the Shareholders' Agreement shall provide that till the time the Authority holds the Golden Share, it shall be entitled to nominate one person of its choice for appointment as non-retiring Directors on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such persons as Directors in accordance with Applicable Laws.

5.4 Concessionaire's Representative

- a The Concessionaire's Representative shall be the person so authorized and named by the Concessionaire by way of a Board Resolution. If at some point of time the Concessionaire is unable to provide the services of the person named as under the Concessionaire's Representative, then it shall notify the Authority its reasons for this and thereafter, provide a substitute person who can be the Concessionaire's Representative
- b If at some point of time the Concessionaire is unable to provide the services of the person named as under the Concessionaire's Representative, then it shall notify the Authority its reasons for this and thereafter, provide a substitute person who can be the Concessionaire's Representative.
- c The person named as the Concessionaire's Representative under this Concession Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project. Prior to appointment of the Concessionaire's Representative, the Concessionaire shall also submit the curriculum vitae of the person it proposes to appoint, detailing in particular the relevant project experience and then obtain the written consent of the Authority to the appointment of the Concessionaire's Representative.
- d The Concessionaire's Representative shall be exclusively employed or engaged by the Concessionaire to give his whole time to directing the preparation of the Project Documents (the "**Project Documents**"), the development, and operation and maintenance of the Project. Except as otherwise stated in this Concession Agreement, the Concessionaire's Representative shall receive on behalf of the Concessionaire all notices, instructions, consents, approvals, certificates, determinations and other communications under this Concession Agreement. Whenever the Concessionaire's Representative is to remain absent from the Project Site for a continuous period in excess of 7 (seven) days, a suitable replacement Person shall be appointed with the Authority's consent.
- e The Concessionaire's Representative may delegate, while retaining his prime responsibilities, any of his powers, functions and authorities to any competent Person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Authority has received prior notice signed by the Concessionaire's Representative, specifying the

powers, functions and authorities being delegated or revoked. Concessionaire's Representative shall notify to the Authority the names, duties and scope of authority of such Persons. Any instructions given to any of them shall be deemed to have been given to the Concessionaire's Representative. Any such delegation shall not relieve the Concessionaire's Representative of its obligation and duties under this Agreement.

5.5 Sole purpose of the Concessionaire

- 5.5.1 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/sister concerns/group companies/related entity 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 therein.

5.6 Project Implementation Schedule

- 5.6.1 The Concessionaire shall prepare and submit a Project Implementation Schedule to the Authority before the Compliance Date. The programme shall include, but not be limited to, the following:

- A. The order in which the Concessionaire proposes to carry out the Works including development (such as the stages of demolition, design, procurement, construction, erection, testing, commissioning etc. concerning with the Project and Project Site).
- B. Chronological roadmap of all major events and activities in the production of Project Documents.
- C. The particulars for the pre-commencement reviews and for any other submissions, approvals and consents specified in this Concession Agreement.
- D. The Concessionaire shall, whenever required by the Authority, provide in writing, for information, a general description of the arrangements and methods, which the Concessionaire proposes to adopt for the execution of the Works.

- 5.6.2 Any alteration/ revision by the Concessionaire in the Project Implementation Schedule shall be made only with the prior approval of the Authority in accordance with Article 11.

- 5.6.3 If the progress of the Works does not conform to the Project Implementation Schedule, the Authority may instruct the Concessionaire to revise the Project Implementation Schedule, showing the modifications necessary to achieve completion as per Project Implementation Schedule.

- 5.6.4 The Project Implementation Schedule shall be developed using PERT (Programme Evaluation and Review Techniques) charts showing critical activities and milestones for completion of all works and services within the stipulated time period and submitted to the Authority.

5.7 Materials

- 5.7.1 All materials used in the Project shall conform to the Technical Requirements & Performance Standards mentioned in Schedule III. However, the Concessionaire shall have freedom to choose best quality materials, fixtures, and fittings of the standard desired for a minimum 5-star category Hotel and above, in consultation with the Authority, whose recommendations shall be mandatory and not directory.

- 5.7.2 The Concessionaire shall at its own cost and responsibility arrange for the requisite materials, and any other materials and fixtures used in the works, as well as ancillary materials.

5.8 Safety

Within 1 (one) month from the Agreement Date, the Concessionaire shall provide to the Authority details of its safety plans and procedures for the Works and services. The Concessionaire shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. Unless otherwise stated in this Concession Agreement, the Concessionaire shall, from the commencement of Works on the Project Site until the expiration of this Concession Agreement or upon termination of this Agreement, whichever is earlier, provide fencing, lighting, guarding and watching of the Facilities. The Concessionaire alone shall be responsible in the operation of machinery and equipment, and any other work and to take all precautions to ensure safety of the staff, laborers and public.

5.9 EHS and L&FS Standards

- 5.9.1** The Concessionaire shall solely, at all times and throughout the Concession Period comply with Applicable Laws including the relevant Environmental, Health and Safety (the "EHS") rules and regulations and life and fire safety Standards (the "L&FS Standards").
- 5.9.2** The Concessionaire shall prepare and comply with the performance standards, including an environmental and sustainability plan stating how the Concessionaire intends to manage and mitigate risks in relation to EHS. Such performance standards shall take into consideration the principles set out in, wherever applicable:
- National EHS regulations (<http://www.moef.nic.in/> and others);
 - Real Estate (Regulation and Development) Act, 2016;
 - National Building Code of India published by BIS (<http://www.bis.org.in/>) and other statutory BIS standards applicable to projects of similar nature; and
 - L&FS Standards.
 - Any other applicable law.

5.10 Demolition

- a)** The Authority shall remove the articles/fixtures and movable assets which shall be provided in Addendum to Schedule I, which shall contain an inventory of all items/structures to be removed from the Project Site before the Concessionaire commences demolition of the existing structure at the Project Site within a period of 30 days from the Compliance Date. Upon receiving the requisite permission(s) for demolition as per Article 4.2(A)(v) hereinabove, the Concessionaire shall ensure that an any remaining inventory after removal by the Authority of any articles/fixtures and movable assets in the existing building ("**Inventory**") sought to be demolished is prepared and countersigned by an appropriate official of the Authority.

It is clarified that the Authority if unable to remove any articles/fixtures and movable assets mentioned in **Addendum to Schedule I** within a period of 30 days from the Compliance Date, then such period may be extendable by a period of 15 days and not thereafter. Any item remaining in the Project Site as mentioned in the **Addendum to Schedule I**, which is not removed within the period of 30 days or in the extended 15 days, can be removed and dealt with by the Concessionaire at its discretion.

- b)** Upon removal of all articles/fixtures and movable assets, the Authority shall confirm to the Concessionaire a 'date of demolition' when the demolition process can commence which shall not be later than the time period as provided in Article 5.10 (a). The Concessionaire shall ensure that all such

debris/waste generated from such demolition shall be disposed of expeditiously, immediately after such demolition. The disposal of debris/waste shall be in accordance with applicable laws and in coordination with the competent authorities.

c) Delay in demolition:

It is understood that demolition is very urgent and shall be completed within 30 (thirty) days from the 'date of demolition' as conveyed by the preceding clause. In case of delay, levy of Rs. 5,000/- per day shall be imposed and amount shall be adjusted from the Performance Security. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty since the Project involves demolition of an existing hotel to develop a new one as conceived by the Project. The liquidated damages as provided for in this Article are in addition to, and not in derogation of, other remedies available to the Authority under this Agreement as well as in law.

- d)** No sale of dismantled material shall be permitted from the site and all such material shall have to be removed from the site within two days of its dismantling. No sorting of good bricks will be allowed at site of demolition.
- e)** Concessionaire must follow all applicable safety codes before dismantling of Building work is commenced and also during the progress of Work.
- f)** The area should be sufficiently barricaded or cordoned off by suitable means (Through Board/Jali) to avoid mishaps of any kind. Proper warning signs should be displayed for the safety of the public whenever cleaning works are undertaken during night or day. Ensuring the aforesaid precautions shall be the sole obligation of the Concessionaire.
- g)** The Concessionaire shall take adequate precautions and safety measures while demolishing the existing Building so as not to cause any damage / adverse affect to adjacent building(s), municipal road, water mains, and electric overhead lines/underground cables. The road path and the lanes around the Project Site shall be kept clear for the use of vehicles, pedestrians, malba etc. shall not be stacked on municipal roads/paths. Any damage in this regard shall have to be made good by the Concessionaire at his own risk and cost. Any fine(s), if imposed by any authority for damage/encroachment/obstruction shall be borne by the Concessionaire.
- h)** The Concessionaire shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for damages to person or property, either on or off the Project Site, which may occur as a result of his execution of the work under this Agreement. The safety provisions of applicable laws and building and construction codes shall be observed, and additionally the Concessionaire shall take or cause to be taken such additional safety and health measures as the Authority may determine to be reasonable and necessary.
- i)** The Concessionaire shall indemnify, and hold harmless the Authority and its officials and employees from all liabilities and claims for damages because of bodily injury, death, property damage, sickness, disease, or loss and expense suffered or alleged to have been suffered by any person as a result of, or arising from, the Concessionaire's operations under this Article, whether such operations be by the Concessionaire, any subcontractors or suppliers engaged by the Concessionaire in connection with such operations, or anyone directly or indirectly employed by either the Concessionaire or such subcontractors and suppliers.
- j)** The Concessionaire shall permit inspection by the Authority and Independent Engineer and other appropriate officials in order to confirm that work is conducted in accordance with the terms and conditions of this Agreement, and that the same is satisfactorily completed.

5.11 Financial Loan from Bank & Financial Institutes

Subject to the conditions prescribed in this Agreement, the Concessionaire shall have all rights as provided in section 108(B)(j) of the Transfer of Property Act, 1882 in respect of the Project Site only for the limited purpose of securing any loan from any Bank/ Financial Institution in relation to the Project. The Concessionaire shall be bound to take prior consent of the Authority before exercising its rights under this clause. Provided that in the event the Bank/Financial institution auctions the Project Site for recovery of dues, the auction purchaser shall step into the shoes of the present Concessionaire and shall be bound by the terms and conditions of this Agreement as if it were the original Concessionaire. Such auction purchaser shall enjoy the lease rights only for the remaining period of the Lease and such auction purchaser shall not re-transfer the said Land. Thus, in such scenario for all ends and purposes it shall be treated as though the present Agreement was executed with such auction purchaser and the rights and obligations of the Authority and such Auction Purchaser shall be construed accordingly. Provided also that the balance of consideration received by the bank/financial institution from the auction, after satisfaction of the dues of the bank/financial institution shall be paid to the Authority and the Concessionaire / Auction Purchaser shall have no right to claim the same. It shall be the duty of the Concessionaire to ensure that a specific term securing the right and interest of the Authority as provided herein is categorically mentioned in the loan agreement executed between the Concessionaire and the bank/financial institution. Provided further that, in all circumstances the charge of the Authority on the said Land shall be over and above all other charges that may be created on the Project Site subsequent to the execution of this Agreement.

ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

6.1 General Obligations

It shall be the Authority's obligation to ensure that the following are made available or executed by the Authority:

- a) Handover or cause to be handed over, the Right of Way to the Project Site, free from any Encumbrances, as per terms of Clause 4.1 at the concerned point in time as per this Agreement;
- b) Authority shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the demolition and subsequent development/operation & maintenance and management of Lakeview Residency Hotel, Bhopal as a minimum 5-star Hotel as provided in this Concession Agreement.
- c) All litigation involving the Project Site, prior to the date of issue of Certificate of Compliance and wherein the actions have been filed against the Authority, shall be contested solely by the Authority. The Concessionaire shall in no way be held responsible or liable thereunder. The Authority shall indemnify the Concessionaire and shall hold it free from any claim or consequent cost that may arise as a result of any such litigation obligations of Authority regarding the Project Site.
- d) Upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance on best efforts basis to the Concessionaire in procuring Applicable Permits required from any Competent Authority for implementation and operations of the Project; subject to the Concessionaire submitting its applications complete in all respect in a timely manner.
- e) Upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- f) Transfer the Project Site on lease basis free from Encumbrances to the Concessionaire and ensure that no barriers are erected or placed on or around the Project Site by any Competent Authority for persons claiming through or under the Authority, except for reasons of Emergency, national security or law and order;
- g) Bear and be responsible for all costs, expense or charges incurred in making available the Project Site in accordance with Article 4.
- h) Neither do nor omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- i) Support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- j) Upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors of their obligations under this Agreement and the Project Agreements. No such assistance or lack thereof by the Authority shall absolve the Concessionaire of its obligations under this Agreement or amount to Force Majeure under this Agreement.
- k) Upon written request from the Concessionaire, execute the Substitution Agreement.
- l) Assist the Concessionaire in procuring Police assistance for regulation of movement of any person on the Project site, removal of trespassers and for security of the material, labour and

machinery. Any liability arising from providing the Project Site free of all Encumbrances to the Concessionaire shall be borne solely by the Authority.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- a) The Concessioning Authority has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement (including giving the requisite authorizations), exercise its rights and perform its obligations, under this Agreement;
- b) This Concession Agreement constitutes a legal, valid and binding obligation enforceable against the Concessioning Authority in accordance with the terms hereof;
- c) Presently, 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 Competent Authority which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement; and
- d) It has good, legal and valid right and title to the Project Site and has the power and authority to handover the Project Site to the Concessionaire for the development of the Project in accordance with the provisions of this Agreement. All information provided by the Authority in the Bid Documents in connection with the Project is to the best of its knowledge and true and accurate in all material aspects.

7.2 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioning Authority that:

- a) It is duly incorporated, organized, validly existing and in good standing under the laws of its incorporation in India
- b) It has full power and authority to execute, deliver 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 and its constitutional documents to authorize the execution & delivery, exercise of rights and performance of obligations under this Agreement;
- d) It has the financial standing and capacity to undertake and complete the Project in accordance with the terms of this Agreement;
- e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f) It is subject to laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- g) The information furnished in the Concessionaire's Bid Proposal to RFP 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.
- h) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of the Concessionaire's Memorandum and/or Articles of Association or any Applicable Laws or any covenant, agreement, 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;
- i) There are no actions, suits, proceedings (including any insolvency proceedings), or investigations pending or, threatened against the Concessionaire under law or in equity before any court or before any other judicial, quasi-judicial, Governmental Instrumentality or other authority, the outcome of which may cast a bearing or may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any

-
- impairment of its ability to perform its obligations and duties under this Concession Agreement;
- j) It shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of this Agreement;
 - k) The Concessionaire is not in violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Competent Authority which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Concession Agreement;
 - l) The Concessionaire is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement pursuant to the Letter of Award, and has agreed to and has unconditionally accepted the terms and conditions set forth in this Agreement;
 - m) The Concessionaire has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which, otherwise or in the aggregate may have a Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Concession Agreement;
 - n) The Concessionaire has the requisite financial standing and resources to fund the required capital expenditure and ancillary costs and to raise any necessary debt for undertaking and implementing the Project in accordance with this Agreement;
 - o) No order has been made and no resolution has been passed for the winding up of the Concessionaire or for a provisional liquidator to be appointed in respect of the Concessionaire and no petition has been presented and no meeting has been convened for the purpose of winding up the Concessionaire. No receiver has been appointed in respect of the Concessionaire or all or any of its assets. The Concessionaire is not insolvent or unable to pay its debts as they fall due. There is no ongoing Petition before any National Company Law Tribunal for seeking the initiation of the Corporate Law Insolvency Process of the Concessionaire.
 - p) The aggregate equity share-holding of the Consortium Partners (in case of a Consortium) in the issued and paid up equity share capital of the Concessionaire are in accordance with the requirements stipulated under Article 5.2;
 - q) In case the Concessionaire is a consortium then each Consortium Member was, and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Concessionaire entering into this Concession and has agreed to and unconditionally accepted the terms and conditions set forth in this Concession Agreement, and shall be responsible in the same manner as though such a member was accepted individually as the successful Bidder;
 - r) All rights and interests of the Concessionaire 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 the part of the Concessionaire or the Authority. Furthermore, none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire 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 Concession Agreement;
 - s) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority, including the Bid or to any Competent Authority in relation to Applicable permits/clearances contains or will contain any untrue statement of fact or omission to state any fact necessary to make such representation or warranty correct and truthful; and
 - t) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of 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 Concessioning Authority.
 - u) Consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings initiated by or at the behest of the Authority; and
 - v) Further representations as may be added depending on the specific circumstances of the

Concessionaire

w) Sufficiency of Concession Period

The Concessionaire shall be deemed to have satisfied itself as to the correctness and sufficiency of the Concession Period and undertakes to duly perform all its obligations under this Concession Agreement and all things necessary for the execution and completion of the Works and the remedying of any defects during the development and also the subsequent O&M Period of this Concession Agreement.

7.3 Disclosure

7.3.1 In the event that any occurrence, circumstance or fact 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. Furthermore, in any instance wherein such an incorrect representation is so highlighted, the erring Party shall immediately cure such aforesaid occurrence, circumstance or fact. However, such aforesaid cure may not be treated as a conclusive remedy to such occurrence, circumstance or fact and the informing Party may resort to any other additional remedy as available to it under law or otherwise.

7.3.2 Neither the Authority nor any of its agents or employees shall be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:

- i. any inaccuracy, omission, unfitness for any purpose flowing or alleged from inadequacy of any kind whatsoever in the data disclosed by the Authority to the Concessionaire in relation to the Project; and/or
- ii. any failure to make available to the Concessionaire any material, document, drawing, plan or other information relating to the Project.

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 Qualification, Scope of the Project, specifications and standards, Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of Users 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, assumption, 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 Article 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 or to 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 Article 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 Article 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 Article 8.1.4 shall not prejudice the disclaimer of the Authority contained in Article 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.

ARTICLE 9: PERFORMANCE SECURITY

9.1 Performance Security

The Concessionaire shall, for the due and faithful performance of its obligations during the Concession Period, provide to the Authority, on or before the date for signing of this Concession Agreement(Agreement Date), an irrevocable and unconditional guarantee from a Scheduled Bank for a sum of **INR 7.5 Crore** (Rupees Seven Crores and Fifty Lakhs Only) in the form set forth in **Schedule-IV** (the "**Performance Security**").

9.2 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, without any interest.

9.3 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within the stipulated time period, the Authority may forfeit the Bid Security and appropriate the proceeds thereof as Damages, and thereupon 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 this Agreement shall be deemed to have been terminated.

9.4 Validity of Performance Security

The Concessionaire shall be obligated to keep the Performance Security revalidated, renewed, extended and continuously in force and in effect up to a period of six months beyond the end of the Concession Period.

9.5 Appropriation of Performance Security

Upon occurrence of a Concessionaire Event of Default or failure to meet any Condition Precedent, the Authority shall, after due notice to the Concessionaire of such Event of Default or failure to meet any Condition Precedent, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Event of Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level/amount of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security of the entire original amount, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 22.

9.6 References to Performance Security

References to the Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire and/or any amounts due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement, and the amount so determined shall be appropriated from the Bid Security or Performance Security, as the case may be.

9.7 Release of Performance Security

The Performance Security shall remain in force and effect for the entire Concession Period (and six months thereafter). Upon completion of 6 (six) months after end of the Concession Period and on a request made by the Concessionaire for release of the Performance Security the Authority shall, after making adjustments (if

any) in pursuance of this Agreement, along with the particulars which establish satisfaction of the requirements laid down in this Agreement, release the Performance Security forthwith.

ARTICLE 10: RIGHTS AND TITLE OVER THE PROJECT SITE

10.1 The Site

- 10.1.1** The site of the Project shall comprise the land described in Schedule I and in respect of which the Site shall be provided and granted by the Authority to the Concessionaire on lease under and in accordance with this Agreement (the "**Project Site**").
- 10.1.2** The ownership rights/leasehold rights of the Project Site shall always remain solely vested with the Authority apart from the rights as leased to the Concessionaire.

10.2 Lease and Access to the Site

- 10.2.1** The Authority hereby grants to the Concessionaire, access to the Project Site for carrying out any surveys and investigations that the Concessionaire may deem necessary prior to Compliance Date, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or any other work undertaken by the Concessionaire on or about the Project Site pursuant hereto in the event of Termination or even otherwise.
- 10.2.2** In consideration of 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 agrees to grant to the Concessionaire, from the Agreement Date, lease-hold rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Project Site which is described, delineated and shown in Schedule I hereto, on 'lease basis' free of any Encumbrances, to develop, operate and maintain the said Project, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Project Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever. These rights have been provided under the sub-lease deed as provided under separate lease deed executed between the Parties with the terms and conditions mentioned therein at the time of signing of the Concession Agreement.
- 10.2.3** The lease, access, Right of Way and all other rights to the Project Site granted under this Agreement by the Authority to the Concessionaire shall always be subject to existing rights of way of the Authority.
- 10.2.4** It is expressly agreed that the Concessionaire's rights to the Project Site by way of the lease granted hereunder shall, along with all other rights granted to the Concessionaire under this Agreement, terminate automatically upon the Termination of this Agreement for any reason whatsoever even if the sub-lease deed is not specifically cancelled, and any such lease-deed would be deemed to be cancelled on termination of this Agreement.

For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Project Site by the Concessionaire or its Contractors, the rights of the Concessionaire in respect of the Project Site shall automatically terminate, without any further act required on the part of the Parties, upon Termination of this Agreement.

10.3 Procurement of the Project Site

- 10.3.1** The Concessionaire shall have the right to access and occupy the parts of the Project Site described in Schedule I for the purpose of designing, constructing, operating, and maintaining the Project, only upon fulfillment of all Conditions Precedent specified in this Agreement and upon vacant access thereto being provided by the Authority to the Concessionaire as stipulated in Article 4. The present Agreements also operates as the grant of a valid lease to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered 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 valid lease with respect to the parts of the Project Site as set forth in Schedule I 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** On and after signing of this agreement, and until the Transfer Date, the Concessionaire shall maintain a round-the-

clock vigil over the Project Site and shall ensure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof (whether actual or constructive), the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.3 Deleted

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

10.4 Project Site to be free from Encumbrances

10.4.1 The Project Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all encumbrances on an “**lease**” basis, where the concessionaire would undertake to demolish the present structures on the Site and thereafter plan, design, build and operate the envisaged Project as per the terms of this RFP and DCA as per the terms of the sub-lease deed signed between the Parties.

10.5 Protection of Site from encroachments

10.5.1 During the Concession Period, it shall be the sole responsibility of the Concessionaire to protect the Project Site from any and all illegal 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 Project 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 Access to Authority

10.6.1 The lease and right to the Project Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, its authorized representatives and their employees for inspection, viewing and exercise of their rights and performance of their obligations under this agreement.

10.7 Geological and archaeological finds

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

10.8 Development of Project Site

10.8.1 The Concessionaire may landscape and develop the Project site and regulate the use thereof in accordance with the Good Industry Practice and in conformity with the provisions of this Agreement.

10.9 Special or temporary Right of Way

10.9.1 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 Project Site. The Concessionaire shall obtain at its own 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.

10.10 Sub-licensing and Sub Leasing for operations

- 10.10.1** The Concessionaire shall not sub-lease or sub-let the whole or part of the Site's physical structure, including project site and facilities, without the Authority's prior written approval. Any such sub-lease or sub-let shall be subject to the terms and conditions of this Agreement. All agreements or arrangements shall specifically have stipulation of a covenant that the agreements shall be coterminous with the termination of this agreement.

However, the Concessionaire may enter into sub-licensing agreements for the operation of specific services or facilities within the Site, including Spa operations, Wedding and event management, Food and beverage services and other day-to-day operational activities. These sub-licensing agreements shall be coterminous with the termination of this Agreement and not create any permanent physical changes to the Site. These agreements shall be submitted to the Authority within one (1) week of execution and disclose all relevant details as required by the Authority. The Concessionaire shall ensure that all sub-licensees comply with the terms and conditions of this Agreement and any applicable laws and regulations.

ARTICLE 11: VARIATIONS

11.1 Initiated by the Authority

- a) Variations may be initiated by the Authority at any time during the Concession Period, either by instruction or by a request to the Concessionaire to submit a proposal. The Concessionaire shall not make any alteration or modification of the Works, unless and until Authority instructs or approves a Variation. If the Project Documents, Works or Operation and Maintenance Procedures are not in accordance with this Concession Agreement, the rectification, repair or remedy thereof shall not constitute a Variation.
- b) If Authority requests a proposal, prior to instructing a Variation, the Concessionaire shall submit as soon as practicable:
 - I. A description of the proposed design or work to be performed and a programme for its execution.
 - II. The Concessionaire's proposal for any necessary modifications to the Project Implementation Schedule according to Article 5.6; and
 - III. The Concessionaire's proposal for adjustment to the Concession Period, Time for Completion and/or modifications to this Concession Agreement.
- c) The Authority shall, as soon as practicable after receipt of such proposals, respond with approval, rejection or comments. If Authority instructs or approves a Variation, it shall proceed to agree to, or determine adjustments to the Concession Period (if required, given the nature of variation).

11.2 Initiated by Concessionaire

- a) The Concessionaire may, at any time during the Concession Period, initiate a Variation, by submitting to the Authority a written proposal which in the Concessionaire's opinion will reduce the cost of development, maintaining or operating the Project, or improve the efficiency or value to the Authority of the completed Project, or otherwise be of benefit to the Authority or to rectify a divergence between any law or directive and the Technical Requirements. The Authority shall, as soon as practicable after receipt of such proposal respond with approval, rejection or comments. If the Authority approves a Variation, it shall agree to, or determine adjustments of the Concession Period (if so required, given the nature of the Variation).

ARTICLE 12: FINANCIAL CLOSE

12.1 Financial Close

- 12.1.1** Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire hereby agrees and undertakes that it shall achieve the Financial Close within 180 (One Hundred and Eighty) days from the date of this Agreement and in the event of delay, it shall be liable to pay damages as per provisions of Article 4.
- 12.1.2** The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package (the **"Financial Package"**) and the Financial Model, duly attested by a Director or authorized representative of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof 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.

12.2 Termination due to failure to achieve Financial Close

- 12.2.1** Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Article 12.1.1, 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 concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual Agreement of the Parties. For the avoidance of doubt, it is agreed that in the event that the Parties hereto have, by mutual consent, determined the Financial Close, the provisions of this Article 12.2.1 shall not apply.
- 12.2.2** Upon termination under Article 12.2.1, the termination payments shall be as defined in Article 4.4. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security the Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages.

ARTICLE 12A: COMMENCEMENT TIME AND DELAYS

12A.1 Commencement of Concession Period

The date on which all the Conditions Precedent specified in Article 4.1 & Article 4.2 are satisfied or waived, as the case may be, and each Party has issued a Compliance Certificate to the other Party towards fulfillment of all Conditions Precedent required thereof, shall be the Compliance 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 Compliance Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence operations/ construction of the Project.

- a) The rights and obligations of the Parties under this Concession Agreement shall commence from the Agreement Date. Any Works of whatever nature, which the Concessionaire elects to carry out prior to the Compliance Date including investigations, surveys, design, etc. shall be entirely at the risk and cost of the Concessionaire.
- b) The Concessionaire shall not be permitted to commence work on any part of the Project Site prior to the issuance of the Certificate of Compliance under Article 4 of this Concession Agreement.
- c) The Authority shall have the absolute right to Operate and Manage the Lakeview Hotel till the time the Conditions Precedent of the Concessionaire are fulfilled and Compliance Certificate for the same is given by the Authority. Only once the Compliance Certificate is given by the Authority to the Concessionaire on their Compliance of the Conditions Precedent, that the Authority shall cease all Operations concerning the Lakeview Hotel. Thereafter from the Date of execution of the instant Agreement and till the Compliance Date the Authority shall undertake steps to manage the operations of the Lakeview Hotel in a manner wherein the Authority is in a position to handover the entire possession of the Lakeview Hotel to the Concessionaire for demolishing the same (in terms of article 5.10 hereinabove). Thus, while the lease rights of the Concessionaire shall commence from the Agreement Date, its license rights shall commence from the Compliance Date.

12A.2 Commercial Operation Date (COD)

When the Authority has issued the Completion Certificate, and the necessary approvals have been obtained by the Concessionaire from the competent authorities, including the Occupancy Certificate from the Competent Authority and the Concessionaire certifies in writing to the Authority that all the facilities required for rendering Hospitality Services can be safely and reliably placed in commercial operation, the Authority shall, upon receipt of such certification from the Concessionaire and its satisfaction thereof, intimate to the Concessionaire the date when the Project shall enter into commercial operation and such date shall be the 'Commercial Operations Date'/'COD', whereupon the Concessionaire shall be entitled to demand and collect User Charges in accordance with the provisions of Article 30. The Concessionaire shall not be permitted to run any operations on the Project Site prior to COD.

12A.3 Extension of period

The Authority may extend the COD timelines with or without penalty, depending on whether it is seen by the Authority that the reason(s) for delay in achieving COD by the Concessionaire is/are justified. Upon extension of the Scheduled Completion Date under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly. Any delay on the part of the Authority (unless such delay is contributed by the Concessionaire) in the completion of the Conditions Precedent shall be deemed to be a delay in commencement of the Project.

12A.4 Time for Completion

The development of the minimum 5-star category Hotel shall be in accordance with the Development Period or the Time for Completion, provided that this period, as stated, may be extended by mutual agreement in writing between both the Parties. The Authority may reject the request for extension by assigning reason(s) thereof.

12A.5 Progress

- a) If at any time, the Concessionaire's actual progress falls behind the Project Implementation Schedule referred to in Article 5.6, or it becomes apparent that it will so fall behind, the Concessionaire shall submit to the Authority a revised Project Implementation Schedule taking into account the prevailing circumstances. The Concessionaire shall, at the same time, notify the Authority of the steps being taken to mitigate any delays and expedite progress so as to achieve completion within the Scheduled Period or the Time for Completion i.e. 36 months.
- b) If the revision of the Project Implementation Schedule is necessitated due to any default, negligence or oversight of the Concessionaire, the Concessionaire shall be responsible, to take all further steps for the rectification and revision of the programme and the underlying Works at its cost.
- c) Notwithstanding anything to the contrary in this Article, a revision in the Project Implementation Schedule that results in the extension of the Completion Period or the Time for Completion shall become effective only after it has been approved in writing by the Authority.

12A.6 Stipulated schedule:

Agreement Date: 2025
Compliance Date: ____2025
Conditions Precedent Period: ____Days
Construction Period: 3 Years
COD Achieved on: 2028
Performance Security (PS) on Agreement Date: Rs. 7.50 Crores

12A.7 Delay in Completion

- a) If the Concessionaire delays completion of Works beyond the Completion Period or the Time for Completion and if in the opinion of the Authority, such delay is caused by any negligence, default, or willful failure of the Concessionaire, no extension of the Completion Period or the Time for Completion shall be given by the Authority. In such a case the duration of the Concession Period shall also not be adjusted, and the Concessionaire shall be solely responsible for the corresponding reduction of the period for which the Project Site is used and any reduction in revenue as a consequence thereof.
- b) In case the Concessionaire fails to complete the Works within the Time for Completion, the Authority shall issue a notice to the Concessionaire to complete within such reasonable time as will be specified in the notice and shall also be asked to pay damages, as specified in Article 13.6. If the Concessionaire fails to complete the Works within the time specified in the notice the Authority may proceed to terminate the Concession Agreement in accordance with Article 22 at the Concessionaire's sole cost and expense.

ARTICLE 13: MONITORING OF CONSTRUCTION

13.1 Monthly progress reports during the Construction 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 Works and shall promptly give such other relevant information as may be required by the Authority / Independent Engineer.

13.2

In respect of the first such aforesaid report, the same shall cover the period up to the end of the month in which the Compliance Date occurred. The reports shall be submitted monthly thereafter, each within 7 (seven) days of the last day of the preceding month to which it relates. Reporting in terms of this Article shall continue until the Concessionaire has completed the development and the Completion Certificate is issued pursuant thereto. Each monthly report shall essentially include:

- I. An executive summary;
- II. For the completion of each main item of the Project, the extent of progress as quantity and percent, the actual or expected dates of commencement, anticipated completion date of the activity;
- III. Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public in general;
- IV. Comparisons of actual and planned progress, with details of any aspects which may jeopardize the completion of development in accordance with this Concession Agreement, and the measures being (or to be) adopted to overcome such aspects; and
- V. Details of unresolved disputes and claims, if any.

13.3 Inspection During the Construction Period

The Independent Engineer shall inspect the Works at least once a month and make/send a report of such inspection (the "**Inspection Report**") to the Authority stating in reasonable detail the defects or deficiencies in the progress of the Project Works, if any, with particular reference to the Scope of the Project and specifications and standards laid out in Schedule III. It 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.

13.4 Tests

For determining that the Works conform to the specifications and standards laid out in Schedule III, 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 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 and the Authority. 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 construction shall be borne solely by the Concessionaire.

13.5

In the event that results of any tests conducted under Clause 13.4 establish any defects or deficiencies in the Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer and Authority in this behalf. 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 Construction Works into compliance with Specifications and Standards set forth in Schedule III, shall be repeated until such Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.4 shall be undertaken in addition to and independent of the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer and the Authority forthwith.

13.6 Delays during construction

- a) Without prejudice to the provisions of this Agreement, if the Concessionaire delays the Works or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works

is such that the Project is not likely to be achieved by the Completion Date, it shall notify the Concessionaire and the Authority to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer and the Authority in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Completion Date.

- b) In the event that Completion Date is not achieved for any reason other than Force Majeure or reasons attributable to the Authority, the Concessionaire shall pay to the Authority damages for delay beyond the Completion Date i.e. an amount equivalent to 0.05% (zero point zero five percent) of the Performance Security per day, for each day of delay, or part thereof, until Completion Date is achieved, subject to maximum of 50% (Fifty Percent) of the Performance Security. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty since the Project involves demolition of an existing hotel to develop a new one as conceived by the Project. The liquidated damages as provided for in this Article are in addition to, and not in derogation of, other remedies as may be available to the Authority under this Agreement as well as in law. Provided that nothing contained in this sub article (b) shall be deemed or construed to authorize any delay by the Concessionaire in achieving the Completion Date.
- c) In the event that the Actual Completion Date is not achieved within [120 (one hundred and twenty)] days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to forfeit the entire Performance Security as well as the ACF and terminate this Agreement. Without prejudice to the Authority's rights under this Agreement and/or any other right that it may have under Applicable Law or equity, the Authority may in its sole discretion choose not to Terminate this Agreement after the said period of [120 (one hundred and twenty)] days and allow for such extension beyond such period of [120 (one hundred and twenty)] days on such terms and conditions as it deems fit; provided that the Concessionaire agrees and pays in advance, the Damages calculated in accordance with Clause 13.6(b) 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 13.6(c). 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.

13.7 Suspension of unsafe Construction Works

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 Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the public.

- 13.8** The Concessionaire shall, pursuant to the notice under Clause 13.7, suspend the Construction 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 shall be repeated until the suspension hereunder is revoked.

- 13.9** All reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne solely by the Concessionaire; provided that if the suspension has occurred as a sole result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

- 13.10** If suspension of 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 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 Date.

13.11 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every month, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Compliance Date and thereafter, no later than 15 (fifteen) days after the end of each month.

ARTICLE 13A: MORTGAGE OF PROJECT ASSETS

13.A.1 Notwithstanding anything to the contrary contained in this Agreement, upon request made in this behalf by the Senior Lender's Representative, the Concessionaire shall upon receiving a no-objection from the Authority, execute a mortgage deed (the "**Mortgage Deed**") forthwith for the benefit of the Senior Lenders to provide inter alia for the following:

- a) As security for any credit facility / loan obtained by the Concessionaire in respect of the Project Site alone along with any other rights granted to the Concessionaire under this Agreement, which may be mortgaged in favour of Senior Lenders subject to the terms specified in the Mortgage Deed; (the "Mortgaged Assets")

It is clarified that subject to the conditions prescribed in this Agreement, the Concessionaire upon receiving a no-objection certificate from the Authority shall have all rights as provided in section 108(B)(j) of the Transfer of Property Act, 1882 in respect of the Project Site alone (along with any rights granted to the Concessionaire under this Agreement) for the limited purpose of securing any loan from any Bank/ Financial Institution in relation to the Project. The Concessionaire shall be bound to take prior consent of the Authority before exercising its rights under this clause.

Provided that in the event the Senior Lenders/Bank/Financial institution wishes to recover its dues under the Mortgage Deed from the Project Site, as per the terms of this Agreement, it shall be entitled to nominate a company which shall substitute and step into the shoes of the present Concessionaire and shall be bound by the terms and conditions of this Agreement as if it were the original Concessionaire. Such nominated company shall enjoy the lease rights only for the remaining period of the Lease and in such scenario for all ends and purposes it shall be treated as though the present Agreement was executed with such nominated company and the rights and obligations of the Authority and such nominated company shall be construed accordingly. Provided also that the balance of consideration received by the bank/financial institution from the nominated company, if any, after satisfaction of the dues of the bank/financial institution shall be paid to the Authority and the Concessionaire shall have no right to claim the same. It shall be the duty of the Concessionaire to ensure that a specific term securing the right and interest of the Authority as provided herein is categorically mentioned in the loan agreement executed between the Concessionaire and the senior lender/bank/financial institution, and this clause shall be deemed to be a part of any such loan agreement if not provided and prevail over such loan agreement. Provided further that, in all circumstances the charge of the Authority on the said Land shall be over and above all other charges that may be created on the Project Site subsequent to the execution of this Agreement.

- b) Senior Lenders shall not exercise or enforce any rights or title over the Mortgaged Assets at any time prior to the expiry of [180 (one hundred and eighty)] days from the Transfer Date; A similar clause to the aforesaid extent shall be included by the Concessionaire in the Financial Documents executed with such Senior Lenders. In case of any repugnancy between this clause and any part of Mortgage Deed, the instant Clause shall prevail.
- c) If this Agreement is terminated owing to any default on part of the Concessionaire then not only is the Concessionaire liable to tender the Termination payment to the Authority, but the Authority shall have the right to have itself assigned as the Mortgagee under the Mortgage Agreements with the Senior Lenders in lieu of the Concessionaire, or nominate a subsequent Concessionaire to be so assigned therein. The aforesaid right of the Authority shall be in addition to, and not derogation of any other remedy available to the Authority against the Concessionaire in law.
- d) The Mortgaged Deed shall expire and cease to have any force or effect upon the earlier of (i) payment of mortgage amount by the Concessionaire; or (ii) the [20th (twentieth) anniversary] of Project COD or any other date as maybe approved by the Authority

ARTICLE 14: COMPLETION OF PROJECT

14.1 Completion Certificate

- a. The development/development work in this Concession Agreement shall not be considered to be completed until the Completion Certificate has been issued by the Authority, in accordance with **Schedule VII**, on the advice of the Independent Engineer, to the Concessionaire, stating that the Concessionaire has completed development obligations under the Concession Agreement to the Authority's satisfaction.
- b. The Completion Certificate shall be given by the Authority within 15 (fifteen) days after:
 - i The Concessionaire has provided all the Project Documents; and
 - ii The Concessionaire has remedied any defects in the Works, if pointed out to the Concessionaire;
 - iii The completion of Works is in conformity with the Technical Requirements, to the satisfaction of the Concessionaire; and
- c. The Authority would be required to issue the Completion Certificate after the development of the minimum 5-star Hotel has been completed in all respect and is ready to use. However, the required documents as stated in Article 14.1 (b) shall be submitted by the Concessionaire and also, comply with all the obligations mentioned hereinabove or elsewhere in this Agreement, required to be met before and after the issuance of the Completion Certificate.

14.2 Completion Certificate not a Cessation of Liability

The issuance of the Completion Certificate under this Article shall be a milestone for reckoning the commencement of Commercial Operations. However, grant of Completion Certificate shall not in any way:

- i Reduce or alter the liabilities of the Concessionaire under this Agreement; or
- ii Constitute a waiver of unfulfilled obligations; or
- iii Bar remedy and rectification of defects; or
- iv Constitute an acceptance of the Works.

ARTICLE 15: OPERATIONS AND MAINTENANCE PERIOD

15.1 Commencement and Duration

The O&M Period of the Project shall commence from the Commercial Operations Date (COD) and shall expire at the Transfer Date.

15.2 Obligations of the Concessionaire during O&M Period

15.2.1 During the Concession Period, the Concessionaire shall operate and maintain the Project Facilities in accordance with this Agreement solely by itself and also 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 (in relation to all Works as well as items which are connected / ancillary thereto). The obligations of the Concessionaire shall include, but be not limited to:

- a) Ensuring safe, hygienic and efficient Hospitality Services and maintaining a high standard of cleanliness and hygiene in the Project Facilities.
- b) undertaking operation and maintenance of the Project Facilities in an efficient, coordinated and economical manner, in compliance with the Specification and Standards;
- c) Undertaking operation and maintenance of the Project Infrastructure in accordance 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 Facilities during the Operation Period such that the Project is self-sustained.
- d) The Concessionaire shall have the right to sub-license part of the Project for the O&M Period, in accordance with provisions of the Concession Agreement. All such licenses shall be terminable within the Concession Period and shall be co-terminus with the termination of this Agreement.
- 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) The Concessionaire is expected to provide best-in-class facilities and adhere to minimum requirements as stipulated in Schedule II and Schedule III.
- g) 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;
- h) The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and wastewater), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.
- i) The Concessionaire shall comply with all the Safety requirements as prescribed under any statute, regulation, bye laws and under good industry practice as applicable for such kind of projects;
- j) Carry out periodic preventive maintenance and periodic renovation of the Project Facilities;

- k) Undertaking routine maintenance including prompt repairs of potholes, cracks, joints, structures, buildings, replacement of lights, pavement lighting, road signs, electricity lines, telephone lines, water facilities, sewage system and other public amenities on the Project Site;
- l) Undertaking major maintenance such as resurfacing of roads, pavements, repairs to structures and buildings including repairs and refurbishment of other infrastructure and Project Facilities;
- m) Maintaining a public relations unit to interface with and attend to suggestions from the users, government agencies, media and other agencies.

15.2.2 The details of Scope of Work and the obligations of the Concessionaire during Operations Period have been given in the Schedule-III to this Agreement.

15.2.3 If the Concessionaire fails to comply with any directions issued by the Authority or any Competent Authority acting under any Applicable Laws, as the case may be, or 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, if any. In the event the Authority is required to pay any penalty to the Competent Authority under any Applicable Laws then the Authority shall be entitled to be indemnified by the Concessionaire under this Agreement.

15.3 Maintenance Requirements

15.3.1 The period commencing from the date immediately succeeding the COD and up to the expiry of this Agreement (whether by efflux of time or by Termination under the provisions of this Agreement), shall be considered as "O&M Period" or "Operations Period". The Concessionaire shall ensure that at all times during the Concession Period the Project conforms to the Performance Standards set forth in Schedule-III.

15.4 Restoration of loss or damage to Project

15.4.1 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 other than Force Majeure Event, 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. The Concessionaire is also obliged to ensure that it undertakes reasonable pre-emptive steps to ensure that no damage is caused to the Project or any part thereof at the first instant.

15.5 Advertising on the Site

15.5.1 The Concessionaire shall be allowed to undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if the advertising thereon does not, in the opinion of the Authority violate orders passed by any Competent Court of law. All advertising on the Project shall also conform to Good Industry Practices. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.

15.6 Operations and Maintenance of Project Facilities

- 15.6.1** The Concessionaire agrees and undertakes to maintain the Project Facilities at all times in accordance with Good Industry Practice and Applicable Laws.

15.7 Safety Requirements

- 15.7.1** The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practices for securing the safety of users of the Project Facilities and other persons present at the Project Site. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements under law and in practice.
- 15.7.2** Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to safety requirements shall be borne solely by the Concessionaire.
- 15.7.3** In the event of failure to perform the obligations or comply with the Performance Standards and rectifying any defects within permissible time limits or any extension thereof, laid down in **Schedule III**, the Concessionaire shall be liable to a penalty which shall not exceed 0.05% of Performance Security for each day until rectification of such defect/damage subject to maximum of 10% of Performance Security for each lapse in compliance in the performance standards or MOT Guidelines, which in turn shall lead to Concessionaire's Event of Default under Article 22.1. If any part of the original performance security is so deducted, as aforesaid, then the Concessionaire shall be liable for replenishing/maintaining the Performance Security to its original value, as stipulated.
- 15.7.4** The Concessionaire recognizes and acknowledges the fact that the Project is intended to provide a facility with minimum 5-star rating, and the Concessionaire shall have no right to prevent, impede or obstruct any bona fide visitor from using the Project Facility, save and except for regulating such usage under the terms of this Concession Agreement. Under exceptional circumstances, if the Concessionaire apprehends any detriment to the Project Facility it shall seek instructions from the Authority, whose decision in this regard shall be final.
- 15.7.5** The Concessionaire shall remove the defects or damage found by Authority at his own cost and ensure the performance standards are maintained throughout.
- 15.7.6** The Concessionaire is obliged to carry out adjustments, repairs, replacements or modifications during the O&M period to maintain the Works etc. The Authority shall permit the Concessionaire to carry out all such adjustments, repairs, replacements or modifications as may be necessary. If the adjustment, repair, replacement or modification cannot be made without stopping the operations of the Project, including the Hotel so constructed, then such request shall only be granted if the Concessionaire's request is reasonable, and under all the circumstances, having regard to the Concessionaire's obligations to keep the Hotel operational during all permitted hours of the day.
- 15.7.7** The Concessionaire shall put appropriate danger sign boards in English, Hindi and the local language, notices and barriers as necessary in order to avoid any accidents and/or emergencies on the Project Site or any portion

thereof.

- 15.7.8** The Concessionaire shall deploy adequately trained staff to manage complete operations of the Project, including the Hotel so constructed and the Common Area upkeep and Security as per Performance Standards detailed in Schedules to this Agreement. The Concessionaire shall bear the entire responsibility and liability for operation of the Project.
- 15.7.9** The Concessionaire shall be entitled to levy, demand, collect, retain and appropriate the User Charges as per the terms of this Concession Agreement, whether vicariously or otherwise, and the Concessionaire shall always keep the Authority informed in this regard and also duly tender the corresponding amounts payable to it.
- 15.7.10** The Concessionaire shall, at its cost, carry out such periodic inspections, as well as assist Authority or its nominee to carry out any (reasonable) random or periodic inspections or checks of any part or component of the Works, the cost of any Test shall be borne by the Concessionaire.
- 15.7.11** The Concessionaire shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there shall be minimal disruption of the operations of the Project, including the Hotel so constructed.
- a** Notwithstanding anything contained herein, the Concessionaire shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the project whether with regard to any negligence committed in the Project or by reason of deficiency in the service at the Hotel or otherwise for any reasons whatsoever whether intentionally or unintentionally and the Authority shall not be responsible or liable in this regard.

15.8 O&M Manual

- a** The Concessionaire shall, in consultation with the Authority, prepare and evolve, not later than 28 (twenty-eight) days prior to the Completion Date, a draft Operation and Maintenance Manual ("**O&M Manual**") providing the detailed plan for regular and preventive maintenance of the Hotel. The Concessionaire shall at its cost provide within 21 (twenty-one) days of its finalization the draft of the O&M Manual to the Authority for its review. The O&M Manual will become final only after it has received the final approval of the Authority. Within a period of 45 (forty-five) days from the date of receipt of the O&M Manual, the Authority shall revert to the Concessionaire with its comments and suggestions (if any) on the O&M Manual, which shall be implemented, and the O&M Manual shall be re-submitted for approval of the Authority.

ARTICLE 16: INDEPENDENT ENGINEER

16.1 Appointment of Independent Engineer

- a) "Independent Engineer" means a technical consultancy firm appointed by the Authority for supervision and monitoring of Works by the Concessionaire to be in compliance with the terms and conditions set forth in this Agreement.
- b) The Authority shall appoint the Independent Engineer to oversee the construction of the Project.
- c) The Authority shall invite technical and financial offers (in separate envelopes) from consulting firms or bodies corporate to undertake and perform the duties and functions set forth herein. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist a maximum of 4 (four) eligible firms on the basis of their technical scores. The financial bids in respect of such shortlisted firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted technical and financial evaluation (Combined Quality-cum-Cost-Basis Selection).
- d) The Concessionaire shall be entitled to scrutinize the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with best industry practices.

16.2 Role and functions of the Independent Engineer

The role and functions of the Independent Engineer shall include the following:

- a) Review of the Detailed Project Report including a review of the Drawings and Documents forming a part of the DPR; and other drawings and documents;
- b) Review, inspect and monitor Works and their compliance with Drawings and Documents forming a part of the DPR; and other drawings and documents;
- c) Monitoring compliance of Works as per timelines stipulated in this Agreement

16.3 The Independent Engineer(s) shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

16.4 The Independent Engineer shall inspect the construction at the Project Site every 15 days. If any such or other defect or deficiency is found by the Independent Engineer(s), it shall make a report thereof in reasonable detail and send it forthwith to the Authority and the Concessionaire.

16.5 Determination of costs and time

- I. The Independent Engineer(s) shall determine the costs, and/or their reasonableness, that are required for the Project under the Agreement.
- II. The Independent Engineer(s) shall determine the period, or any extension thereof, that is required for construction under the Agreement.

16.6 Suspension of unsafe Construction Works

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 Construction Works in accordance with Article 13, if, in the reasonable opinion of the Authority such work threatens the safety of the public or infringes any environmental norms and the procedure provided for rectification of such unsafe works shall be carried out in accordance with Article 13.

16.7 Assistance in Dispute resolution

- i. When called upon by either Party in the event of any Dispute between the said Parties, the Independent Engineer(s) shall mediate and assist the said Parties in arriving at an amicable settlement.

- ii. In the event of any disagreement between the said Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer(s) shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

16.8 Other duties and functions

The Independent Engineer(s) shall perform all duties and functions specified in the Agreement, which may fall within its scope of work, whether or not specifically mentioned in this Article.

16.9 Miscellaneous

- I. The Independent Engineer(s) 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.
- II. A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer(s) to the Concessionaire pursuant to this Agreement, and a copy of all the test results with comments of the Independent Engineer(s) thereon shall be furnished by the Independent Engineer(s) to the Authority forthwith.

The Independent Engineer(s) 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(s), whereupon the Independent Engineer(s) shall send one of the copies to the Authority along with its comments thereon.
- III. The Independent Engineer(s) shall retain at least one copy each of all Drawings and Documents received by it and keep them in its safe custody.
- IV. Upon completion of its assignment hereunder, the Independent Engineer(s) shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify and receipt thereof. Two copies of the said document shall also be furnished in microfilm form or in such other medium as may be acceptable to the Authority.
- V. Wherever no period has been specified for delivery of services by the Independent Engineer(s), the Independent Engineer(s) shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice and within a reasonable time.

16.10 Termination

- i. The Authority may, in its discretion, but by reasons recorded in writing, terminate the engagement of the Independent Engineer.
- ii. The issuance of the Completion Certificate under Article 14 shall lead to termination of the mandate of the Independent Engineer.

16.11 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and 50% of the fee shall be reimbursed by the Concessionaire to the Authority at the time of completion of construction.

16.12 Authorized signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire one member 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 such designated person; provided that the Independent Engineer may, by notice in writing (to the Authority / Concessionaire), of a reasonable time, substitute the designated person by any of its other employees/members.

16.13 Dispute Resolution

If either Party disputes any advice, instruction, decision, direction 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 as mentioned in Article 28 of this Agreement.

ARTICLE 17: MONITORING OF OPERATION AND MAINTENANCE

17.1 Quarterly status reports

- 17.1.1** During Concession Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority a quarterly report stating in reasonable detail the condition of the Project Facilities including its compliance or otherwise with the Maintenance Requirements and Safety Requirements / other requirements in law, 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 as well as the steps proposed by the Concessionaire to remedy the same along with timelines thereof.

17.2 Inspection

- 17.2.1** The Authority may through its Authorized Representatives, or the Project Management Consultant provided for in Article 17.3, inspect the Project Facilities at anytime during the O&M Period. 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 Authority and the Concessionaire within 7 (seven) days of such inspection.

17.3 Appointment of Project Management Consultant

The Authority may invite technical and financial offers (in separate envelopes) from consulting firms or bodies corporate to undertake and perform the duties and functions set forth herein (Project Management Consultant or 'PMC').

All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist a maximum of 4 (four) eligible firms on the basis of their technical scores. The financial bids in respect of such shortlisted firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted technical and financial evaluation (Combined Quality-cum-Cost-Basis Selection).

The Concessionaire shall be entitled to scrutinize the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with best industry practices.

17.4 Tests

- 17.4.1** For determining that the Project Facilities conform to the Maintenance Requirements, the Authority on the advice of the PMC may require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority and furnish the results of such tests forthwith to the Authority. One half of the costs incurred on such tests, shall be reimbursed by the Authority to the Concessionaire.

17.5 Remedial measures

- 17.5.1** The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Article 17.4 and furnish a report in respect thereof to the Authority and the Authority may within 15 (fifteen) days of receiving the O&M Inspection Report highlight defects or deficiencies therein; 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.
- 17.5.2** The Authority may require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Article 17.5 shall be repeated until the Project, in entirety, conforms to the Maintenance Requirements.

17.6 Miscellaneous

The Project Management Consultant 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.

17.7 Termination

- I. The Authority may, in its discretion, but by reasons to be recorded in writing, terminate the engagement of the Project Management Consultant.
- II. The issuance of the Vesting Certificate as per Schedule VIII shall lead to termination of the mandate of the Project Management Consultant.

17.8 Remuneration

The remuneration, cost and expenses of the Project Management Consultant shall be paid by the Authority.

17.9 Authorized signatories

The Authority shall require the Project Management Consultant to designate and notify to the Authority and the Concessionaire one member to sign for and on behalf of the Project Management Consultant, and any communication or document required to be signed by the Project Management Consultant shall be valid and effective only if signed by such designated person; provided that the Project Management Consultant may, by notice in writing, substitute the designated person by any of its other employees/members. Furthermore, the Project Management Consultant shall be bound by such endorsements / executions made by its aforesaid representative, as though they were made directly by the Project Management Consultant itself.

17.10 Dispute Resolution

If either Party disputes any advice, instruction, decision, direction of the Project Management Consultant, 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 as mentioned in Article 28 herein.

ARTICLE 18: UTILITIES & LABOUR

UTILITIES

18.1 Existing utilities and roads

- 18.1.1** Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the right of way or utilities on, under or above the Project 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 relevant Government Instrumentality.

18.2 Shifting of obstructing utilities

- 18.2.1** 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 Project Site if and only if such utility causes or shall cause a material adverse effect on the construction, 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.

18.3 New utilities and roads

- 18.3.1** The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Project 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 such 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 Project Site under this Article (whether in whole or in part) shall not in any manner relieve the Concessionaire of its obligation to maintain the (remainder of such) Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

18.4 Felling of Trees

- 18.4.1** The Authority shall assist the Concessionaire in procuring the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Project Facilities. For avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Concessionaire alone and any revenues thereof shall be paid to the Authority.

LABOUR

18.5 Specific obligations related to compliance with labour laws:

- a) The Concessionaire shall obtain all relevant labour registrations and comply with all relevant Indian labour laws and applicable local labour laws applying to its employees / personnel and shall duly pay and accord to them all their legal rights. The Authority shall not have any responsibility towards such aforesaid employees / personnel in respect of any of their legal rights, whether statutory or otherwise.
- b) Copies of the documents affirming such compliance shall be shared with the Authority or Competent Authorities upon request, at the earliest.
- c) The Concessionaire shall make all deductions of taxes at source as may be required by Applicable Laws.
- d) The Concessionaire shall require all employees to obey all Applicable Laws concerning safety during Works.

- e) The Concessionaire shall be responsible for order and discipline of its personnel without disruption of services and develop its own standard operating procedures for handling personnel issues including, but not limited to, employee grievances, indiscipline and / or employee strikes.

18.6 Engagement

The Concessionaire shall make its own arrangements for the engagement of all its employees, staff and labour, local or otherwise and for their payment, housing, feeding and transport etc.

18.7 Labour Insurance

The Concessionaire shall ensure that all labour and staff employed with it are adequately covered with Insurance such as ESI, Personal Accident, Group Mediclaim / Mediclaim, etc. at its own cost and expense. Thus, no liability whatsoever shall ever befall upon the Authority in respect of any such insurance claims by the labour / staff.

18.8 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Contractors and their Sub-Contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its Contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

18.9 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions in accordance with the terms of this Agreement and Applicable Laws, as amended from time to time.

ARTICLE 19: PROJECT CONSIDERATION

19.1 Project Consideration

In consideration of the rights, privileges and interests granted by the Authority to the Concessionaire in terms of this Agreement, the Project Consideration ("**Project Consideration**") shall comprise of the following payments by the Concessionaire to the Authority:

- a) Annual Concession Fee
- b) Revenue Share
- c) Lease Rent as defined in Lease Deed

19.1.1 Annual Concession Fee (ACF): The Concessionaire shall pay to the Authority an Annual Concession Fee (the "ACF") of INR 3 Crores increasing at a compounding rate of 5% p.a. excluding GST and any other taxes applicable from time to time.

Please note, all such taxes shall be paid in addition to (i.e. over and above) the ACF by the selected Bidder to the Authority. The first Annual Concession Fee (ACF) will be due and payable before the time of signing of the Concession Agreement. Subsequent ACF payments shall be made annually, on or before the same date each year, payable as a lump sum.

For clarification of doubt, it is explained with an example, that if the Agreement Date is 01.08.2024, ACF shall be paid on or before 01.08.2024 and next ACF would be paid on 01.08.2025 and in such manner for each Financial Year till end of the Concession Period.

19.2 Revenue Share : In consideration of grant of the Concession, the Concessionaire agrees to pay to the Authority, a payment equivalent to a percentage of yearly Gross Revenues from the Project / Project Facilities in addition to the ACF mentioned in Article 19.1.1.

19.2.1 The Revenue Share shall be calculated in the following manner:

- a) After the COD, the Revenue Share shall be calculated and paid on or before 30th June of each year, as **Quoted Percentage (Financial Bid Parameter) of Gross Revenue** GST and any other taxes applicable from time to time. Please note, all such taxes shall be paid in addition to, and over and above, the quoted Revenue Share by the selected bidder to the Authority, from the Project in the immediately preceding Financial Year, based on audited financial statements. The Gross Revenue is as defined in Article 1 of the Definitions and Interpretations.

Please note, all such taxes shall be paid in addition to (i.e. over and above) the quoted Revenue Share basis the Gross Revenue by the Selected Bidder to the Authority. It is clarified that the Revenue Share payments shall be ascertained basis the audited financials certified by a chartered accountant as per the relevant 'Indian Accounting Standard' and be made annually, on or before 30th June of each year.

The Concessionaire shall, with each payment of the Revenue Share submit:

- I. A certificate that the amounts paid are correct and in accordance with the provisions of this Agreement;
- II. Detailed calculations of the Revenue Share based on the Gross Revenue;
- III. Details in respect of Taxes/duties payable/reimbursable in accordance with the provisions of this Agreement;
- IV. Details in respect of other Damages payable in accordance with the provisions of this Agreement; and
- V. Net amount payable under the provisions of this Agreement

19.3 The Concessionaire shall furnish to the Authority audited quarterly statements within 30 days of the statutory period of its filing with the relevant authorities. In the event the Authority requires any clarifications regarding the audited financial statement so submitted by the Concessionaire, the Concessionaire shall provide the same

promptly and not in any case later than 7 (seven) days from the date of such request. The Concessionaire shall furnish the Total Revenue reported to the Registrar of Companies annually, and in the event of any discrepancy with the audited figure, the figure reported to the Registrar of Companies shall prevail, with corresponding adjustments to be made to the revenue share payable to the Authority

The Authority may, additionally, ask the Concessionaire furnish its book of accounts from time to time to verify the sanctity of records. If any discrepancy is found in the report of Gross Revenues by the Concessionaire, the Authority would be entitled to:

- i. Recover any payments due from the Concessionaire due to discrepant reporting of the Gross Revenues with an agreed upon interest rate of 18% p.a.; and / or
- ii. Terminate the Agreement due to Concessionaire's Default in accordance with Article 22

19.4 The ACF and Revenue share shall be payable by the Concessionaire to the Authority in the manner set forth in the Concession Agreement. These payments shall be made periodically by Escrow Mechanism in the manner set forth in the instant Agreement and more particularly in the Escrow Agreement, as the case may be.

19.5 Damages for Delay in Payment of Project Consideration: In the event of delay in payment of ACF and / or Revenue Share and /or Lease Rent by the Concessionaire on or before the due date, the Concessionaire shall be required to pay to the Authority an interest at the agreed rate of 16% (sixteen percent) per annum (calculated on daily basis) on the delayed payments of ACF and / or Revenue Share for the days of the delay, subject to a maximum of 45 (Forty five) days beyond the due date. A delay beyond 45 (forty-five) days in payment of outstanding Project Consideration (ACF and/or Revenue Share) to the Authority shall be considered as a Concessionaire Event of Default.

19.6 Notwithstanding the right of the Authority to terminate this Agreement for non-payment of Project Consideration in Article 19.3, the Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the outstanding Project Consideration (ACF and/or Revenue Share) from the Performance Security, in addition to any other remedy available to the Authority in law.

19.7 The Concessionaire shall maintain duly updated, true, correct and complete computerized accounts of all inflows and of the costs in relation to the Project, as well as ensure weekly reporting of turnover and monthly reconciliation of accounts to facilitate timely payment of Project Consideration to the Authority, and its authorized agents shall be given unrestricted and complete access to the said accounts at any time the Authority may so require.

19.8 The time prescribed for making payment of the ACF and Revenue Share respectively shall be the essence of this Agreement.

19.9 Set-off

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.

19.10 Adjustment of the Project Consideration

The Project Consideration shall not be adjusted for changes in the cost of labour, materials or other matters and there shall be no other implied adjustments for any other reasons whatsoever.

ARTICLE 20: ACCOUNTS AND AUDIT

20.1 Audited accounts

- 20.1.1** The Concessionaire shall maintain books of accounts recording all its receipts (including all Project Revenues derived/collected by it (directly or otherwise) 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 Financial 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 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.
- 20.1.2** The Concessionaire shall, within 30 (thirty) days of the close of each quarter of a Financial 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.
- 20.1.3** Along with the copies of the Audited Accounts and the Auditors Report thereon as per Article 20.1.1, the Concessionaire shall provide segregated Profit and Loss Accounts for the operations of various Project Facilities, duly audited by the statutory auditors.
- 20.1.4** On or before the 30th June of each year, the Concessionaire shall provide to the Authority, for the immediately preceding Financial Year, a statement duly audited by its statutory auditors, giving any such information as the Authority may reasonably require, including a summary of information on:
- a) The occupancy of the Project Facilities, and
 - b) User Fee charged and received and other revenues derived from the Project / Project Site / Project Facilities, and
 - c) Annual Gross Revenue earned from the Project / Project Site / Project Facilities, and
 - d) Such other information as the Authority may reasonably require.

20.2 Certification of claims by Statutory Auditors

- 20.2.1** 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. In the event of there being any difference or dispute in respect thereof, such Dispute shall be resolved by recourse to the Dispute Resolution Procedure as highlighted in Article 28 herein. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

20.3 Set off

- 20.3.1** 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 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

20.4 Appointment of Additional Auditors

- 20.4.1** 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 of Chartered Accountants (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.

- 20.4.2** In addition to above, the Authority shall have the right, but not the obligation, to appoint, at its cost, Additional Auditors to undertake concurrent audit of the Concessionaire's accounts and the Concessionaire herein consents to such aforesaid power of the Authority.

ARTICLE 21: SUSPENSION

21.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Event of Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to

- I. Suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect revenues pursuant hereto; and
- II. 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 such 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 Senior 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.

21.2 The Authority to act on behalf of Concessionaire

21.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenue from the Project 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 costs incurred by it for remedying and rectifying the cause of Suspension.

21.2.2 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 therein 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 its sub-contractors, the Authority or any other person so authorized by it under Article 21.1 to use, during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, development, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

21.3 Revocation of Suspension

21.3.1 In the event that the Concessionaire shall have rectified or removed the cause of Suspension 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. 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.

21.4 Substitution of Concessionaire

At any time during the period of Suspension, the Senior 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 Senior 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 Article 21.1, for enabling the Senior Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

21.5 Termination

- 21.5.1** At any time during the period of Suspension under this Article 21, the Concessionaire may by notice require the Authority to revoke the Suspension. Subject to the rights of the Senior Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Article 21.4, the Authority may, within 30 (Thirty) days of receipt of such notice, revoke the suspension and reinstate the Concessionaire's rights under this Agreement, upon being satisfied that the Concessionaire has removed / cured the issues / matters which caused suspension in the first place.
- 21.5.2** 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 Article 22.1, the 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 Event of Default.

ARTICLE 21A: SUBSTITUTION

21A.1 Restrictions on assignment and charges

21A.1.1 Subject to Clauses 21A.2 and 21A.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.

21A.1.2 Subject to the provisions of Clause 21A.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.

21A.2 Permitted assignment and charges

The restraints set forth in Clause 21A.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; (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; (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Senior 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; and (d) liens or encumbrances required by any Applicable Law.

21A.3 Substitution Agreement

21A.3.1 The Senior 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 Senior Lenders' Representative, on behalf of Senior Lenders, substantially in the form and as per the underlying terms set forth in **Schedule-IX**.

21A.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 the Project Agreement as if it were the Concessionaire which executed this Agreement in the first place; 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.

21A.4 Assignment by the Authority

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.

21A.5 Any assignment under this Article 21A shall be subject to the approvals and consents required therefor 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 22: TERMINATION

22.1 Concessionaire Event of Default

22.1.1 Each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure and if not cured within the Cure Period which shall be 60 (sixty) days from the date of notice of default, further extendable at the instance of the Authority, shall be considered for the purpose of this Agreement as an Event of Default of the Concessionaire ("**Concessionaire Event of Default**"):

- A)** The Performance Security has been encashed and appropriated in accordance with Article 9 and the Concessionaire fails to replenish or provide fresh Performance Security within 30 (thirty) days of encashment / appropriation, in accordance with Article 9.5;
- B)** Subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article 9.5, failure to cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a maximum Cure Period of 120 (one hundred and twenty) days;
- C)** The Concessionaire abandons or manifests its intention to abandon the development or operation of the Project without the prior written consent of the Authority;
- D)** The Concessionaire is in breach of the Maintenance Requirements or Safety Requirements;
- E)** The Concessionaire has failed to make payment of Project Consideration to the Authority within the period specified in Article 19.6;
- F)** The Concessionaire has failed to make any other payment which is due to the Authority within the period specified in this Agreement;
- G)** The Concessionaire fails to achieve the Schedule Completion Date (including any extension thereof provided by the Authority as per this Agreement).
- H)** Upon occurrence of a Financial Default, the Senior Lender's Representative has, by notice, required the Authority to undertake Suspension, Termination, or substitution, 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;
- I)** An Escrow Default (as defined in Schedule – VI hereto) has occurred, and the Concessionaire fails to cure the default within the period specified in the Escrow Agreement;
- J)** A breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- K)** The Concessionaire creates any Encumbrance in breach of this Agreement;
- L)** The Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by this Agreement;
- M)** A Change in Ownership has occurred in breach of the provisions of this Agreement;
- N)** If the Concessionaire is declared as a wilful defaulter by any of the Scheduled Banks in India;
- O)** An execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect to the Authority;
- P)** If the Concessionaire is declared unfit/ineligible to continue as a "going concern" or undertake the responsibilities as per this Agreement under Applicable Laws;

-
- Q)** 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;
 - R)** 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;
 - S)** 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:
 - a) 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;
 - b) 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 COD; and
 - c) Each of the Project Agreements remains in full force and effect;
 - T)** 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;
 - U)** 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;
 - V)** It is found that the Selected Bidder has hidden a Conflict of Interest, as outlined in RFP, during the bidding process;
 - W)** The Concessionaire has failed to fulfil any obligation, for which failure, Termination has been specified in this Agreement; or
 - X)** The Concessionaire commits a default in complying with any other provision of this Agreement if such default cause a Material Adverse Effect on the Authority.
 - Y)** the Concessionaire issues Termination Notice in violation of the provisions of this Agreement; or The Concessionaire novates and /or assigns the agreement to any third party without any prior approval from the Concessioneing Authority
 - Z)** The Concessionaire fails to achieve Financial Close within the stipulated time period of 90 (ninety) days from the Compliance Date, unless expressly extended by the Authority.
 - AA)** A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire.
 - BB)** Failure on part of the Concessionaire to replace the O&M Operator operating the Project post lock in period, wherein the agreement between the O&M Operator and Concessionaire has been terminated, and/or the O&M Operator has abandoned or materially reduced its operations in the Project. It is clarified that the new O&M Operator would be required to meet the technical eligibility/requirements as provided in the RFP on basis of which this Concession Agreement has been executed, and the approval of the Authority for any agreement between the Concessionaire and new O&M Operator would be necessarily required before execution.

22.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon

occurrence of a Concessionaire Event of 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 Article 22.1.3.

22.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 22.1.2 to inform the Senior Lenders' Representative and grant 15 (fifteen) days to the Senior Lenders' Representative, for making a representation on behalf of the Senior 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 Senior Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement as per Schedule IX.

22.1.4 Provided that the Senior Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, ensure that the default specified in the notice is cured within a period of 90 (ninety) 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 Senior Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 90 (ninety) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

22.2 Termination for Authority Event of Default

22.2.1 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 further extendable at the instance of the Authority, 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 Event of 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:

- 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 any land which is necessary and required for construction of any essential element or part of the Hotel and/or the Project Infrastructure; or
- c The Authority repudiates this Agreement or otherwise takes any action that amounts to an irrevocable intention not to be bound by this Agreement.

22.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Authority Event of 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 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.

22.3 Termination Payment

22.3.1 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire.

Upon Termination on account of a Concessionaire Event of Default during the Concession Period, the Concessionaire shall pay to the Authority, Damages as stipulated below;

22.3.2 In case of Concessionaire Event of Default where damages are not specifically provided for in this Agreement, the 100% of subsisting Performance Security shall be forfeited. Furthermore, in case of Concessionaire Event of Default if the damages suffered by the Authority are greater than the amount realized from forfeiture of the Performance Security then the Authority shall be at liberty to claim such unrealized amounts as damages under the instant Agreement, or as per any other course of law available to the Authority.

In case of Authority Event of Default, in the event of the Authority being in material default or breach of this Agreement at any time after COD, 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 [90 (ninety)] 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 avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, and all other costs directly attributable directly to such material breach or default but shall not include loss of profit or damages on account of Revenues from room charges, restaurants and sale of food and all incomes derived or collected by it from or on account of the Hotel, Project Infrastructure and Associated Services, 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.

22.3.3 The Concessionaire expressly agrees that Termination under this Article 22 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 shall not have any further right or claim under any law, treaty, convention, contract or otherwise against the Authority.

22.3.4 Consequence of Termination: Irrespective of the reason for Termination, the Concessionaire shall transfer all movable and immovable assets forming part of the Project Assets to the Authority immediately forthwith upon the Transfer Date. Furthermore, immediately on Termination, the Concessionaire shall cease to be possessed with any right / benefit/ rights including leasehold rights etc. which was conferred upon the Concessionaire under the instant Agreement or by way of a separate sub-lease.

22.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- a) Be deemed to have taken possession and control of the Project Assets and entire Project Site (including the project facilities) forthwith;
- b) 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;
- c) Require the Concessionaire to comply with the Divestment Requirements set forth in Article 23.1; and
- d) 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 Subcontractors 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 Subcontractors / Third Parties as being due and owed for Works and services performed or accruing on account of any act, omission or event prior to such election date shall constitute debt between the Concessionaire and such Subcontractors, 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. However, if the amount under Termination Payment appears insufficient to meet such outstanding amounts, then the Authority shall be at liberty to seek /realize such amount from the Concessionaire under this Agreement or under any other remedy available to it under law.

22.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 22.3.4, 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.

22.5.1 Retention in Escrow Account

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 22.5.2, a sum equal to the Performance Security shall be retained in the Escrow Account for a period of 90 (ninety) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Article 25.

22.5.2 Without prejudice to the provisions of Article 22.5.1, the Authority / Independent Engineer/Project Management Consultant shall carry out an inspection of the Project at any time between 120 (one hundred and twenty) days 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 Article 22.5.1 should be retained in the Escrow Account and for a period longer than the aforesaid 90 (ninety) days, the amount recommended by the Authority / Independent Engineer shall be retained in the Escrow Account for the period specified by it.

ARTICLE 23: DIVESTMENT OF RIGHTS AND INTEREST

23.1 Divestment Requirements

23.1.1 Upon Expiry or Termination (whichever is earlier) of the instant Agreement, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- a) Notify to the Authority forthwith the location and particulars of all Project Assets;
- b) Deliver forthwith the actual possession of the Project including, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- c) 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 Construction Period, all Project Assets shall be handed on "as is where is and in good condition" basis including all movable and immovable assets after bringing them to a safe condition;
- d) Deliver and transfer (in original, wherever required) relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its Design, Development, O&M etc., including all programmes and manuals pertaining thereto, as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, development, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance / Infringement;
- e) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- f) 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 and Project Site, including manufacturers' warranties in respect of any services, 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
- g) 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.

23.1.2 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 giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

23.1.3 It is clarified that only the assets of the Concessionaire shall be taken over and not the liabilities, including without limitation liabilities relating to staff and personnel related obligations of the Concessionaire and the Persons claiming through or under the Concessionaire or liabilities related to the commercial area/premises. All such staff and employees shall be the responsibility of the Concessionaire even after the expiry of the Concession Period and they shall have no claim to any type of employment or compensation from Authority or its nominated agency.

23.2 Inspection and cure

Not earlier than 180 (one hundred and eighty) days prior to Termination but not later than 15 (fifteen) days prior to the Effective Date of such Termination, the Authority shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such inspection for the purpose of verifying

compliance by the Concessionaire with the Maintenance Requirements. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its own cost and the provisions of Article 15 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 23.

23.3 Cooperation and assistance on transfer of Project

23.3.1 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.

23.3.2 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, any subsequent Concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

23.3.3 The Authority shall acquire and take possession of all movable assets, including but not limited to all furniture, fixtures, equipment, machinery, and other tangible personal property (the "Movable Assets") located on or used in connection with the Project. The acquisition of the Movable Assets by the Authority shall be deemed to include all rights, title, and interest in and to the Movable Assets, free from any liens, encumbrances, or other claims. The Authority shall be responsible for the maintenance, repair, and replacement of the Movable Assets from the date of acquisition

23.4 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-VIII** (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. Furthermore, any such defect or deficiency shall, upon discovery, be immediately cured and the said Parties shall extend their whole cooperation to each other in this regard.

23.5 Divestment costs etc.

23.5.1 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 in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents which may be executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

23.5.2 In the event of any dispute relating to matters covered by and under this Article, the Dispute Resolution

Procedure shall apply as enumerated in Article 28 herein.

ARTICLE 24: LIABILITY AND INDEMNITY

24.1 General indemnity

- 24.1.1** The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Authority Instrumentalities and Authority 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 any User or from any negligence of 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.
- 24.1.2** The Authority will 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 (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which may 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.
- 24.1.3** The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Senior 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 the terms of this Agreement, Applicable Laws and Applicable Permits.
- 24.1.4** 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 fulfill 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.

24.2 Indemnity by the Concessionaire

- 24.2.1** Without limiting the generality of Article 24.1 and 24.2, the Concessionaire shall fully indemnify, hold harmless and defend the Authority 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;
 - 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 Sub-contractors; or
 - d. Its omissions or acts of fraud, gross negligence and willful misconduct;
 - 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 caused by, arising out of or in connection with the performance of this Agreement.
- g. Breach by the Concessionaire of any of the obligations under this Agreement.

24.2.2 Without limiting the generality of the provisions of this Article 24, 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, trademarks 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 or any other personnel appointed / working for the Concessionaire in performing the Concessionaire's obligations or in any way 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 the Authority, to secure the revocation or suspension of the injunction or restraint order. At the same time the Concessionaire shall take all reasonable steps to defend / contend such aforesaid litigation, including immediate steps to have such injunction / interim order vacated at the earliest. If in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently restricted, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, therein 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.

24.3 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 24 (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.

24.4 Defence of claims

- 24.4.1** 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 24, 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.

24.4.2 If the Indemnifying Party has exercised its rights under Article 24.3, 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).

24.4.3 If the Indemnifying Party exercises its rights under Article 24.3, 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; or
- 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; or
- 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:

24.4.4 Provided that if Sub-Articles (b), (c) or (d) of this Article 24.4.3 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.

24.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 24, 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 remote nature, including loss of profit, except as expressly provided in this Agreement.

24.6 Survival on Termination

The provisions of this Article 24 shall survive Termination.

ARTICLE 25. ESCROW AGREEMENT

25.1 Escrow Account

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

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

25.1.3 All transactions related to this Project, including but not limited to investments made by the Concessionaire for the Project, receipts from all sources for this Project, all expenses / recurring expenses as mentioned in this Agreement, shall be made from the Escrow Account. Any transaction related to the Project through any bank account other than the Escrow Account shall be deemed as a Concessionaire Event of Default under the Agreement

25.2 Deposits into Escrow Account

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

- a. All Project Revenues and any other revenues from or in respect of the Project, including the proceeds of any rentals, advances, deposits, fee or charges etc. Received from any party;
- b. All funds received in relation to the Project from any source, including without limitation Financial Assistance provided by the Senior Lenders, Senior Lenders of Subordinated Debt constituting the Financial Package and the Authority;
- c. All proceeds received pursuant to any insurance claims.

25.3 Withdrawals during Concession Period

25.3.1 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. Project Consideration (Annual Concession Fee & Revenue share) due and payable to the Authority;
- c. All payments relating to Development/Renovation of the Project;
- d. O&M Expenses, subject to the ceiling, set forth in the Financing Agreements
- e. O&M Expenses and other costs and expenses incurred by the Concessionaire in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- f. Monthly proportionate provision of debt service payment due in a Financial Year in respect of all Debts;
- g. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and
- h. Balance, if any, in accordance with the instructions of the Concessionaire and.
- i. Any reserve requirement set forth in the Financing Agreements;

25.3.2 The Concessionaire shall not in any manner modify the order / sequence of payment specified in Article 25.3.1, except with the prior written approval of the Authority.

25.4 Withdrawals upon Termination

25.4.1 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:

- I. All taxes due and payable by the Concessionaire for and in respect of the Project;
- II. Outstanding Project Consideration;
- III. All payments due and Damages certified by the Authority as due and payable to it by the Concessionaire under this Agreement;
- IV. Cost of repair and restoration of damages to the Project on account of a Non- Political Event;
- V. Outstanding Debt Service including the balance of Debt Due and interest thereon;
- VI. Outstanding Subordinated Debt
- VII. Retention and payments relating to the liability for defects and deficiencies ;
- VIII. Incurred or accrued O&M Expenses;
- IX. Any other payments required to be made under this Agreement; and
- X. Balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-Article (ix) of this Article 25.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 23.

25.4.2 The provisions of this Article 25 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 25.4.1 have been discharged.

ARTICLE 26 INSURANCE

26.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect 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 Completion Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured. 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 Senior Lenders' dues.

26.2 Insurance Cover

26.2.1 Without prejudice, the Concessionaire shall, during the Concession 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 facilities;
- c. The Concessionaire's general liability arising out of the Concession Agreement;
- d. Liability to third parties for goods or property damage;
- e. Workmen's compensation insurance;
- f. 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 Concession Period; and
- g. 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 (f) above.

26.3 Notice to the Authority

Before the Compliance Date, 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. Within 15 (fifteen) 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 as stipulated in Article 28 shall apply.

26.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 26 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, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia 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.

26.5 Remedy for failure to insure

- 26.5.1** If the Concessionaire shall fail to effect and keep in force all insurances for which it is required to obtain pursuant hereto, the Authority shall have the option 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.

26.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 26 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.

26.7 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.

26.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall, notwithstanding anything to contrary contained in this Agreement apply all such proceeds for any necessary repair, re-construction, reinstatement, replacement, improvement, in the Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

26.9 Compliance with conditions of insurance policies

- 26.9.1** 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 the Agreement.

ARTICLE 27: FORCE MAJEURE

27.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Events, Indirect Political Events and Political Events, as defined in Article 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:

- I. Is beyond the reasonable control of the Affected Party; and
- II. The Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and
- III. 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. Acts of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical, radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project 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 a Financial Year and not being an Indirect Political Event set forth in Article 27.3;
- c. Any failure or delay of a Subcontractor 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 Subcontractor;
- 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 or toxic contamination 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. 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 a Financial Year;
- c. Any civil commotion, boycott or political agitation which prevents collection of User Charges by the Concessionaire for an aggregate period exceeding 7 (seven) days in a Financial Year;
- d. Any failure or delay of a Subcontractor 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 Subcontractor;
- e. Any Indirect Political Event that causes a Non-Political Event; or
- f. 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 construction, operations or management of the Project to be financially unviable or otherwise not feasible;
- g. 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 Competent Authority:

- a. Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 32;
- b. Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Subcontractors;
- c. Unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Subcontractors 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 Subcontractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no objection certificate, exemption, consent, approval or permit;
- d. Any failure or delay of a Subcontractor 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 Subcontractor; or any event or circumstance of a nature analogous to any of the foregoing.
- 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; and
- 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 not later than 15 (fifteen) 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 Article 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 Compliance Date, the period set forth in Clause 4 for fulfilment of the Conditions Precedent and the period set forth in Article 12 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 Agreement Date, if any Force Majeure Event occurs:

- a. Before COD of the Project, the Concession Period and the dates set forth in the Project Implementation Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- b. After COD of the Project, whereupon the Concessionaire is unable to collect User Charges despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of project revenues on account thereof.

27.7 Allocation of costs arising out of Force Majeure prior to Compliance Date

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

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Concessionaire's share of project revenues 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.

27.7.2 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** 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;
- 27.9.2** Upon occurrence of an Indirect Political Event, the Authority shall return the Performance Security to the Concessionaire
- 27.9.3** Upon occurrence of a Political Event, half of all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

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 defined under Article 28; 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 actually 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 in question;
- 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.
- d. In case it is found that a Party has either unjustly halted its obligations under this Agreement under the guise of force majeure or has unjustly portrayed the continuance of a force majeure event, beyond the actual span / duration of effect of such event, then such Party shall be liable to tender to the other / innocent Party damages for the period wherein such Party's obligation's were not actually halted due to the operation of a force majeure event.

ARTICLE 27A: COMPENSATION FOR BREACH OF AGREEMENT

27A.1 Compensation for default

- 27A.1.1** Subject to the provisions of Article 27A.3, in the event of the Concessionaire being in material default or breach 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 default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Article 27A, for any material breach or default in respect of which Damages are expressly specified and payable elsewhere under this Agreement.
- 27A.1.2** Subject to the provisions of Article 27A.3, in the event of the Authority being in material default or breach of this Agreement at any time after COD, 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 avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, and all other costs directly attributable to such material breach or default but shall not include loss of profit or damages on account of Revenues from room charges, restaurants and sale of food and all incomes derived or collected by it from or on account of the Hotel, Project Infrastructure and Associated Services, 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.

27A.2 Compensation to be in addition

- 27A.2.1** Compensation payable under this Article 27A.2 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof as well as other remedies under law.

27A.3 Mitigation of costs and damage

- 27A.3.1** The non-defaulting 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 28: DISPUTE RESOLUTION

28.1 Dispute resolution

- a. 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 28.2.
- b. 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 nonprivileged records, information and data pertaining to any Dispute.

28.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer, as the case may be, to mediate and assist the Parties in arriving at an amicable settlement thereof or either Party may without intervention of the Independent Engineer call upon the other to amicably settle any Dispute between them. Failing mediation or any amicable settlement within a period of 15 (fifteen) days of the notice by the Independent Engineer or without the intervention of the Independent Engineer, as the case may be, either Party may require such Dispute to be referred for discussion between the Principal Secretary of the of Tourism and Culture, Madhya Pradesh and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than [15 (fifteen)] days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the [15 (fifteen)] day period or the Dispute is not amicably settled within [30 (thirty)] days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within [45 (forty five)] days of the notice in writing referred to in Clause 28.1 (a) or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute for resolution under the aegis of the Arbitration and Conciliation Act, 1996 for arbitration in accordance with the provisions of Clause 28.2.1 hereinbelow.

28.2.1 In the event of a failure by the Parties to arrive at an amicable settlement as per Clause 28.2, the Parties would be free to resolve their Disputes arising out of or in relation to this Concession Agreement by way of arbitration under the Arbitration and Conciliation Act, 1996. The arbitral tribunal for adjudication of the notified Disputes will comprise of a panel of three (3) arbitrators (or sole arbitrator if the Parties so agree) , wherein one arbitrator will be nominated by either Party, and the third arbitrator would be appointed by the nominated arbitrators.

28.2.2 The language of the arbitral proceedings shall be in English, and the courts of Madhya Pradesh shall have exclusive jurisdiction to adjudicate on all Disputes. The place of arbitration shall also be in Bhopal.

28.3 Costs associated with Dispute Resolution

28.3.1 The cost incurred on Dispute Resolution shall be borne by the Parties in equal proportions.

28.3.2 Each Party shall bear its own legal fees incurred as a result of any Dispute under this Article 28.

28.4 Performance during Dispute

Performance of this Concession Agreement shall continue during the pendency or settlement of any Dispute under this Article 28. The provision of this Dispute Resolution Procedure shall be binding upon the successors, assigns and any trustee or receivers of either the Authority or the Concessionaire as well as anyone claiming through or under either of them.

ARTICLE 29: REDRESSAL OF PUBLIC GRIEVANCES

29.1 Complaints Register

- 29.1.1** The Concessionaire shall maintain a public relations office at the Project Site where it shall keep a register (the **"Complaint Register"**) open to public access at all times for recording of complaints by any person (the **"Complainant"**). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at Project Site so as to bring it to the attention of all the Users.
- 29.1.2** The Complaint Register shall be securely bound, and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire, if any. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 29.1.3** Without prejudice to the provisions of Articles 29.1.1 and 29.1.2, the Authority may, in consultation with the Concessionaire, lay down and specify the procedure for making complaints in electronic form and for responses thereto.

29.2 Redressal of Complaints

- 29.2.1** The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 29.2.2** Within 7 (seven) days of the close of each quarter, the Concessionaire shall send to the Authority a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 30: USER CHARGES

30.1 Levy and Appropriation of User Charges

- a. On and from the COD, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate User Charges/ as per the market driven rates for the facilities provided by the Concessionaire in accordance with the provisions of this Agreement. The Concessionaire shall carry out the Project and also be responsible for collection of the tariff and other charges applicable on the facilities provided therein.
- b. The Authority expressly recognizes the right of the Concessionaire or its Subcontractors to levy, demand, collect, retain, and to appropriate fee/charges in accordance with
 - I. The terms of this Concession Agreement; and
 - II. To exercise all rights and remedies available under Applicable Law and under this Concession Agreement for the recovery of such User Charges/ Fee/Project Revenues at the Concessionaire's cost.

ARTICLE 31: TRANSFER OF THE PROJECT

- 31.1** On the Transfer Date, the Concessionaire shall transfer and assign to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Compliance Date, all the Concessionaire's right, title and interest in and to the Project Assets /Site on '**as is where is and in good condition**' basis including and with any and all movable and immovable assets on the Project Site. The Concessionaire shall also deliver to the Authority or its nominated agency on such date such operating manuals, plans, design drawings, reports, accounts and other information as may reasonably be required by the Authority or its nominated agency to enable it to continue the operation of the Project either directly or by its nominated agency. The personnel of the Concessionaire shall continue to be the employees of the Concessionaire and the transfer of the Project Assets shall not, in any manner, affect their status as employees of the Concessionaire and they shall have no claim to any type of employment or compensation from the Authority or its nominated agency.
- 31.2** The Concessionaire shall, to the extent possible, assign to the Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by subcontractors and suppliers and all insurance policies. The Concessionaire shall ensure that any rights, which are to be so assigned, are capable of assignment and the counterpart to the Concessionaire has approved such assignment under the terms and conditions of the relevant contract.
- 31.3** The Concessionaire shall, to the extent possible at the time of transfer, assign to the Authority or its nominated agency all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by the Concessionaire and subsisting at the time of transfer except any contracts with employees.
- 31.4** The transfer of the Project Assets /Site shall be treated as a transfer on a 'going concern' basis. On the Transfer Date the transfer of immovable property comprised in the Project shall be deemed to be a termination of all sublicense agreements/arrangements in relation to the Project Assets /Site which were in place till the Transfer Date, unless the Authority deems it fit to continue with the aforesaid agreements post the Transfer Date. Furthermore, the (leasehold) rights over the immovable property (in the Project/ Project Site) shall automatically revert to the Authority or its nominated agency on the Transfer Date without the Authority/Concessionaire being obliged to undertake any separate act in this regard. Parallely, the transfer of title, if any, over movable assets on the Project Site at the time of Transfer Date shall be governed by clause 23 hereinabove.
- 31.5** At the time of transfer, the Project Assets /Site shall be in such condition as is reasonable under all the circumstances taking into account its age, the design, materials used, and maintenance carried out.
- 31.6** Any time within 12 (twelve) months prior to the Transfer Date, the Authority shall be entitled to appoint any consulting engineer to assess the condition of the Project Assets/ Project Site. Such consulting engineer shall be entitled to have free access to inspect the Project Assets/ Project Site, provided that such inspection is reasonable and is carried out with minimum disruption to normal operation of the Project/Hotel so constructed. The consulting engineer, if required, may cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any found, in the Maintenance Requirements etc. shall be highlighted to the Concessionaire who shall forthwith remedy the same, to the satisfaction of the Authority.
- 31.7** Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Project Assets /Site, unless such loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Agreement.
- 31.8** The Concessionaire shall provide fair and just compensation to its employees as required under the Applicable Laws or under this Agreement and shall indemnify the Authority against any claims from any such employees for their loss of office, redundancy, loss of employment or otherwise. The Authority shall accept absolutely no liability on account of any matter pertaining to the Concessionaire's employees, staff, labour etc.
- 31.9** On the Transfer Date, all the sub-license agreements/arrangements shall stand terminated. The Concessionaire shall hand over the Project Site and Project Assets to the Authority or its nominated agency at zero cost and the

Concessionaire, its Subcontractors, agents, employees and sublicensees shall vacate the Project Site and Project Assets.

- 31.10** From the Transfer Date, the obligations and the rights of the Concessionaire under this Concession Agreement shall terminate and the Authority or its nominated agency shall take over the Project Assets /Site and their operation and maintenance and any other rights or obligations (excluding all the liabilities whether in form of debt or otherwise) arising out of this Agreement which either expressly or implicitly survive termination of this Concession Agreement; provided, however, that the Concessionaire may continue with any other business operations arising other than in connection with this Agreement and provided further that the Concessionaire shall no longer act in its capacity as Concessionaire in relation with or pursuant to this Agreement.
- 31.11** On the Transfer Date, the Concessionaire shall transfer and assign to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Compliance Date of all the Concessionaire's right, title and interest in and to the Project Assets /Site, thus excluding all the liabilities whether in form of debt or otherwise. Any delay in vacating the Project Site and transferring the Project Assets /Site in accordance with the provisions of this Article to the Authority by the Concessionaire beyond the Transfer Date shall lead to imposition of penalty on the Concessionaire. In such a case, the Concessionaire shall be liable to pay the Authority a sum equal to 0.1% of Performance Security for each day of delay beyond the transfer date, subject to a maximum of 10% of the Performance Security.
- 31.12** However, upon request in writing by the Concessionaire, the Authority may, at its sole discretion and in writing, waive fully or partially the penalty imposed on the Concessionaire, provided the Authority is convinced of the reasons stated by the Concessionaire for not vacating the Project Site on the Transfer Date.
- 31.13** After taking over the Project Assets /Site from the Concessionaire, the Authority may bid the Project as running concern for its O&M through an open and competitive bidding process by giving the Concessionaire a first right of refusal on such terms and conditions as specified by the Authority and which are mutually agreed between the Parties.
- 31.14** The Concessionaire shall, at all times during the Concession Period maintain an Asset/Inventory Register containing the list of all movable and immovable assets as associated with the Project. The Concessionaire shall unconditionally handover the associated assets to the Authority at the time of transfer of the Project.

ARTICLE 32: CHANGE IN LAW

32.1 No claim in the event of recovery from Users

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

32.2 No claim in the event of change in tax regulations and developmental control regulations

Notwithstanding anything to the contrary contained in this Agreement, it is hereby clarified, that the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a change in taxation regulations/rates of any taxes and any change in developmental control regulations for both land use and building regulations and the same shall not constitute a Change in Law for the purposes of this Agreement.

32.3 Restriction on cash compensation

The Parties acknowledge and agree that there shall be no demand for cash compensation under this Article due to the effect of Change in Law during the respective Accounting Year.

ARTICLE 33: MISCELLANEOUS PROVISIONS

33.1 Governing Law and Jurisdiction

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

33.2 Waiver

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 judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).
- e. 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;
- f. Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- g. Shall not affect the validity or enforceability of this Agreement in any manner
- h. 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.

33.3 Depreciation and interest

33.3.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Facilities 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 the Applicable Laws.

33.3.2 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 rates

33.4 Delayed payments

33.4.1 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 45(Forty-Five) days of receiving a demand along with the necessary particulars.

33.4.2 For specific event(s) of delay where no interest rate is defined / mentioned elsewhere in this agreement, the defaulting Party shall pay interest at a rate equal to 16% (Sixteen percent) for delay beyond 30 days and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

33.5 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 legal and valid 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 upon one or more provisions, which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided that, failure to agree upon any such provisions shall not be a subject matter to dispute resolution under this Agreement or otherwise.

33.6 Liability for review of Documents and Drawings

33.6.1 Except to the extent expressly provided in this Agreement:

- a. No review, comment or approval by the Authority of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the 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, the 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.

33.7 Exclusion of implied warranties etc.

33.7.1 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.

33.8 Survival

33.8.1 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.

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

33.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms and conditions 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 Qualification, as the case may be, shall be deemed to form part of this Agreement and treated as such.

33.10 Custody of Documents

The Project Documents shall be in the custody and care of the Concessionaire. Unless stated otherwise in this

Agreement, the Concessionaire shall provide 2 (two) copies for the use of the Authority.

33.11 Limitations

- a. The Concessionaire shall not be authorized to incur any expenditure on behalf of the Authority, or to enter into any commitment as agent of the Authority, unless specifically and explicitly authorized by the Authority under the terms of this Concession Agreement.
- b. The Concessionaire shall not amend, terminate, modify or supplement any agreement on behalf of or in the name of the Authority.

33.12 No partnership

- 33.12.1** 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.

33.13 Third Parties

- 33.13.1** 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.

33.14 Successors and Assigns

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

Use of the Authority's Documents

Copyright in the Technical Requirements and other documents issued by the Authority to the Concessionaire shall (as between the Parties) remain the property of the Authority. The Concessionaire may, at its cost, copy, use and communicate any such documents for the purposes of this Agreement. They shall not, without the Authority's consent, be used, copied or communicated to a Third Party by the Concessionaire, except as necessary for the purposes of this Agreement.

33.15 Compliance with Applicable Laws

- a. The Concessionaire shall, in all matters arising in the performance of this Concession Agreement, comply with, give all notices under, and pay all taxes, levies and other similar charges required by the provisions of any Applicable Laws of any legally constituted public authority having jurisdiction over the Works. The Concessionaire shall obtain all permits, licences or approvals required for any part of the Works in reasonable time, taking into account the delivery time for the plant and machinery and materials and required for completion of the Works. The Authority and the Concessionaire shall comply with all the laws as applicable.
- b. In the performance of this Agreement, the Concessionaire shall ascertain and comply with all Applicable Laws. The Authority will provide such reasonable assistance as may be requested by the Concessionaire in ascertaining the nature and extent of such relevant Applicable Laws.
- c. The Concessionaire shall indemnify the Authority, its officers, employees and agents against all governmental penalties and fines payable to a Competent Authority, together with any reasonable

legal expenses incurred in connection therewith, to the extent arising out of any failure of the Concessionaire, any Subcontractor or their respective agents or employees to comply with Applicable Laws in respect to the development, start-up, operation and maintenance activities conducted at the Project Site, during the performance of the Works.

- d. If the Concessionaire or the Authority finds any divergence between any Applicable Law and the Technical Requirements, it shall give to the other Party a written notice specifying such divergence.

33.16 Joint and Several Liability

If the Concessionaire is a consortium of two or more Persons, all such Persons shall be jointly and severally liable to the Authority for the fulfillment of the terms of this Concession Agreement. Such Persons shall designate one of them to act as Lead Member with Authority to bind the consortium and each of its members. The composition or the constitution of the consortium shall not be altered without prior approval of the Authority and as per the specific provisions in this regard provided in this Agreement.

33.17 Notifications

- a. Wherever provision is made for the giving or issuance of any notice, instruction, consent, approval, certificate or determination by any Person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, typewritten or printed communication, including the agreed systems of electronic transmission.
- b. All certificates, notices or written orders between the Parties shall either be delivered by hand against written acknowledgement of receipt or be sent by registered acknowledgement due pre-paid post or courier or one of the agreed systems of electronic transmission. In the event of any dispute, unless such acknowledgement of receipt is provided, the communication shall be treated as not given.
- c. In the case of the Concessionaire, all communication shall be marked for the attention of the person appointed under Article 5.4 and to the address provided below, or to such other person or address as may be intimated to the Authority by the Concessionaire from time to time.

Name of Concessionaire's Representative:

Address for communication:

- d. In the case of the Authority, all communication shall be addressed to the:

33.18 Language

The language of this Agreement is the English language. All correspondence, drawings, designs, design data, Tests reports, certificates, specifications and information shall be in the English language. All other written and printed matter required for development, operation and maintenance shall be executed in the English language. Instructions and notices to the public and staff and all other signs and information notices shall be in English and Hindi.

33.19 Confidentiality

- 33.19.1** 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.
- 33.19.2** Article 33.19.1 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.
- 33.19.2** 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.

- 33.19.3** 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.
- 33.19.4** Each Party shall utilise 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.
- 33.19.5** 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.

This Concession may be executed in 3 (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.

SIGNED SEALED AND DELIVERED For and on behalf of The Authority by: _____(Signature) _____(Name) _____(Designation)	SIGNED SEALED AND DELIVERED For and on behalf of The Concessionaire by: _____(Signature) _____(Name) _____(Designation)
In the presence of 1. _____(Signature) _____(Name) _____(Designation)	2. _____(Signature) _____(Name) _____(Designation)

LIST OF SCHEDULES

(Concession Agreement – Development, Operation & Maintenance and Management of Lakeview Residency Hotel, Bhopal on Design, Build, Finance, Operate, Transfer (DBFOT) Mode for 60 Years (extendable by a period of 10 years)

Schedule I: - Project Site description

Schedule II: - Project facilities

Schedule III: - Scope of work, Technical Requirements & Performance Standards

Schedule IV: - Format of Performance Security

Schedule V: - List of Applicable Permits

Schedule VI: - Escrow Agreement

Schedule VII: - Completion Certificate

Schedule VIII: - Vesting Certificate

Schedule IX: - Substitution Agreement

Schedule X: Compliance Certificate

Schedule XI: Lease Deed

Schedule	XII:	Shareholders	Agreement
-----------------	-------------	---------------------	------------------

SCHEDULE-I: PROJECT SITE DESCRIPTION

• Location:

The Hotel is strategically located in Shyamala Hills which is a prominent residential and commercial area in Bhopal. The area houses upscale neighbourhood, aesthetic landscapes, and convenient proximity to the city center and airport.

The hotel site overlooks the Bada Talab, which is the largest lake in Bhopal and is designated as a 'Ramsar' site and is governed by Wetlands (Conservation and Management) Rules, 2017. The site is also in proximity to popular tourist destinations such as Van Vihar, MP Tribal Museum, Sair Sapata, Kerwa Dam, Indira Gandhi Rashtriya Manav Sangrahalaya, etc. It is also surrounded by key hospitality developments including MPT Wind N Waves Cottages

Table: MPT Lake View Residency Details

Area	Shyamala Hills, Bhopal
Site/Location	The subject property is located at Shyamala Hills, Bhopal, towards the eastern side of Upper Lake i.e., central region of Bhopal city. The subject location has many prominent government institutions and building. The prominent hospitality developments in vicinity of the subject site include Jehan Numa Palace, Ivy Suites, The Ten Suites etc. The subject micro-markets enjoys express connectivity via 24 m wide VIP Road (north) to the Bhopal Raja Bhoj Airport and other touristy places like Birla Museum, Sair Sapata, Interpretation Centre - Manav Sangrahalaya via 24 mts. wide Jehan Numa Palace Road.
Location Coordinates	Latitude: 23.243043872752793 Longitude: 77.38768911349595
Approach Road	24 mts. wide primary access road – Jehan Numa Palace Road
Site Boundaries	The subject property is surrounded by: <ul style="list-style-type: none"> • North: Green Zone adjacent to Bhopal Upper Lake • South: 24 mts. wide primary access road – Jehan Numah Palace Road • East: Other's property • West: Other's property
Land Area & Built-Up Area	The land area of the subject property admeasures approx. 7.16 acres while the total built-up area of the subject development admeasures approx. 87,521 sq. ft.

• Existing Facilities at the Project Site and status of work

The MPT Lakeview Residency's total area of the site is approx. 7.16 acres i.e. 28,975 Sqm. including parking lots, Bhopal Express Restaurant, Spa & Pool, and Drive in theatre. The entire area will have to be developed, maintained and landscaped by the Concessionaire at their own cost. The Concessionaire is expected to develop and maintain the subject site in consonance with the regional Building Bye Laws, Regulations and any other rules which are applicable from time to time by the competent authorities on the subject site.

Further the said project comprises 42 existing rooms (of deluxe and standard category), multiple restaurants & roof top bar, multiple banquet halls and an open lawn for events with a capacity of 650 pax. to attract domestic as well as international tourists. The Concessionaire will be required to demolish the current development and further, Develop, Operate & Maintain and Manage, the property.

All open areas such as gardens, pathways and any other areas used for access covered under thoroughfare will have to be maintained and landscaped by the Concessionaire at their own cost. The breakup of the Built-up Area (Sq. Ft.) is as below:

Sl. No.	Building Description	Built Up Area (Sq. Ft)
1.	Ashoka Hotel Main Building	65,664
2.	MOA Spa	5,607
3.	Swimming Pool	2,236
4.	Railway Platform Restaurant	4,046
5.	Railway Coach Restaurant	5,768
6.	Hot & Cold Restaurant	892
7.	Open Area	777
8.	Services	2,531
	Total	87,521

Note: The bidders shall undertake their own due diligence exercise to ascertain the actual built-up area at the subject site.

SCHEDULE-II: PROJECT FACILITIES



Project Facilities: The Concessionaire shall develop atleast 150 rooms and Banquet & Convention facility for atleast 1,000 pax under the project. Additionally, the Concessionaire shall complete the development of all the Project Facilities in accordance with the provisions of this Agreement as defined in Schedule III of this Agreement.

The facilities may include:

1. Additional rooms to provide lodging facilities to the guests.
 2. Theme Restaurants and Food Joints
 3. Banquet & Convention Centres
 4. Facilities in the Hotel for Social and Corporate events including weddings/exhibitions.
 5. Facilities in the Hotel to Promote and Market fairs, local cuisine, culture, folk music, dance, costumes, products, art, handicraft and heritage tourism.
 6. Food & Beverages (Cafes, Retro Lounges Heritage/Luxury Dining etc.)
 7. Food Courts and/or Rooftop Restaurant
 8. Any other projects as defined in Madhya Pradesh Tourism Policy 2025 as amended from time to time
1. The Concessionaire shall develop such other facilities as may be necessary and required to establish and operate and the Project in accordance with the specifications and standards.
 2. The Concessionaire shall undertake procurement and installation of such equipment and installations that would be necessary for providing clean drinking water, waste treatment, water treatment, power backup, security and surveillance and for other routine upkeep and maintenance activities including BOH equipment and machinery.
 3. Before commencement of any activity, the Concessionaire shall submit the detailed layout plan of the project

for approval from MPHCL within 2 months of date of signing of contract. In case the Concessionaire wants to make any new additions or modifications to the project site, they must obtain prior permission/approvals from the authority.

4. The Concessionaire shall also obtain all necessary permissions pertaining to Design, Planning and Implementation of the project. Additionally, all the required Licenses/Permits/Permissions/Approvals for the permitted activities shall be the responsibility of the Bidder entirely from the Financial, Legal, etc., perspective.
5. Post completion of the Concession Period, Bidder shall ensure that the Site shall be handed over to the Concerned Authority in the as is Condition at the time of handover.

SCHEDULE-III: SCOPE OF WORK, TECHNICAL REQUIREMENTS & PERFORMANCE STANDARDS

1. SCOPE OF WORK

a. Demolition Activities

- The Concessionaire will be required to undertake demolition of the entire existing establishment on the project site as per environmental regulations, Building Bye Laws and Development Control Regulations applicable on the site, at its own sole cost and expense. It shall be the sole responsibility of the Concessionaire to either itself or through any Third Party undertake the aforesaid demolition and subsequent construction on the said Project. In the event the Concessionaire opts to contract with a Third Party for any of the aforesaid works, then the Authority shall not have any privity or relationship in the nature of principal – agent etc. with such Third Party. Furthermore, the Authority shall not have any responsibility / liability towards such Third Party in relation to any work which is contracted / sub-contracted / delegated by the Concessionaire to any such Third Party, whether any such claim is made by a Third Party in the nature of damages or of any other nature. Any work (under the instant RFP) which is delegated / given / contracted / sub-contracted by the Concessionaire to a Third Party shall be at the sole cost and responsibility of the Concessionaire. Furthermore, the Concessionaire shall be solely responsible for ensuring that all works, under the instant RFP, which it so contracts / sub-contracts / delegates to any Third Party or undertakes itself confirms to standards of quality under the instant RFP as well as under the applicable laws / regulations / market practices / bye-laws etc. whichever are applicable to the matter. Furthermore, if any such work is subsequently found by the Authority to be short of such aforesaid quality / specifications / terms of this RFP / applicable law / regulations / bye-laws, then the Authority shall intimate the Concessionaire of such shortcomings and the Concessionaire shall be obligated to correct such shortcomings immediately forthwith and without any reservation, at its sole cost and expense. The Concessionaire shall be liable to complete all works under the instant RFP to the complete satisfaction of the Authority.
- Additionally, before any demolition is commenced at the subject site the Concessionaire shall also notify all utilities having service connections within the present buildings at the project, such as water, electric, gas, sewer and other connections as well as ensure that all pre-requisite environmental clearances are in place. A permit for demolition shall not be issued until a release is obtained from the utilities stating that their respective service connections and appurtenant equipment, such as, meters and regulators have been removed or sealed and plugged in a safe manner.
- The Authority assumes no responsibility for the actual condition of the structures to be demolished or relocated or reconstructed.
- It shall be noted that any serviceable/ movable materials including but not limited to electric fixtures, furniture/other fixtures, equipment, Table/ Chairs etc., shall be retained by MPHCL and removed anytime from the date of signing of contract as per Clause 5.10.
- The Concessionaire shall be bound to dispose of the waste generated after the demolition. The Concessionaire shall dispose of such waste expeditiously, immediately after such demolition. The disposal of such waste shall be in accordance with applicable laws and in coordination with the appropriate authorities and the Concessionaire shall be solely responsible for the same.

b. Development Activities

The Concessionaire shall develop / construct atleast 150 rooms and Banquet & Convention facility for atleast 1,000 pax under the project.

For the objective of Development, Operation & Maintenance and Management of the 5-star development, following development activities may also be incorporated in the site by the Concessionaire:

1. Additional rooms to provide lodging facilities to the guests
2. Theme Restaurants and Food Joints
3. Banquet & Convention centres
4. Facilities in the Hotel for Social and Corporate events including weddings/exhibitions.
5. Facilities in the Hotel to Promote and Market fairs, local cuisine, culture, folk music, dance, costumes, products art, handicraft and heritage tourism.
6. Food & Beverages (Cafes, Retro Lounges Heritage/Luxury Dining etc)
7. Food Courts and/or Rooftop Restaurant
8. Any other projects as defined in Madhya Pradesh Tourism Policy 2025 as amended from time to time

Note:

The above-mentioned activities are not comprehensive and only indicative. Bidders are expected to conduct their own due diligence and commercial analysis for the feasibility of activities before Bidding. It may be noted that MPHCL and concerned departments shall have all jurisdiction over alteration/modification/rectification of the activities before and during the Concession Period.

1. Before commencement of any activity, the Concessionaire shall submit the Detailed Project Report (Detailed Layout Plan) of the project for approval from MPHCL within 20 weeks of date of signing of contract. In case the Concessionaire wants to make any new additions or modifications to the project site, they must obtain prior permission/approvals from the Authority.
2. The Concessionaire shall also obtain all necessary permissions pertaining to Design, Planning and Implementation of the project, at its sole responsibility, cost and expense. Additionally, all the required Licenses/Permits/Permissions/Approvals for the permitted activities shall be the sole and exclusive responsibility of the Bidder entirely from the Financial, Legal, etc. perspectives.
3. Post completion of the Concession Period, Bidder shall ensure that the Site shall be handed over to the Concerned Authority in the as is Condition at the time of handover.

Besides the above development works the Concessionaire shall have the following O&M and other Obligations as well:

1. The Concessionaire shall be solely responsible for seeking all approvals and licenses for smooth operations of the project facility including, but not limited to, fire safety, bar license, etc.
2. The Concessionaire shall, at its own cost, enter into Annual Maintenance Contracts (AMCs) with the Vendors for various installations.
3. The Concessionaire shall ensure that the Insurances are taken for Fire, STPI, Earthquake for the building, Third Party Liability, Medical Insurance, Workmen Compensation and wherever else necessary or mandated, at its sole cost and expense
4. The Concessionaire shall maintain the entire premises in accordance with Good Industry Practice.
5. The Concessionaire shall solely be responsible for payment of all taxes, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.
6. Project Site clearance and cordoning off; providing and deputing of Security, removal of debris etc. shall be the responsibility of the Concessionaire. In case the Project encompasses demolition of any existing structure to commence the Project, then the Concessionaire shall ensure that all such debris/waste generated from such demolition shall be disposed of expeditiously, immediately after

- such demolition. The disposal of debris/waste shall be in accordance with applicable laws and in coordination with the competent authorities.
7. Meeting the requirements and norms laid down by the competent authorities regarding Development, Operation & Maintenance and Management of the Project Facilities, if any.
 8. Use of premium quality materials for Civil Works, Furniture and Fixtures in accordance with the heritage and culture of the state.
 9. Any development activities should ensure that the property's aesthetic relationship with its surrounding are maintained.
 10. Maintaining the standards of a minimum 5-star hotel and providing facilities applicable to a minimum 5-star category and above hotels as per guidelines of Ministry of Tourism, Government of India, in terms of offerings, ambience and services as amended from time to time and avail and renew the certification from MoT in this regard, at its option. Additionally the Concessionaire shall ensure the following:
 - a. Provision of natural greenery and plants in lobby areas and common areas to keep the environment of the concerned area to look fresh and lively.
 - b. Provision for availability of personnel on 24x7 basis in Reception Area for providing assistance to the guests staying in the Hotel, with an ability to communicate in English, and Hindi or any other Indian regional language or any foreign language.
 - c. Turndown services and other housekeeping services to be provided on daily basis or on demand.
 - d. The Concessionaire is required to adhere to the standards of a minimum 5-star hotel as per MoT guidelines, GoI for Development, Operation & Maintenance and Management of the hotel. The Concessionaire is not obligated to receive the minimum 5-star rating certification from the government but shall follow the guidelines in practice.
 - e. Performance and fulfilment of all obligations of the Concessionaire in accordance with the provisions of the Concession Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under the Concession Agreement.
 - f. All the open spaces in and around the Hotel shall be landscaped and adequately lighted.
 - g. The Concessionaire shall be responsible for payment of all taxes including GST as per GoI norms issued in this regard from time to time, duties, levies including stamp duty and any other statutory charges are required to be paid as per statutory requirements from time to time.
 - h. Development and Completion of the remaining works at the Project Site after approval of the design/ concept plan by the Authority pursuant to the terms and conditions of the Concession Agreement and the Schedules hereof, in conformity with Applicable Laws and regulations of the State of Madhya Pradesh.
 - i. Developing the Project consisting of all Facilities as prescribed under FHRAI Guidelines for minimum 5-star category and above facilities mentioned in the Annexure attached with this agreement.
 - j. Obtaining relevant accreditation from the concerned accreditation agency for the minimum 5-star Hotel Authority Area to be developed, operated, managed and maintained is not mandatory for the concessionaire.
 - k. O&M of the minimum 5-star Hotel, Concessionaire's Area and Common Area in accordance with the provisions of this Concession Agreement and the Schedules hereof.
 - l. Right to demand and collect Project Revenues etc. from the sub-contractors/ Users, as per the provisions of the Concession Agreement and the Schedules hereof.
 - m. 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.

- n. The MPT Lakeview Residency's total project site area admeasures approximately 28,975 sq. m. (7.16 acres) for MPT Lakeview Residency Hotel covering Spa & Swimming Pool area, Parking – 1 & Parking – 2, Drive in Theatre (Big Event lawn), Event Lawns, Bhopal Express Restaurant, Kinara Restaurant, Rooftop Restaurant, Ripples Bar and Banquet halls at Shyamala Hills, Bhopal. The Site plan , Drawings and Layout plan are provided in Appendix VII of the RFP.
- o. The use of standards and specifications for use of material, technology and operations shall adhere to the national and international set of specifications and the best practices in the industry.
- p. Provide the basic necessities like drinking water, toilets, DG sets, firefighting facility, and security on the Project Site.

2. SPECIFICATIONS FOR DESIGN AND COMPLETION

2.1 MINIMUM BUILDING SPECIFICATIONS

Premium quality building material, sanitary fixtures, electrical fixtures, proper health standards etc. shall be used.

2.2 MINIMUM AMENITIES REQUIREMENT

- i. Concessionaire shall make provision for separate rest room for men and women in the facility at appropriate location easily accessible to all the Users including disable persons.
- ii. The Concessionaire shall make a provision of administrative office for his use during Concession Period.

2.3 LIGHTING

- i. Lighting shall be designed to provide adequate vision, comfort and safety. It shall be designed to provide for uniform lighting throughout the facility with no dark patches or pockets.
- ii. Concessionaire is expected to save energy and should use CFL or LED lamps in order to save energy.
- iii. Concessionaire is advised to harness solar energy by installing solar panels.

2.4 UTILITIES

- i. Standby DG Set of adequate capacity shall be provided to meet the emergency load requirements or for backup during power outages along with the secondary backup for the minimum operation.
- ii. Adequate underground/overhead water storage shall be provided to cater for a day's requirement of domestic flushing and firefighting purpose.
- iii. The Concessionaire shall ensure the provision of proper fire safety measure conforming to the provisions of National Building Code to the satisfaction of the Fire Department.

3. PERFORMANCE SPECIFICATIONS FOR OPERATION, MAINTENANCE AND MANAGEMENT PHASE

The Concessionaire shall be committed to continuous improvement and shall implement systems to facilitate this objective.

3.1 OPERATION AND MAINTENANCE MANUAL

- i. The Concessionaire shall in consultation with the Authority evolve an O&M Manual.
- ii. The Concessionaire shall maintain the Project Facility in good and usable condition throughout the Concession Period or any extension thereof through regular and preventive maintenance of the Project Facility.
- iii. The O&M Manual shall include all the activities required for regular and periodic maintenance of the facility during the Operations Period, so that facility is maintained in a manner that at all times it complies with the specifications and standards and at the time of divestment of rights and interest by the Concessionaire in terms of the Agreement in sound, durable and functional condition.
- iv. The Concessionaire shall adhere to the MOT Guidelines and modified from time to time.
- v. The Concessionaire shall specify Detailed Performance Standards pertaining to routine maintenance/periodic maintenance/preventive maintenance, operations in the O&M Manual.

3.2 EQUIPMENT MAINTENANCE

Concessionaire shall undertake planned and reactive maintenance of all equipment's to ensure that equipment's are safe, accurate and working to optimum performance and to achieve maximum availability and continuity of services by maintaining standards set by equipment manufacturer.

3.3 STAFFING AND PERSONNEL TRAINING

- i. Concessionaire shall make provision of adequate staff required for development, operation, maintenance and management of facility as prescribed in the staffing plan.
- ii. Concessionaire shall ensure that all staff engaged in the delivery of the Services is all times properly adequately notified, trained, and instructed and information records are maintained accordingly.
- iii. Concessionaire shall ensure that all staff are properly and presentably dressed in appropriate uniforms and work wears and wear identification badges at all times while working in the facility.
- iv. Concessionaire should properly do verification of the staff hired.

3.4 SECURITY

- i. Concessionaire shall take all reasonable precautions to minimize theft, injury to visitors or their property within confines of the Hotel.
- ii. Concessionaire shall make a provision of adequate security to prevent any theft and provide a 24-hour surveillance system which continuously monitors and controls entry into and exit from the facility. A closed-circuit television (CCTV) network may be provided for security and surveillance as well as for central monitoring purposes.
- iii. It is the duty of the Concessionaire to do thorough background check and verification of the staff they hire.

3.5 PREPAREDNESS AND PREVENTION

- i. The preparedness and prevention standards are intended to minimize and prevent emergency situations at the Hotel. Concessionaire shall ensure that facility is operated and maintained in a manner that minimizes the possibility of a fire, explosion, and theft. Concessionaire shall provide and maintain requisite equipment

including firefighting and adequate water supply, internal communication system and alarms and provisions for contacting local authorities.

- ii. Concessionaire shall prepare and maintain emergency preparedness plan for facility and train all the personnel working in the facility in order to respond appropriately in such situation and carry out these plans in the event of an actual emergency.
- iii. Proper fire extinguisher, fire alarms and hydrants need to be installed by the Concessionaire in the facility. Any damage to firefighting equipments installed in the facilities and in public spaces shall be rectified within 2 (two) days of detection. Fire extinguishers shall be replaced before the end of its expiry date.
- iv. In case of any emergency Concessionaire should report and inform about the incident.
- v. Concessionaire should remove visitors and provide them with a safe passage in case of any emergency.
- vi. Co-ordinate with the emergency services such as, trauma centers, hospitals, police stations, fire brigade office, etc.
- vii. Reorganize the operations with proper information, sufficient number or warning regulatory, information signs, displays or temporary change in visitor's circulation.
- viii. Attend to the affected area using manpower, machinery at Concessionaire's disposal.
- ix. Clear the affected site and arrange for repairs and make a report of the incident to the Authority.
- x. The Concessionaire shall evolve a comprehensive recovery plan for the restoration of the breakdown in the operations. The plan must be documented by record keeping procedures. The recovery plan shall include the following components:
 - a Identify and prioritize essential facility functions for recovery.
 - b Procedures for repairs / rebuilding / modifications, if any.
 - c Contingencies for alternate data processing / protection of vital records.
 - d Identify possible alternative traffic circulation / parking plans.
 - e Documentation process for after action reports.

3.6 PERFORMANCE AND MAINTENANCE STANDARDS/INDICATORS FOR OPERATIONS

The O&M of the Hotel shall be carried out to maintain the performance standards, which shall comprise, but shall not be limited to that described below.

- The performance levels define the level at which the Project is to be operated & maintained. Performance standards are defined for both the operation and maintenance.
- The obligation of the Concessionaire with respect to Maintenance Requirements shall include the rectification of the defects and deficiencies specified below within the time limit set forth against such deficiency or defect.
- Notwithstanding anything contrary to specified in this schedule, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. However, the Concessionaire shall get prior approval from the Authority, for such additional requirement of time.
- Notwithstanding anything to the contrary contained in this schedule, if any defect, deficiency or

deterioration in the Project poses danger to the life and property of the Users thereof, the Concessionaire shall promptly take all reasonable measures in consultation with Authority for elimination or minimizing such danger.

A. Performance Indicators and their permissible time limits

S. No.	Parameters	Performance Indicators	Permissible Time Limits For Rectifying Defects
1	Hotel	To remain operational 24 (twenty-four) hours a day throughout the year	_____
2	Parking Area	To remain operational 24 (twenty-four) hours a day throughout the year	_____
3	Enquiry Office	To remain operational 16 (sixteen) hours a day throughout the year	_____
4	Information Systems, Displays, signage and boards	To remain operational 24 (twenty-four) hours a day throughout the year.	All these signage and boards should be clearly visible, legible and functional. Maximum 2% (two percent) number of damaged signage and boards at any given point of time. These shall be cleaned once in a week. Damaged signage and boards replaced, repaired within seven days of their detection.
5	All toilets, urinals, bathrooms shall be clean and functional	To remain operational 24 (twenty-four) hours a day throughout the year.	A minimum of 95% (ninety-five percent) toilets and urinals shall be functional. It should be demarked with suitable sign boards. These should be kept clean and hygienic and cleaning shall be done regularly
6	Natural and Mechanical Ventilation and Illumination	_____	Shall meet the required Illumination level as specified in the IS Code and NBC. Shall meet the required Ventilation level as specified in the IS Code and NBC. Any disruption in it shall be rectified within 24 (twenty-four) hours. Arrangement for natural ventilation like skylights ventilators, shafts etc. shall be cleared after every 5 (five) days.

7	Water supply and all drinking water chambers	To remain operational 24 hours a day throughout the year.	95% (ninety-five percent) drinking water chambers shall be functional. These shall be cleaned daily. Drinking water quality in all the seasons shall be as per WHO standards
8	Power Supply, Electrical installations, Electrical Equipment	To remain operational 24 (twenty-four) hours a day throughout the year.	Any disruption in power supply shall be rectified in six hours. Timely intervention with temporary measures within 3 (three) hours, permanent restoration within 3 (three) days, depending on nature and intensity of work required as decided by Authority.
9	Telecommunication and Networking Equipment	To remain operational 24 (twenty-four) hours a day throughout the year.	Temporary measures within an hour and permanent restoration within a day.
10	Standby Diesel Generator Sets	Should be there at the facility.	Standby diesel generator sets to supply power to Project Facility must be available 24 (twenty-four) hours a day throughout the year in case of disruption or breakdown in power supply.
11	Elevators	To remain operational 24 (twenty-four) hours a day throughout the year.	Time to maintenance of elevators shall be done and in case of any faults it should be rectified quickly.
12	Maintenance Office	To remain operational 24 (twenty-four) hours a day throughout the year	_____
13	Security	To remain operational 24 (twenty-four) hours a day throughout the year.	Proper development and installation of up-to-date security devices and equipments shall installed in the facility and there should be proper weekly check of these equipments and also a proper training should also be there for security personnel present in the site. Any defects in the security devices and equipment should be rectified within a day or two.

14	Dustbins, spittoons etc. shall be clean and functional	Should be in the facility all the time.	A minimum of 95% (ninety five percent) Dustbins, Spittoons shall be functional at any given point of time. Dustbins shall be emptied after every 3 (three) hour or earlier if it is full or it creates foul smell in the neighborhood.
15	Staircase Shall be clean and functional	_____	The staircase shall be cleaned at least once a day. Damaged handrails, risers or treads shall be repaired within 2 (two) days after detection
16	Boundary Wall shall be without any damage/ breach	. _____	Any damage/breach to the boundary wall shall be rectified within 3 (three) days after their detection
17	There shall be no standing water on pavement surface, no water logging in the centre		Immediate measures to be taken and water logging should be cleared within two-three hours
18	Drainage and Sewage	Should be operational throughout the year	Timely intervention with temporary measures within 4 (four) hours, permanent restoration within 7 (seven) days, depending on nature and intensity of work required.

B. Periodic Maintenance/ Renewal Activities

Apart from the routine maintenance work, periodic maintenance work shall be done by the Concessionaire. All preventive maintenance work shall be listed, and the time of their execution should be planned before hand at beginning of year. For Periodic maintenance/Preventive Maintenance a register should be maintained further for Periodic maintenance/Preventive Maintenance work should be so organized that there is little inconvenience to the Users of Project Facility:

S. No.	Periodic Maintenance Activities	Time limit for Maintenance
1	Repainting of furniture, signage delineators, markings etc.	As per requirement
2	Repainting of Buildings and all other structures.	As per requirement

3	Repainting of carpentry work like joinery, doors, windows, ventilators, wooden furniture etc. in the offices, cabins, booths etc.	As per requirement
4	Resurfacing of Pavement	Routine repairs every year and premix carpet every 3 rd (third) year. In case the pavement is of rigid type, no periodic renewal would be required except cleaning & filling of joints.
5	Mechanical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual.
6	Electrical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual
7	Cleaning and disinfecting of water storage/ distribution tanks, water mains	Once in a month
8	Cleaning of manholes/ gully chambers/ inspection chambers and flushing of building sewers	Once in 6 (six) months
9	Collection of water samples for physical, chemical and bacteriological analysis of water	Once every 15 (fifteen) days
10	Roof Inspection	Once in a year and before monsoon to see and repair whether roof drainage is functioning properly. Also check for presence of leaks and historical information for leaks during long continued rain, leaks occurring every rain etc. Check exposure of bituminous coating due to loose or missing gravel or slag and fix it on an annual basis. Also check all flashing for wind damage, loss of bituminous coating, loose seams and edges, damaged caulking and curling, and exposed edges
11	Water proofing of roofs, terraces, interior/exterior walls, and tanks etc.	Once in 3 (three) years
12	Analogous addressable fire detection, fire alarm and firefighting system	Once in a year including conducting of mock drill.

13	Air Conditioning (HVAC) system	Once in a year with cleaning of filters at regular interval.
----	--------------------------------	--

C. Major Maintenance Work

The Concessionaire shall be responsible at his own cost, for all maintenance and repairs of the Project and all its components. The work shall conform to norms as laid out in PWD specifications/ MOT Guidelines / BIS codes / IS codes / NBC codes for functional requirements of buildings etc. The performance standards shall match the service standard of comparable international practice for a minimum 5-star category hotel buildings.

SCHEDULE-IV: FORMAT OF PERFORMANCE SECURITY

Bank Guarantee No.

Issuer of Bank Guarantee

(Name of Bank)

(Hereinafter referred to as the "Bank")

Beneficiary of Bank Guarantee

Details of the Bank of the Beneficiary

Bank: <>

Branch:<>

IFSC Code:<>

Nature of the Bank Guarantee

Unconditional and irrevocable Bank Guarantee

Context of Bank Guarantee

Concession Agreement (hereinafter referred to as the "Concession") to be executed amongst MPHCL [Hereinafter referred to as the "Concessions Authority"] and _____(name of the Concessionaire) [hereinafter referred to as the "Concessionaire"] for the Development, Operation & Maintenance and Management of Lakeview Residency Hotel, Bhopal as a minimum 5-Star Category Hotel on Design, Build, Finance, Operate, Transfer (DBFOT) Mode [hereinafter referred to as the "**Project**"], provided, however, such context of the Bank Guarantee or reference to the Concession in this Bank Guarantee shall be in no manner relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The title of this Bank Guarantee i.e "Performance Security" shall in no manner and at no stage be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The Contract of the Bank Guarantee is an Independent Contract between the Bank and the Authority and is not dependent upon the execution or performance of any Contract/Agreement amongst the Authority and the Selected Bidder/Concessionaire.

As per the terms of the Concession Agreement, the Concessionaire is required to furnish to THE AUTHORITY, an unconditional and irrevocable bank guarantee for an amount of

Rs _____

(Rupees_____only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement for the Concession Period.

Operative part of the Bank Guarantee

1. At the request of the Concessionaire, we _____ (name and address of the bank), hereinafter referred to as the ("Bank"), do hereby unconditionally and irrevocably affirm and undertake that we are the guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Bidder, up to a total sum of Rs (Rupees__ only), such sum being payable by us to the Authority immediately upon receipt of the first written demand from the Authority.
2. We unconditionally and irrevocably undertake to pay to the Authority, on an immediate basis, upon receipt of first written demand from the Authority without any cavil or argument or delaying tactics or reference by us to the Concessionaire and without any need for the Authority to convey us any reasons for invocation of the Guarantee or to prove on the failure on the part of the Concessionaire or to show grounds or reasons for the demand or sum specified therein, the entire sum or sums within the limits of Rs (Rupees only).
3. We hereby waive the necessity of the Authority to demand the said amount from the Concessionaire first prior to serving a demand notice upon us for the encashment of this Bank Guarantee Amount.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority will be the sole and exclusive judge to determine that whether or not any sum or sums are due and payable to it by the Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.
5. The Guarantee will not be discharged due to a change in the constitution of the Bank or the Concessionaire. We undertake that to withdraw or revoke this Guarantee during its currency/validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to the Authority, any amount so demanded not exceeding Rs _____ (Rupees _____ only) notwithstanding any dispute or disputes raised by the Concessionaire or anyone else in any suit or proceedings before any dispute review arbitrator, court, tribunal or other Authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be valid discharge of our liability for payment under the Guarantee and the Concessionaire shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid till _____
8. This Bank Guarantee is issued by the Bank having its office at _____ but as per the Authority's requirement, this Guarantee can be encashable / negotiable at the Bank's branch at Bhopal having address at _____.

Notwithstanding anytime contained herein:

1. Our liability under this Bank Guarantee shall not exceed Rs _____ (Rupees _____ only).
2. The unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ to _____
3. We are liable to pay the guaranteed amount or any part hereof under this unconditional and irrevocable Bank Guarantee only and if the Authority serves upon us as a written claim or demand on or before _____.

SCHEDULE-V: LIST OF APPLICABLE PERMITS

The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the required date for project stage (Demolition, Construction, Operation), save and except to the waiver granted by the Confirming Party in accordance with this Agreement.

Sr. No.	Permission	Relevant Departments
1.	Building permission	Urban Bodies
2.	Land/ Property Registration	Registration and Stamp Department, Commercial Tax Department
3.	Fire NOC	Urban Bodies
4.	Electricity Connection (Temporary/Permanent)	Madhya Pradesh Electricity Distribution Company
5.	Water Supply System	Urban Housing and Development Authority/ Gram Panchayat
6.	Permission for establishment / operation	Pollution Control Board
7.	Electrical work/ Drawing approval for installation / inspection	Energy Department, Chief Electrical Inspector
8.	Gumasta (Trade License)	Labor Service Portal
9.	Trade License	Urban Bodies
10.	Food License	FSSAI portal
11.	Tree cutting NOC	Concerned District Collectorate
12.	Tree Transit	Concerned District Collectorate
13.	Right of way/ Road cutting permission	Urban Development
14.	Bar License	Excise Department
15.	Form C (Foreign guest arrival)	Ministry of Home Affairs
16.	Professional Tax	Commercial Tax Department
17.	GST Registration	Department of Revenue, Government of India
18.	ESI Registration	Ministry of Labour and Employment, Government of India
19.	PF Registration	Urban Bodies
20.	VAT Registration	Commercial Tax Department
21.	Providing information about tourists to the nearest police station	Home Department
22.	Any other permits or Clearance/No Objection Certificates required under Applicable Law	Concerned Competent Authority

SCHEDULE-VI: ESCROW AGREEMENT

THIS ESCROW AGREEMENT (hereinafter referred to as the "**Agreement**") is entered into on this the day of..... 20.....

AMONGST

- I. 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);

And

- II. (name and particulars of Senior Lenders' Representative) and having its registered office at..... acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Senior Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

And

- III. (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

- IV. **Madhya Pradesh Hotel Corporation Limited** having its office at Paryatan Bhawan, Bhadbhada Road, Shastri Nagar, Bhopal, Madhya Pradesh- 462003, acting through its authorized representative, its Managing Director , (hereinafter referred to as the "**MPHCL**" or the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

- V. *Collectively referred to as "**Parties**", and individually as "**Party**".*

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the "**Concession Agreement**") for the Development, Operation & Maintenance and Management of Lakeview Residency Hotel, Bhopal on Design, Build, Finance, Operate, Transfer (DBFOT) Mode for 60 Years (extendable by a period of 10 years), 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

- a. In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them: **"Agreement"** means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;
- b. **"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;
- c. **"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 to the Concessionaire asking the latter to cure the breach or default specified in such notice;
- d. **"Escrow Account"** means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;
- e. **"Escrow Default"** shall have the meaning ascribed thereto in Article 6.1 ;
- f. **"Senior Lenders' Representative"** means the person referred to as the Senior Lenders' Representative in the foregoing Recitals;
- g. **"Parties"** means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually;
- h. **"Payment Date"** means, in relation to any payment specified in Article 4.1, the date(s) specified for such payment; and
- i. **"Sub-Accounts"** means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Article 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 Senior Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Senior 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 Articles are, unless stated otherwise, references to Articles of this Agreement.
- 1.2.4** The rules of interpretation stated in Articles 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 Senior Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2** The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Senior Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority 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 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 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 Compliance 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 after consultation with the Senior Lenders' Representative, shall 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 Article 4.1.

2.5 Rights of the Parties

The rights of the Authority, the Senior 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 Senior 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 Project Revenues and any other revenues from or in respect of the Project, including the proceeds of any rentals, advances, deposits, fee or charges etc. Received from any party;
- b) All funds received in relation to the Project from any source, including without limitation Financial Assistance provided by the Senior Lenders, Senior Lenders of Subordinated Debt constituting the Financial Package and the Authority;
- c) All proceeds received pursuant to any insurance claims.

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:

- I. Any other monies disbursed by the Authority to the Concessionaire, and;
- II. Termination Payments.

3.3 Deposits by Senior Lenders

The Senior 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 Subcontractors 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.

3.5 Deposits during Construction Period

The Authority shall, at the time of opening of the Escrow Account give irrevocable instructions by way of the Escrow Agreement, to the Escrow Bank instructing, inter alia, that all Commercial Charges in respect of the Project until the COD shall be transferred to a separate Account viz. Construction Period Fee Escrow sub-account

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 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. Project Consideration (Annual Concession Fee & Revenue share) due and payable to the Authority;
- c. All payments relating to Development/Renovation of the Project;
- d. O&M Expenses, subject to the ceiling, set forth in the Financing Agreements
- e. O&M Expenses and other costs and expenses incurred by the Concessionaire in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- f. Monthly proportionate provision of debt service payment due in a Financial Year in respect of all Debts;
- g. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and
- h. Balance, if any, in accordance with the instructions of the Concessionaire and.
- i. Any reserve requirement set forth in the Financing Agreements;

All fee and other revenues from or in respect of the Project transferred to the Construction Period Fee Escrow sub-account and amount thereof shall be disbursed to the Escrow Account on achieving COD, as certified by the Authority to that effect.

The amounts specified in Article 4.1.1 (a) to (i) constitute the permitted payments. For each Year, a proforma would be separately provided by the Concessionaire to the Escrow Bank, with the permission of Senior Lenders Representative, not later than 60 (sixty) days prior to the first day of each Year.

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

Notwithstanding anything to the contrary contained in the Agreement, the Concessionaire shall, at

any point of time during the tenure of the Escrow Account, maintain a minimum amount equivalent

to the amount of Project Considerations due and payable to the Authority over the next 12

months.

4.2 Withdrawals upon Termination

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:

- I. All taxes due and payable by the Concessionaire for and in respect of the Project;
- II. Outstanding Project Consideration;
- III. All payments due and Damages certified by the Authority as due and payable to it by the Concessionaire under this Agreement;
- IV. Cost of repair and restoration of damages to the Project on account of a Non- Political Event;
- V. Outstanding Debt Service including the balance of Debt Due and interest thereon;
- VI. Outstanding Subordinated Debt
- VII. Retention and payments relating to the liability for defects and deficiencies ;
- VIII. Incurred or accrued O&M Expenses;
- IX. Any other payments required to be made under this Agreement; and
- X. Balance, if any, in accordance with the instructions of the Concessionaire.

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

In the event of Termination during the Construction Period, the balances, if any, in the Construction Period Fee Escrow sub-account shall be dealt with in the following manner:

- a. If the Termination occurs solely on account of the Authority default or Political event or Nonpolitical event, as certified by the Authority then the balances as on the Termination date shall belong to and be disbursed to the Concessionaire;
- b. If the Termination occurs solely on account of the Concessionaire default, as certified by the Authority then the balances as on the Termination date shall belong to and be disbursed to the Authority and the Concessionaire shall not be entitled to the same in any manner whatsoever;
- c. If the Termination occurs solely on account of the Indirect Political event as certified by the Authority then the balances as on the Termination date shall belong to and be disbursed in equal proportion to the Authority and the Concessionaire.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Articles 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 utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this Agreement.

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 21 of the 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 to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

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

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

6.1.1.1 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;

6.1.1.2 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

6.1.1.3 the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty-five) days prior notice to the Escrow Bank, the Authority and the Senior Lenders’ Representatives terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Senior Lenders’ Representative and arrangements are made satisfactory to the Senior Lenders’ Representative and the Authority 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 Account shall be operated and maintained till the date of Termination of the Concession Agreement and thereafter, the Concessionaire shall be entitled to discontinue the same and terminate the Escrow Agreement.

Subject to the above, the Escrow Bank shall, at the request of the Concessionaire made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement including the payments specified in Article 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

Any lender providing financial assistance for the Project 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 matters not covered under this Agreement such as the rights and obligations of Senior Lenders, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Authority and Escrow Bank and the Senior Lenders, acting through the Senior 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 fulfill 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 fulfill 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 Article 9.1 or in respect of which it is entitled to reimbursement (the **"Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (the **"Indemnifying Party"**) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with provisions of Arbitration and Conciliation Act, 1996 as amended till date under this Article 10.1.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Bhopal, Madhya Pradesh and the language of the arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Madhya Pradesh 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:

11.5.1.1 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;

11.5.1.2 Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

11.5.1.3 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:

11.7.1.1 Shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

11.7.1.2 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.

11.7.1.3 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 Article 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 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.

SIGNED, SEALED AND
DELIVERED

For and on behalf of
ESCROW BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of

THE CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of

THE SENIOR LENDERS REPRESENTATIVE by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

2.

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
Senior Lenders by the
Senior Lenders’
Representative:
(Signature)
(Name)
(Designation)
(Address) (Fax
No.)
(e-mail address)

SCHEDULE-VII: COMPLETION CERTIFICATE

- 1 I,(Name of the Issuing Officer), acting as, under and in accordance with the Concession Agreement dated(the **"Agreement"**), for Development, Operation & Maintenance and Management of Lakeview Residency Hotel, Bhopal as a minimum 5-Star Category Hotel on Design, Build, Finance, Operate, Transfer (DBFOT) Mode (the **"Project"**), through(Name of Concessionaire), hereby certify that and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.

- 2 It is certified that, in terms of the aforesaid Agreement, all works and services forming part of development of Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this theday of20.....

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

(Signature)
(Name)

(Designation)
(Address)

SCHEDULE-VIII: VESTING CERTIFICATE

- 1** **DEPARTMENT OF TOURISM (DOT)** through Madhya Pradesh Hotel Corporation Ltd. ("**MPHCL**") ("**the Authority**") refers to the Concession Agreement dated..... (the "**Agreement**") entered into with the
..... (the "**Concessionaire**") for Development, Operation & Maintenance and Management of Lakeview Residency Hotel, Bhopal as a minimum 5-Star Category Hotel on PPP model (the "**Project**") on design, build, finance, operate and transfer ("**DBFOT**") basis
- 2** The Authority hereby acknowledges compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in Article 23.1 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

For and on behalf of

CONCESSIONAIRE by:

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

AUTHORISED SIGNAORY OF MPHCL

by:

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

In the presence of:

1.

2.

SCHEDULE-IX: SUBSTITUTION AGREEMENT

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

AMONGST

1. Department of Tourism ("**DOT**") through Madhya Pradesh Hotel Corporation Ltd. ("**MPHCL**") having its office at Paryatan Bhawan, Bhadbhada Road, Shastri Nagar, Bhopal, Madhya Pradesh-462003, acting through its authorized representative, its Managing Director (hereinafter referred to as the Authority which expression shall, unless the context otherwise requires, include its successors and assigns); and
2. [*******Limited**], a company incorporated under the provisions of the Companies Act, 1956/2013 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); and
3. ****[NAME AND PARTICULARS of Senior 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 "Senior 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**") on PPP mode for the development and operations & management of MPT Lakeview Residency Hotel in Bhopal, Madhya Pradesh (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 planning, designing, development, 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 IT IS HEREBY AGREED 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;

"Senior Lenders' Representative" means the person referred to as the Senior Lenders' Representative in the foregoing Recitals;

"Nominated Company" means a company, incorporated under the provisions of the Companies Act, 1956/ 2013, selected by the ~~Senior 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 mean the 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 ; 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 Senior Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Senior Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Articles are, unless stated otherwise, references to Articles 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 Articles 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 assigns the rights, title and interest in the Concession to, and in favor of, the

Senior 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 Article 2.1, the Senior Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Senior Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Senior 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 Senior 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 Article 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 issuance of a Notice of Financial Default hereunder, the Senior 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 Senior 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 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 Senior 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.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Senior Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Senior 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 Senior Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Article 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Senior 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 Senior Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Article 3.3.2, as the case may be, the Senior Lenders' Representative may, without prejudice to any of the other rights or remedies of the 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 fulfill the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Concession; provided that the Senior 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 Senior Lenders' Representative shall request the Authority to:

- a. Accede to transfer to the Nominated Company the right to construct, 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 Senior Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Senior Lenders' Representative, give a reasoned order after hearing the

Senior Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Senior Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Article 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Senior 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 Senior Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Senior 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 Senior Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Senior Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreement

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 Senior 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 22 and 23 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 Senior Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Article 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 Senior 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.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

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

7 INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Senior 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 fulfill 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 Senior 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 Senior Lenders' Representative to fulfill 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 Senior 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 Article 7.1 or in respect of which it is entitled to reimbursement (the **"Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (the **"Indemnifying Party"**) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute Resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Senior Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Bhopal and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Madhya Pradesh 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 Article 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. The address for service of each Party and its facsimile number 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 5.00 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. 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 Substitution 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 were 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.**

<p>SIGNED, SEALED AND DELIVERED For and on behalf of CONCESSIONAIRE</p> <p>[***] by:</p> <p>(Signature)</p> <p>(Name)</p> <p>(Designation)</p> <p>(Address)</p> <p>(Fax No.)</p>	<p>SIGNED, SEALED AND DELIVERED For and on behalf of AUTHORITY by the Authority's Representative:</p> <p>(Signature)</p> <p>(Name)</p> <p>(Designation)</p> <p>(Address)</p> <p>(Fax)</p>
--	---

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR Lenders by the Senior Lenders'

Representative: (Signature)

(Name)

(Designation)

(Address) (Fax)

In the presence of: 1.

2.

SCHEDULE-X: COMPLIANCE CERTIFICATE

Project Name: (Insert Project Name)

Project Location: (Insert Project Location)

Date: (Insert Date)

Dear Sir/Ma'am,

We, (Name of Authorized Signatory), being the (Position) of (Name of Company/Organization), hereby certify that:

1. We have fulfilled all the conditions precedent as specified in Concession Agreement dated (Insert Date) for the (Insert Project Name).
2. We confirm that all necessary approvals, permits, and licenses have been obtained from the relevant authorities and are valid and subsisting (List Provided in the Table Below along with Original Copies of Approvals/Clearances).

The list of permits applicable include;

- I.
- II.
- III.
- IV.

3. We acknowledge that the we have complied with all the requirements and obligations as specified in the Agreement.
4. We confirm that the we have not incurred any liabilities or obligations that may affect our ability to perform our ability to perform our obligations under the Agreement.

We hereby declare that the above statements are true and accurate, and we undertake to comply with all the terms and conditions of the Agreement.

IN WITNESS WHEREOF, we have executed this Compliance Certificate as of the date first above written.

Signature: _____

Name: _____

Designation: _____

Date: _____

COMPLIANCE CERTIFICATE to be Counter-signed and Confirmed by (Authority/Concessionaire as applicable);

Authority

Concessionaire

Compliance Date:

SCHEDULE-XI: LEASE DEED

This Lease Deed ("Lease Deed") is made and executed on this day of 20.... by and amongst:

1. Madhya Pradesh Hotel Corporation Limited ("MPHCL"), represented by its Managing Director and having its principal office at _____ (hereinafter referred to as the "Lessor" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) and represented herein by _____ of the FIRST PART; and
2. _____, a company incorporated under the Companies Act, 2013 and having its registered office at _____ (hereinafter referred to as the "Lessee" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) represented herein through Mr. _____, the Authorized Signatory, as authorized vide Board Resolution dated _____ of the OTHER PART;

The Lessor and the Lessee are hereinafter collectively referred to as the "Parties" and individually as "Party".

WHEREAS

- A. The Lessor and the Lessee have entered into a Concession Agreement dated _____ (the "**Concession Agreement**") pursuant to which the Lessor has, among others, granted to the Lessee, the right to develop the Project Site as a hotel project on DBFOT basis, in accordance with the terms and conditions set forth therein. The terms and conditions shall prevail over this Lease Deed in case of any conflict;
- B. The Lessor is in the prime ownership/has leasehold rights of the Project Site (the "**Project Site**") and now desires to sub-lease the Project Site to the Lessee and the Lessee desires to take on lease from the Lessor, the Land for the purpose of implementation of the development of the Project Site.

NOW THEREFORE, in consideration of the promises and covenants herein set forth and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties mutually agree as hereunder.

Definitions and Interpretation

1. Definitions

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

"Applicable Permits" means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the Project Site and development of Project Site during the subsistence of the Lease Deed or as defined under the Concession Agreement;

"Encumbrance" means any encumbrance such as easement, right of way, license, mortgage, charge, lien, hypothecation, pre-emptive right or security interest whether or not registered and howsoever arising, including by statute or common law or as defined under the Concession Agreement;

"Lease Period" means the term of lease for which the Project Site is given on sub-lease to the Lessee, commencing from the date of signing of Lease Deed and ending on the Expiry Date or Termination Date of the Concession Agreement or as otherwise provided under the Concession Agreement;

"Lease Rent" shall mean an amount of INR 16,110 per year payable by the Lessee to the Authority in accordance with the terms of this Agreement and Lease Deed.

"Project Site" shall have the meaning set forth in Schedule I to the Concession Agreement; and

2. Interpretations

In this Lease Deed, except to the extent that the context requires otherwise:

- a. The terms of this Lease Deed should be read in consonance with and not in derogation with the terms of Concession Agreement;
- b. The definitions and rules of interpretation in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall

apply, mutatis mutandis, to this Lease Deed and in case of any conflict, the Concession Agreement shall prevail; and

- c. The words and expressions beginning with capital letters and defined in this Lease Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Lease Deed 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.

3. Grant of lease and possession

- i. The provisions of this Lease Deed shall take effect and become binding on the Parties on the date first above written ("**Effective Date**").
- ii. In consideration of the Lease Rent, the Lessor grants on lease to the Lessee and the Lessee agrees to accept the lease from the Lessor, free from Encumbrances and/or encroachments, the Project Site measuring, described in Schedule I to the Concession Agreement, hereto together with all and singular rights, liberties, privileges, easements, benefits, rights of way, paths, passages whatsoever in or appurtenant to the Project Site or any part thereof, and to hold, use and enjoy the Project Site and/or any part thereof, in accordance with the provisions of this Lease Deed as provided under the Concession Agreement.
- iii. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-lease, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-lease, sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.
- iv. The Concessionaire shall have the right to access and occupy the parts of the Project Site described in Schedule I for the purpose of designing, constructing, operating, and maintaining the Project, only upon fulfillment of all Conditions Precedent specified in this Agreement and upon vacant access thereto being provided by the Authority to the Concessionaire as stipulated in Article 4. For the avoidance of doubt, it is agreed that valid lease with respect to the parts of the Project Site as set forth in Schedule I shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire

4. Lease Rent

- i. Upon execution of the Lease Deed and in consideration of the Lessor leasing the Project Site to the Lessee and granting the rights, privileges and benefits set forth in this Lease Deed, the Lessee shall pay annual lease rent of INR 16,110 per year.
- ii. The Annual Lease Rent for the Project Site shall become payable from the date of execution of the Lease Deed. The first of such payment shall be made on the date of execution of the Lease Deed and subsequent payments shall be paid on every anniversary of the date of execution of Lease Deed thereof till expiry or early termination of the Lease Period.
- iii. Lease Rental shall be payable by means of a cheque/demand draft drawn in favour of "[Department Rep.], MPSTDC" payable at Bhopal or at such other place as may be notified by the Lessor.
- iv. If the Lessee fails to pay the Lease Rent as aforesaid, the default interest @ 16% shall be charged on the amounts due and payable towards the Annual Lease Rent beginning from the due date of Annual Lease Rent.

5. Use of Project Site

- i. During the Term of this Lease Deed, the Lessee agrees to use the Project Site for implementing the development of Project Site as defined in the Concession Agreement. Lessee is not permitted to utilize the Project Site for any other purpose.

6. Determination of Lease Deed

- i. This Lease Deed may be determined earlier by mutual agreement between the Parties in writing.
- ii. In the event that the Concession Agreement is terminated, then this Lease Deed shall be determined by the Lessor by giving a 90 (ninety) day notice or any other time period for notice as provided under the Concession Agreement, to the Lessee and upon such termination, the Lessor shall be at full liberty to deal with the Project Site in such manner as it deems fit in its sole discretion.

- iii. The Lessor shall have the right to determine this Lease Deed on occurrence of any one or more default(s) by the Lessee as enlisted hereunder:
- a. Filing of a voluntary bankruptcy petition by the Lessee;
 - b. Institution of winding up proceedings against Lessee and such proceedings not being stayed or discharged by a competent court within 180 (one hundred and eighty) days;
 - c. Appointment of a receiver of Lessee's assets or any general assignment for the benefit of Lessee's creditors and such appointment or assignment is not stayed by a competent court within 180 (one hundred and eighty) days;
 - d. Failure of the Lessee to make payments to the Lessor in accordance with the provisions hereof, where such failure continues for a period of 30 (thirty) days after a written notice from the Lessor;
 - e. Failure by Lessee to perform any of the covenants, conditions, or obligations mentioned under this Lease Deed where the failure continues for a period of 60 (sixty) days after notice from the Lessor;
 - f. Transfer or assignment of this Lease Deed or creation of any Encumbrance on the Project Site without securing prior written approval of the Lessor;
 - g. Use of the Project Site for any purpose other than the purposes stated in this Lease Deed and such breach is not remedied within a period of 60 (sixty) days after a notice from the Lessor in this behalf; and
 - h. Any breach of the Concession Agreement having an effect on this Lease Deed.
- iv. Upon determination under sub-points i, ii, iii above, the Lessor shall have the following additional rights:
- a. The recovery of any unpaid Lease Rent due and payable at the time of termination;
 - b. The recovery of any damages, costs, fees and expenses incurred by the Lessor as a result of the breach of the Lease Deed by the Lessee; and
 - c. Any other right or remedy, legal or equitable, that the Lessor is entitled to under Applicable Laws
- v. The Lessee shall have the right to determine this Lease Deed on account of the occurrence of any of the following events:
- a. Any material breach of the terms and conditions of the Lease Deed by the Lessor, which material breach is not remedied by the Lessor within 90 (ninety) days of receipt of notice regarding such breach; or
 - b. Any interference with the peaceful possession of the Project Site by the Lessor due to which the Lessee is not able to carry on its business for a continuous period of 60 (sixty) days or more, which interference is not rectified by the Lessor within a period of 60 (sixty) days from the date on which the Lessee notifies the same to the Lessor.

7. Lessor's obligations and covenants

The Lessor hereby agrees and warrants that:

- a) Subject to the terms of the Lease Deed, the Lessee shall be entitled to hold, use and enjoy the Project Site and every part thereof during the Lease Period, without any interruption by the Lessor;
- b) The Lessee shall, during the Lease Period, enjoy free ingress and egress to and from the Project Site without any hindrance;
- c) Subject to timely payment of the Lease Rent and performance of the covenants and conditions of the Lease Deed, the Lessee shall peacefully hold and enjoy the Project Site during the Term of the Lease Deed;
- d) Upon execution of the Lease Deed and subject to the terms thereof, the Lessor shall deliver, or cause to be delivered, to the Lessee vacant access and right of way of the Project Site. The Lessor shall, at its cost and expense clear any Encumbrances, including occupation, if any, by third parties prior to delivery of vacant possession of the Project Site to the Lessee;
- e) The Lessee shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Project Site during the Lease Period. For avoidance of doubt, any taxes, cess, levies with respect to utilization or developments on the Project Site shall be borne by the Lessee;

- f) Upon execution of the Lease Deed, the Lessor shall provide the Lessee with any consent(s) or no objection(s) of the Lessor in obtaining power, water, telephone and such other facilities that the Lessee may require, to use and enjoy the Project Site effectively for the purposes stated in this Lease Deed. Such consents or no objection(s) shall be provided by the Lessor within a reasonable time; and
- g) The Parties hereby agree that the Lessee shall not mortgage, transfer, assign or otherwise encumber the Project Site, except as permitted under the Concession Agreement.

8. Lessee's obligations and covenants

Lessee hereby covenants, agrees and represents that:

- a) Upon execution of this Lease Deed and subject to the terms thereof, the Lessee shall accept the Project Site on the condition it is handed over and undertakes to use the same only for the purposes as enlisted in this Lease Deed;
- b) This Lease Deed has been duly authorized, executed, and delivered by the Lessor after fulfilling all legal formalities and constitutes its legal, valid and binding obligation;
- c) During the Term of the Lease Deed, the Lessee shall pay the Lease Rent in accordance with terms and conditions set out in this Lease Deed and shall observe and fulfill each of its obligations and covenants set forth herein;
- d) During the Term of the Lease Deed, the Lessee shall undertake the development of the Project Site, and other works which in the reasonable opinion of the Lessee would be required for and in relation to the development of Project Site, and obtain necessary approvals/clearances from the appropriate authorities for the same;
- e) At its own cost and expense, the Lessee shall obtain all utilities such as water, electricity from the appropriate authorities;
- f) It shall obtain and keep current all Applicable Permits that may be required under the Applicable Laws;
- g) It shall pay all taxes, service tax, property tax, cesses, assessments and levies in respect of the Project Site, which are leviable at any time during the Term of the Lease Deed;
- h) It shall not create any lien, charge or Encumbrance on the Project Site, except as permitted in the Concession Agreement, without prior approval of the Lessor;
- i) It shall, indemnify the Lessor in respect of any charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Lessee of water, electricity, telephone, communication and other facilities and in relation to any and all third party claims made with respect to the Project Site;
- j) It shall (i) keep and maintain the Project Site and the buildings and structures thereon in good and habitable condition at all times, and (ii) shall ensure that the Project Site shall be free from encroachments at all times and to the extent that there occur any encroachments on the Project Site, it shall make diligent efforts to remove such encroachments from the Project Site, as soon as practicable; and
- k) It shall take all necessary care to keep the premises neat and clean and in sanitary conditions.

9. Regulatory approvals for construction

The Lessee agrees and covenants that the Lessee shall undertake construction of buildings and/or structures at the Project Site only after obtaining all Applicable Permits as are necessary for such constructions. The Lessee further agrees that the Lessee shall at all times comply with the conditions of such Applicable Permits.

10. Inspection by the Lessor

- a) The Lessee agrees and covenants that during the Term of the Lease Deed, the Lessee shall not restrict or obstruct the Lessor and its authorized agents to enter upon and inspect the Project Site at all reasonable hours on any working day.
- b) The Lessee undertakes that the Lessee shall notify the Lessor of any material breach by the Lessee of any Applicable Permits acquired in relation to the Project Site.

11. Stamp duty and registration charges

Subject to the exemption or waiver, if any, granted by Lessor or any other authority, the Parties agree that all stamp duties and registration charges payable in respect of the lease contemplated herein shall be to the account of and borne by the Lessee.

12. Indemnities and limitation of liability

The Lessee shall fully indemnify, defend and hold harmless the Lessor, of any liability which may be incurred or suffered by the Lessor and which may arise out of or as a result of any of the following causes:

- a) Any breach by the Lessee of any of its obligations, covenants, agreements, representations or warranties set forth in this Lease Deed; and
- b) Any loss of property, damage to property, personal injury or death occasioned to or suffered by any person, to the extent that the damage to or loss of property or the personal injury or death is caused willfully or negligently by the Lessee.

13. Assignment

The Lessee shall not, without the Lessor's prior written consent, transfer, assign, or grant any form of security over any of its rights or obligations under this Lease Deed. However, the Lessee shall be, subject to the terms of Concession Agreement, allowed to create charge / mortgage on the Project Facilities and the Lessee's rights, benefits, entitlements under this Lease Deed, to the Senior Lenders for the purpose of raising financing.

14. Handover of the Project Site

In the event of termination of the Concession Agreement by efflux of time or otherwise and the land lease determined, the Lessee shall immediately hand over encumbrance free possession of the Project Site along with all structures, development works etc. to the Authority, or to its contractors, subcontractors, agents.

15. Force Majeure

- a) Neither Party shall be liable to the other for non-performance of its obligations under this Lease Deed (other than the obligation to make payments when due) on account of any event of Force Majeure including but not limited to fire, flood, act of God or irresistible force, civil disobedience, riots, terrorism, strikes, lock-out, act of government, or any other event beyond the reasonable control of such Party.
- b) Where the event of Force Majeure exists for a continuous period of 6 (six) months, the Parties shall mutually decide on the course of action to be adopted, which may include the determination of this Lease Deed.
- c) Notwithstanding anything to the contrary in this Lease Deed, if the Lease Deed is determined, neither Party shall be liable to pay any compensation to the other for such termination.

16. Dispute Resolution

- a) The Parties shall use their respective reasonable endeavour to settle any dispute, difference, claim, question or controversy between the Parties arising out of, in connection with or in relation to this Lease Deed ("Dispute") amicably between themselves through negotiation.
- b) Any Dispute which the Parties are unable to resolve pursuant to sub-point a above, within 60 (sixty) days (or such longer period as the Parties may agree) of notice by one Party to the other of the existence of a Dispute, shall be resolved in accordance with the provisions of the Concession Agreement and any arbitration agreement under the Concession Agreement would be deemed to be incorporated herein.

17. Governing Law

This Lease Deed is governed by and shall be construed in accordance with the laws of India.

18. General Provisions

1. Entire Agreement

This Lease Deed together with Concession Agreement constitutes the entire agreement between the Parties

with respect to the subject matter and the transaction envisaged in this Lease Deed, but this Lease Deed shall be subject to the provisions of the Concession Agreement at all times.

2. Waiver

- a) 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 Lease Deed:
 - i. 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 Lease Deed;
 - ii. Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
 - iii. Shall not affect the validity or enforceability of this Lease Deed in any manner.
- b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Lease Deed or any obligation there under 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.

19. Severability

If for any reason whatever, any provision of this Lease Deed 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 Lease Deed or otherwise.

20. Specific Performance

In the event of default or breach in performance of obligations by any Party, the Party in default or breach shall be entitled, without prejudice to its other rights and remedies, to seek and enforce specific performance of this Lease Deed.

21. Expenses

Each Party shall pay its own costs and expenses (including, without limitation, the fees and expenses of its agents, authorized representatives, advisors, counsel and accountants) necessary for negotiation, preparation, execution, delivery, performance of and compliance with this Lease Deed.

22. 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 Lease Deed shall be in writing and shall:

- a) In the case of the Lessee, 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 Lessee may from time to time designate by notice to the Lessor; provided that notices or other communications to be given to an address outside Bhopal may, if they are subsequently confirmed by sending a copy thereof by registered post acknowledgement due, airmail or by courier, be sent by facsimile or e-mail to the number as the Lessee may from time to time designate by notice to the Lessor;
- b) In the case of the Lessor, be given by a letter delivered by registered post acknowledgement due addressed to [Department Rep.], MPSTDC with a copy delivered to the Lessor's Representative or such other person as the Lessor may from time to time designate by notice to the Lessee; provided that if the Lessee does not have an office in Bhopal, it may send such notice by e-mail and by registered post acknowledgement due, air mail or by courier; 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.

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of Madhya Pradesh Hotel Corporation Limited (MPHCL) by:

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of by:

(Signature)

(Name)

(Designation)

In the presence of:

- 1.
- 2.

SCHEDULE-XII: SHAREHOLDERS AGREEMENT

Schedule XII

SHAREHOLDERS' AGREEMENT

THIS SHAREHOLDERS AGREEMENT (the "Agreement") is made on this ____ day of _____ month of the year 20__.

AMONGST

1. _____ (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the One Part;

AND

2. _____ {Insert names of Consortium Members} (hereinafter individually referred to as "**Selected Bidder**" and collectively referred to as "**Selected Bidder/Consortium Members**" (which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include their assigns, respective legal representatives and successors) of the Second Part;

AND

3. [insert name of the company], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as "**Concessionaire**", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Third Part.

The Selected Bidders, the Authority and the Concessionaire are hereinafter collectively referred to as the "**Parties**" and individually as "**Party**". The Selected Bidders and the Authority are collectively referred to as the "**Shareholders**".

WHEREAS:

- a) The Authority is the rightful owner of the MPT Lakeview Residency Hotel, Bhopal, Madhya Pradesh, India (hereinafter referred to as "**Project Site**"), who possesses the leasehold rights over the land consisting of the Project Site granted through [*] under a lease deed dated [*] for a period of [*].
- b) The Authority had invited bids towards the Request for Proposal dated [*] to Develop, Operate & Maintain and Manage the Project Site/MPT Lakeview Residency Hotel, Bhopal, as a minimum 5-star Hotel along with a Banquet, Restaurant and other facilities on Design, Build, Finance, Operate and Transfer ("**DBFOT**") basis (the "**Project**") for a period of 60 years (extendable by a period of 10 years) for selection of the successful bidder who would have the right to incorporate a company to act as a special purpose vehicle to undertake the Project.
- c) The Selected Bidders, was/were thereafter selected by Authority, pursuant to which the Authority issued the Letter of Award No [*] dated [*] to incorporate the special purpose vehicle which would execute the Concession Agreement for undertaking the Project (the "**Concessionaire**").
- d) The Selected Bidders have 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 concessionaire under the Concession Agreement dated [*].
- e) As part of the Request for Proposal dated [*] and Concessionaire Agreement dated [*], it is agreed that the Authority would hold one non-transferable Golden Share (as defined hereinafter), on terms and conditions as set out in this Shareholders' Agreement.
- f) The Authority and the Selected Bidders are therefore desirous of setting forth in this Agreement, the terms and conditions to govern the relationships in their mutual capacity as the Shareholders of the Concessionaire and to record their respective rights and obligations in relation to the management and functioning of the Concessionaire and other matters incidental thereto.

- g) It is agreed upon between the Authority, Selected Bidder and Concessionaire, that in case of any discrepancy between the current Agreement and any term of the Concessionaire Agreement dated [*], such Concessionaire Agreement dated [*] shall prevail over the terms of this 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 INTERPRETATIONS

1.1 Definitions

In this Agreement, (including any recitals, annexure, schedules or exhibit attached thereto), except where the context otherwise requires, the following words and expressions shall have the following meaning:

- "**Affected Party**" shall have the meaning ascribed to the term in Clause 11.3 hereunder;
- "**Alternate Director**" shall have the meaning ascribed to the term in Clause 5.7.1 hereunder;
- "**Board of Director(s)**" or "**Board**" means the board of director(s) of the Concessionaire;
- "**Chairman**" means chairman of the Board of the Company;
- "**Charter Documents**" means the memorandum of association and articles of association of the Concessionaire, incorporating as appropriate, and consistent with, to the extent permitted by law, the terms and conditions of this Agreement.
- "**Companies Act**" means the Companies Act, 2013 for the repealed provisions of Companies Act, 1956 and otherwise Companies Act, 1956 including any re-enactment or amendment thereof;
- "**Concession Agreement**" shall mean the Concession Agreement entered into between the Authority and the Concessionaire with respect to the Project dated [*];
- "**Consequential Loss**" shall have the meaning ascribed to the term in Clause 11.14 hereunder;
- "**Defaulting Party**" shall have the meaning ascribed to the term in Clause 8.2.1 hereunder;
- "**Director**" means a director on the Board of Directors of the Concessionaire;
- "**Equity Shares**" means the fully paid-up equity share of a par value of Rs. [*] each of the Concessionaire;
- "**Golden Share**" means the fully paid up equity share of a par value of Rs. [*] of the Concessionaire issued/ to be issued to the Authority;
- "**Managing Director**" means the whole time managing director of the Concessionaire;
- "**Project**" shall have the meaning ascribed to it in Recital (A).
- "**Proprietary Information**" shall have the meaning ascribed to the term under Clause 9.1 hereunder;
- "**Reserved Matters**" means the matters listed under Annex II hereto;
- "**Selected Bidders**" shall have the meaning ascribed to it in the preamble of this Agreement;
- "**Selected Bidders Agreement**" shall have the meaning ascribed to the term in Clause 4.2.3 hereunder;
- "**Shareholder**" or "**Shareholders**" shall have the meaning ascribed to the term in the preamble of this Agreement;
- "**Shareholders' Agreement**" or "**Agreement**" means this shareholders' agreement; "**Third Party**" means any entity not a Party to this Agreement;
- "**Transfer**" shall include (i) any transfer or other disposition of such securities or voting interests or any interest therein, including, without limitation, by operation of Applicable Laws, by court order, by judicial process, or by foreclosure, levy or attachment; (ii) any sale, assignment gift, donation, redemption, conversion or other disposition of such securities or any interest therein, pursuant to an agreement, arrangement, instrument or understanding by which legal title to or beneficial ownership of such securities or any interest therein passes from one entity to another entity or to the same entity in a different legal capacity, whether or not for value; (iii) the granting of any encumbrance (whether by way of mortgage, pledge, lien hypothecation or otherwise) or charge in or extending or attaching to such securities or any interest therein or any privilege or priority of any kind having the effect of security.

1.2 Interpretations

- 1.2.1 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 or the Companies Act, as the case may be, shall, unless

repugnant to the context, have the meaning ascribed thereto in the Concession Agreement or the Companies Act.

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 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. EFFECTIVE DATE

Except for the provisions of Clauses 2, 3, 7, 9 and 10 which shall become effective immediately upon the execution hereof, the provisions of this Agreement shall become effective upon the completion, to the satisfaction of the Authority, of the following actions (such date being the effective date "**Effective Date**"):

- (i) The Concessionaire shall have resolved by way of special resolution, in an extra ordinary General Meeting of the Shareholders of the Concessionaire, alteration of the Charter Documents of the Concessionaire, as necessary, to reflect the terms of this Agreement, unless they have been incorporated at time of incorporation of the Concessionaire itself;
- (ii) The Concessionaire shall have filed with the concerned Registrar of Companies, amended Charter Documents as above, as necessary, and provided the Authority with the receipt issued by the said Registrar of Companies evidencing filing of the Chartered Documents amended as above; and
- (iii) The Concessionaire shall have delivered and the Selected Bidders shall have caused the Concessionaire to deliver to the Authority a certified true copy of all such resolutions and/or any other document(s) evidencing performance of the actions contemplated in this Clause.

3. CAPITAL STRUCTURE AND ISSUANCE OF THE GOLDEN SHARE

3.1 Issuance of the Golden Share to the Authority

- 3.1.1 The Concessionaire hereby undertakes to issue and allot, and the Selected Bidders hereby agree to cause the Concessionaire to issue and allot to the Authority, simultaneously with the execution of this Agreement, the Golden Share, for a consideration equal to the par value of such Golden Share, and deliver the share certificate representing the Golden Share to the Authority.
- 3.1.2 The Concessionaire shall make all filings as may be required under the provisions of the Companies Act and comply with all other requirements of Applicable Laws, in connection with the issuance of the Golden Share.
- 3.1.3 The Parties agree that the nominee Directors of the Authority shall have rights of affirmative vote in the meetings of the Board of Directors of the Company, and the Authority shall have a right of affirmative vote in the General Meeting of Shareholders, in respect of the Reserved Matters. For the avoidance of doubt, the rights of the Authority under this Agreement shall be in addition to any other rights that the Authority may have under the Concession Agreement or any other Project Agreement.
- 3.1.4 The Parties expressly agree that the Golden Share shall, unless otherwise provided for under this Agreement, have identical rights and privileges of Equity Shares, with respect to dividend and all other matters.

3.2 Transfer restrictions

- 3.2.1 Any Shareholder (other than the Authority) may, subject to the provisions of this Agreement, and in compliance with Applicable Laws, Transfer, whether directly or indirectly, all or any of its/their Equity Shares or their rights under this Agreement, to a Third Party provided that (i) such Transfer shall be with the permission of the Authority and shall not cause the Selected Bidders or the Concessionaire to be in breach of the Concession Agreement; and (ii) such Third Party purchaser shall agree and undertake to be bound by the terms and conditions of this Agreement and executes a deed of adherence in the form and manner attached in Annex III ("**Deed of Adherence**").

It is hereby expressly clarified that where a Selected Bidder is a special purpose vehicle established primarily for the purposes of holding Equity Shares in the Concessionaire (such Selected Bidder being an "**SPV**"), a Transfer of any shareholding in such SPV shall constitute an indirect Transfer of Equity Shares by the SPV PP for the purposes of this Agreement and be subject to the restrictions on Transfer of shares as set forth in this

Agreement, including (i) the requirement of the execution of a Deed of Adherence by a third party transferee.

- 3.2.2 The Parties expressly agree that the Authority shall not be entitled to Transfer the Golden Share at any time, save and except when a successor entity of the Authority assumes the rights and obligations of the Authority under the Concession Agreement.

4. SCOPE AND OBJECTIVE OF THE CONCESSIONAIRE

4.1 Purpose of the Concessionaire and scope of this Agreement

The purpose of the Concessionaire is to undertake and perform the obligations and exercise the rights of the Concessionaire in accordance with and subject to the provisions contained in the Concession Agreement.

4.2 Shareholder Commitments

- 4.2.1 Each Shareholder hereby agrees to cooperate with each other Shareholder and with the Concessionaire and to use its reasonable efforts to the extent that it has the authority and ability to do so to promote the success of the Concessionaire. Provided, however, the Parties hereby expressly acknowledge and agree that the responsibilities and obligations of the Authority shall be restricted and limited to the matters expressly set forth in the Concession Agreement: Provided further that, nothing contained in this Article 4.2.1 shall be construed as creating any obligation on the Authority other than as expressly set forth in the Concession Agreement, nor will it imply any joint and several liability of the Authority.

- 4.2.2 Each Shareholder hereby undertakes towards the other Shareholders and for the benefit of the Concessionaire:

- (a) To perform and observe all of the provisions of this Agreement and the Charter Documents; and
- (b) Subject to Authority's right of affirmative vote (which may be exercised through a nominee of the Authority) in relation to the Reserved Matters, and without prejudice to the foregoing, to procure that (i) every person for the time being representing it in its capacity as Shareholder, and (ii) every person appointed as a Director in terms of this Agreement will exercise any power of vote or cause the power to vote to be exercised, at any meeting of the Shareholders or the Board of the Concessionaire, as the case may be, so as to ensure the approval of any and every resolution necessary or desirable to procure that the affairs of the Concessionaire are conducted in accordance with the Concession Agreement and otherwise to give full effect to this Agreement, and likewise so as to ensure that no resolution is passed which is not in accordance with the Concession Agreement and/or the provisions of this Agreement; provided, however, that except as expressly directed or as otherwise contemplated by any provisions in this Agreement, each Shareholder shall have full discretion on how to vote the Equity Shares which such Shareholder owns or on how to cause any person appointed by such Shareholder to act in operating the Concessionaire, subject only to Applicable Laws.

If any Director nominated by a Shareholder pursuant to Clause 5, for any reason refuses to exercise his discretion in accordance with the provisions of this Agreement, such Shareholder shall forthwith take all action within its power or control to substitute such Director.

- 4.2.3 The Parties agree that the Charter Documents shall, to the extent permissible under Applicable Laws, incorporate the provisions of this Agreement including without limitation Authority's right of affirmative vote and to the extent that the Charter Documents are inconsistent with the Agreement, the Shareholders shall exercise their power as shareholders of the Concessionaire to ensure that the Charter Documents are amended to the extent permissible under Applicable Law to remove any such inconsistencies. Further, the Parties also agree that the Selected Bidders may enter into any agreement amongst themselves to regulate their inter-se relationship as Shareholders of the Concessionaire ("**Selected Bidders Agreement**"), provided that the provisions of such Selected Bidders Agreement shall not be contrary to or inconsistent with the provisions of this Agreement, or detrimental, in any way, to the interest of the Authority under this Agreement and/or the Concession Agreement and shall be permissible under Applicable Laws. For the avoidance of doubt, it is hereby expressly agreed between the Parties that in the event of a conflict or inconsistency between the Selected Bidders Agreement and this Agreement, the provisions of this Agreement shall take precedence.

- 4.2.4 The Selected Bidders hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project, till such time as the Financial Close for the Project is achieved in accordance with the Concession Agreement.

5. MANAGEMENT AND THE BOARD OF DIRECTORS

5.1 Management

The Concessionaire shall be managed and governed under the overall superintendence, direction and control of the Board. The Board shall have overall authority with respect to development and management of the Concessionaire and the Project. The officers of the Concessionaire shall have the authority and responsibilities specified by the Board of Directors, consistent with the Charter Documents and this Agreement.

5.2 Composition of the Board

- 5.2.1 The Board composition shall be determined as under:

- (a) The Authority shall at all times be entitled to nominate **2** persons of its choice for appointment as Directors on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such persons as a non-retiring Directors in accordance with Applicable Laws.
- (b) Selected Bidders and Shareholders other than the Authority shall have the right to nominate the remaining Directors.

- 5.2.2 The Shareholders hereby acknowledge and agree to vote their respective shareholding in the Concessionaire in such manner so as to ensure appointment of the nominees of Authority and the Selected Bidders, as Directors from time to time.

5.3 Chairman

The Parties hereby undertake and agree that the Selected Bidders shall have the right to nominate the Chairman of the Concessionaire, who shall be appointed by the Board.

5.4 Managing Director

- 5.4.1 The Selected Bidders shall also nominate the Managing Director of the Concessionaire, who shall, following a Board resolution, be appointed by the Board.
- 5.4.2 The Managing Director shall be responsible for day-to-day management of the Concessionaire and for implementing the Project. The Managing Director will exercise his powers subject to the overall superintendence, direction and control of the Board.

5.5 Qualification

The Directors need not hold any qualification shares in the Concessionaire.

5.6 Resignation and removal

Except where a Director is required under Applicable Laws or the Charter Documents to vacate office, no Director shall be removed during the term for which he was elected without the consent of the Shareholder that recommended his appointment on the Board. Notwithstanding the foregoing, a Shareholder may ask for removal, substitution or recall for any reason, of any of the Directors nominated by such Shareholder and such Director shall be bound by the direction of removal, substitution or recall. Each Shareholder agrees to co-operate with the other Shareholders in convening a meeting of the Shareholders of the Concessionaire to effect such removal and to vote in favour thereof, if so required.

5.7 Alternate Director

- 5.7.1 A Director, other than the Managing Director, (the "**Original Director**") shall be entitled at any time and from time to time, to appoint any person to act as the Original Director's alternate ("**Alternate Director**") (and the Shareholders shall procure that the Board appoints such person as his alternate) and to direct the termination of the appointment of such Alternate Director (and the Shareholders shall procure that the Board terminates the appointment of such Alternate Director).

- 5.7.2 The Alternate Director shall be entitled, while holding office as such, to receive notices of meetings of the Board or any committee thereof to which the Original Director has been appointed, and to attend and vote as a Director at any such meetings at which the Original Director is not present and generally to exercise all the powers, rights (other than the right to appoint an Alternate Director as provided in Clause 5.7.1), duties and authorities and to perform all the functions of the Original Director. Further, such Alternate Director shall be entitled to be counted for the purpose of constituting quorum, exercise the vote and sign a written resolution on behalf of the Original Director at any meeting of the Board or any committee thereof and to the extent permitted by Applicable Laws his signature, vote, presence and consent shall be deemed to be that of himself (as if he is a Director in his own right) and the Original Director for whom he is an Alternate Director.

5.8 Vacancy

If a vacancy in any such office should occur for whatever reason, or a Director is absent for a continuous period of **1 (one) month** from the place where meetings of the Board are regularly held and no Alternate Director has been appointed in his place, then the Shareholder that nominated such Director shall be entitled to nominate a replacement Director, and the Shareholders agree to vote their Shares unanimously for the removal of such Director and election of such replacement Director.

5.9 Mode of conduct of Board meeting

Board meetings shall be held at least once every quarter at such places in India as the Board may determine and failing any such determination at the Concessionaire's registered office located at **[insert address]**. If and when permitted under Applicable Laws, a Director may participate in a Board meeting or a committee/sub-committee meeting of the Board by means of telephone, audio and/or video conferencing or other communication facilities, and a Director participating in such a meeting by such means shall be deemed for the purposes of this Agreement, to be present at that meeting.

5.10 Notice and Agenda for meeting

- 5.10.1 Unless the requirement of notice is waived by all Directors, a minimum of 14 (fourteen) days written notice (or such shorter period as all the Directors may agree) of the Board meetings shall be given to all Directors and their Alternate Directors. Each notice of a meeting of the Board shall contain, inter alia, an agenda specifying in reasonable detail, the matters to be discussed at the relevant meeting and shall be accompanied by all necessary written information.
- 5.10.2 The Board shall only transact the business set out in the agenda accompanying the notice to the Directors. Provided however that with the unanimous consent of all the Directors with Director nominated by Authority in attendance and voting in favour, the Board may transact business that is not set out in the agenda.

5.11 Quorum for Board meetings

- 5.11.1 The quorum for the meetings of the Board or any adjournment thereof shall necessarily include the Director nominated by Authority if any Reserved Matter is to be considered in such meeting; and no Reserved Matter shall be taken into consideration at such meeting, if the Director nominated by the Authority is not present at such meeting.
- 5.11.2 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

5.12 Committees of the Board

If the Board finds it necessary to constitute a committee or sub-committee, the Board shall determine the powers (including scope, termination, amendment of and withdrawal thereof) of such committee or sub-committee. The committee or subcommittee shall be subject to and be under the supervision of the Board. Notwithstanding anything to the contrary contained herein, the Authority shall have the right to nominate its nominee to each and every committee and sub-committee constituted by the Board: Provided, however, that no Reserved Matters shall be delegated to such committee and/or sub-committee.

5.13 Decisions

- 5.13.1 Subject to the provisions of the Companies Act, a resolution of the Board of Directors shall be adopted by the affirmative vote of the simple majority of the Directors present at a meeting at which a quorum of the Board

of Directors is present. Provided, however, that all resolutions on the Reserved Matters to be passed in the meeting of Board of Directors of Concessionaire shall be subject to the affirmative vote of the Director nominated by the Authority and no such resolution shall be passed if no such Director nominated by the Authority is present and voting in favour of such resolution.

- 5.13.2 The Concessionaire or any of its Directors, officers, agents or representatives shall not undertake any Reserved Matter without the prior approval by the Board in the manner provided in Clause 5.13.1 above and any act done by the Concessionaire or any of its Directors, officers, agents or representatives without such prior approval shall be null and void.

5.14 Resolution by circulation

Subject to Applicable Laws and for matters other than Reserved Matters, resolutions of the Board may be passed by circulation, if the resolution has been circulated in draft, together with necessary papers, if any, to all the Directors, then in India or outside India, and has been signed by a majority of the Directors. Such resolutions may be signed by the Directors as single document or in counterparts.

5.15 Authority

Unless otherwise authorised by the Board, none of the Directors shall be empowered to bind the Concessionaire individually.

5.16 Disqualification of Directors

Subject to Applicable Laws, a Director shall not be deemed disqualified to serve by reason of his being officer, director or shareholder of any other body corporate.

5.17 Inspection and information

- 5.17.1 It is hereby agreed between the Parties that the Authority shall have the right to examine the books, records and accounts to be kept by the Concessionaire and shall be entitled to receive all information, including monthly management accounts and operating statistics and other trading and financial information.
- 5.17.2 Without prejudice to the generality of Clause 5.17.1, the Concessionaire shall supply the Authority with copies of:
- (a) audited accounts of the Concessionaire (complying with all relevant legal requirements); and
 - (b) monthly/quarterly management accounts of each principal division of the Concessionaire; these shall include a consolidated profit and loss account, balance sheet and cash flow statement broken down according to the principal divisions of the Concessionaire including a statement of progress against the relevant business plan, a statement of any variation from the quarterly revenue budget and up-to-date forecasts for the balance of the relevant Accounting Year and itemising all expenditure in relation to the Concessionaire's capital programme entered into by each principal division of the Concessionaire during that period.

6. SHAREHOLDERS' RIGHTS AND OBLIGATIONS

6.1 General meeting and matters requiring the approval of Shareholders

- 6.1.1 The Board may whenever it thinks fit convene a General Meeting of the Concessionaire. The Board shall also proceed to convene a General Meeting if so requisitioned by the Shareholders of the Concessionaire in accordance with the provisions of the Companies Act and the Charter Documents.
- 6.1.2 Notwithstanding anything to the contrary contained in this Agreement and the Charter Documents, no decision shall be made and no action shall be taken by or with respect to a Reserved Matter, which is subject to the affirmative vote rights of the Authority as provided in Clause 3.1.3 above, unless approved by an affirmative vote of authorized representative of the Authority. The Parties specifically agree that a resolution relating to the Reserved Matters shall be passed in a meeting of Shareholders only and not by way of circulation.
- 6.1.3 The quorum for any Shareholders' meetings or any adjournment thereof shall necessarily include a representative of the Authority if any Reserved Matter is to be considered in such meeting; and no Reserved

Matter shall be taken into consideration at such meeting, if a representative of the Authority is not present at such meeting.

- 6.1.4 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

7. UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES

- 7.1 Each of the Selected Bidder and Concessionaire hereby warrant and represent to and for the benefit of Authority, that:

- (a) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- (b) the execution and delivery by the Selected Bidders of this Agreement has been duly authorised by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;
- (c) this Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of such Selected Bidders, enforceable against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (d) it is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (e) 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 has or may have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (f) there are no actions, suits, claims, proceedings or investigations pending or, to the best of the Selected Bidders's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement.

- 7.2 Each of the Selected Bidders and the Concessionaire hereby irrevocably undertake, warrant and represent to and for the benefit of Authority that:

- (a) the rights vested in the Authority under this Agreement and the Concession Agreement shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by any of the Selected Bidders or the Concessionaire; and
- (b) any divestment of equity in the Concessionaire shall not in any manner affect the rights of the Authority herein and that the successors, assigns and substitutes of the Concessionaire shall be bound by such undertaking.

- 7.3 The Authority hereby warrants and represents to and for the benefit of the Concessionaire and the Selected Bidders that it has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof.

8. TERMINATION

8.1 Termination

The Parties agree that in the event any of the Shareholders cease to hold, directly or indirectly, any Equity

Shares of the Concessionaire, this Agreement shall stand terminated automatically vis-à-vis such Shareholder. Provided however, the obligations of such Shareholder under this Agreement relating to confidentiality (Clause 9) and dispute resolution (Clause 10) and such other provisions of this Agreement that by their nature are intended to survive, shall survive any termination of this Agreement.

8.2 Right to terminate for cause

- 8.2.1 In the event of occurrence of a material breach of any of the terms and conditions of this Agreement, or any covenant, representation, warranty or agreement set forth herein or specified as an event of default under the Concession Agreement dated _____ ("**Material Breach**") on the part of a Shareholder (the "**Defaulting Party**"), any other Shareholders ("**Non- Defaulting Party**") may give written notice of the alleged breach ("**Breach Notice**") to the Defaulting Party.
- 8.2.2 A termination event ("**Termination Event**") shall be deemed to have occurred if such Material Breach, if reasonably capable of being cured, is not cured by the Defaulting Party within 30 (thirty) days of receipt of the Breach Notice or as may be specified under the Concession Agreement dated _____ ("**Cure Period**"), or if such Material Breach is not reasonably capable of being cured, forthwith upon issue of the Breach Notice.
- 8.2.3 On the occurrence of a Termination Event on the part of any of the Selected Bidder, the Authority may, in its discretion, require such Selected Bidder as provided under the Concession Agreement dated _____ or otherwise to transfer all of the Equity Shares held by it (or anyone claiming through them), along with all rights associated with such Equity Shares, to the Authority as per the terms of Concession Agreement dated _____; and the transfer of such shares shall take place at the registered office of the Concessionaire within 30 (thirty) days from the date of notice or any period provided under the Concession Agreement dated _____, whichever is higher, by the Authority in this behalf.

9. CONFIDENTIALITY

- 9.1 The Parties hereby acknowledge and agree that each of them possess and will continue to possess information that has been created, discovered, developed, or otherwise known and owned by them, which information has commercial value in the business in which they, are or may become engaged (the aforementioned information is hereinafter called "**Proprietary Information**"). The Parties agree that during the terms of this Agreement and after the termination or expiration hereof, each of them will keep in confidence and trust all Proprietary Information received from the other Party, and they will not use or disclose any such Proprietary Information or anything directly relating to it without the written consent of the other Party(ies).
- 9.2 In the event of the expiration or termination of this Agreement for any reason, the Parties shall promptly, at the direction of the owner of such Proprietary Information, cease to use, destroy or return to the owner all documents and data of any nature pertaining to the Proprietary Information owned by such Party, and will not keep or deliver to anyone else any documents or data of any description or any reproduction of any description containing or pertaining to any Proprietary Information.
- 9.3 This Clause shall not, however, apply to information which:
- (a) is or becomes publicly available without the fault of any Party;
 - (b) was known to any Party on a non-confidential basis prior to disclosure;
 - (c) is independently developed by any Party without use of the Proprietary Information;
 - (d) is disclosed by the owner of such information to a Third Party without restrictions similar to those contained herein;
 - (e) is disclosed in order to enable the sell-down/ draw-down of debt or to proposed Third Party transferees, provided that the recipient executes a confidentiality undertaking to use the information solely for that purpose;

- (f) is disclosed in order to comply with the requirements of Applicable Laws including any requirements for the stock exchange listing of the Concessionaire or any entity, which directly or indirectly, holds Equity Shares;
- (g) is disclosed to any of the consultants (legal, financial, technical or otherwise) of the Parties, provided that the recipient executes a confidentiality undertaking to use the information solely for the purpose disclosed.

9.4 The Shareholders agree with each other and the Concessionaire to use their, and to cause the Concessionaire to use its, best efforts to assure that all information disclosed in connection with the business of the Concessionaire and not otherwise generally available shall be kept confidential and shall not be revealed.

10. GOVERNING LAW AND CONSENT TO JURISDICTION; ARBITRATION

10.1 This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India. Subject to Clause 10.3, the courts in the State shall have exclusive jurisdiction over this Agreement.

10.2 The Parties agree that they shall attempt to resolve through good faith consultation, all and any issue, 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 ("**Disputes**"), and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation: Provided that if such good faith consultations have not resulted in a resolution of the dispute within 60 (sixty) days of such consultations having commenced, the provisions of Clause 10.3 shall apply.

10.3 Arbitration

10.3.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to a sole arbitrator to be appointed by mutual agreement by the Parties. Such arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 as may be amended on such date.

10.3.2 The arbitrator shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the **Bhopal** and the language of arbitration shall be English and the courts of Madhya Pradesh shall have exclusive jurisdiction to hear the disputes.

10.3.3 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the award in any arbitration proceedings hereunder.

11. MISCELLANEOUS

11.1 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 e-mail. The address for service of each Party, its 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.

11.2 Force Majeure

Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that no relief shall be granted to any Party under this Agreement for, or on account of, Force Majeure.

11.3 Specific performance of obligations

The Parties to this Agreement agree that, to the extent permitted under Applicable Laws, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a defaulting Party. The Parties acknowledge that any breach of the provisions of this Agreement will cause immediate irreparable harm to the adversely affected Party ("**Affected Party**") for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the Affected Party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a court of competent jurisdiction in the event of any such breach or threatened breach by any other Party. The Parties agree and stipulate that the Affected Party shall be entitled to such injunctive relief, specific performance or other equitable relief without (i) the necessity of proving actual damages; or (ii) posting a bond or other security. Nothing contained herein shall limit the Affected Party's right to any remedies at law or in equity, including without limitation the recovery of damages from the defaulting Party.

11.4 Entire Agreement

11.4.1 Subject to the provisions of the Clause 11.4.2, this Agreement, together with all Annexures, Schedules, Exhibits and attachments hereto, represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral between the Parties.

11.4.2 Nothing contained herein shall:

- (a) affect the provisions of the Concession Agreement;
- (b) prevent the Selected Bidders from having any other inter-se arrangements regarding their shareholding in the Concessionaire, provided that no such arrangements shall in any way affect the rights of the Authority under this Agreement or under the Concession Agreement.

For the avoidance of doubt, it is clarified that in the event of a conflict between the provisions of the Concession Agreement and this Agreement, the provisions of the Concession Agreement shall prevail.

11.5 Amendments

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if, but only if, in writing and signed in person or by an authorised representative of each Party.

11.6 Severability

If any article, clause, section or paragraph, or part thereof, of this Agreement or any agreement or document appended hereto or made a part hereof is invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future Applicable Laws, then it is the intention of the Parties that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause this Agreement to become materially adverse to any Party in which case the Parties shall negotiate in good faith such changes to the Agreement as will best preserve for the Parties the benefits and obligations under such provision.

11.7 Counterparts

This Agreement may be executed in two or more counterparts, and by each Party on the same or different counterparts, but all of such counterparts shall together constitute one and the same instrument.

11.8 Waivers

No failure by a Party to take any action with respect to a breach of this Agreement or a default by any other Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any Party of any breach or failure to comply with any provision of this Agreement by a Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

11.9 No agency

This Agreement shall not constitute any Party as the legal representative or agent of another Party, nor shall any Party have the right or authority, to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of another Party.

11.10 No third party beneficiaries

Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any entity other than the Parties hereto (and their respective successors and permitted assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained.

11.11 Independence of the Parties with respect of each other and of the Concessionaire

The Parties are and shall remain independent. None of the Parties shall be considered an agent of the other, nor shall they have authority to enter into any contract or any obligation for, or make any warranty or representation on behalf of the other, or the Concessionaire.

11.12 Arms' length

All relationships between each Party of the one part, and the Concessionaire of the other part, shall be conducted at arms length and on competitive terms.

11.13 Encumbrance

The Parties agree that the Selected Bidders shall not be entitled to Encumber their shareholding in the Concessionaire other than in favour of or for the benefit of the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project as permissible as per the Concessionaire Agreement.

11.14 Consequential Loss

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to any other Party (on the basis of contract, indemnity, warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of, or in connection with, this Agreement in respect of any Consequential Loss suffered by such other Party. For the purposes of this provision, "**Consequential Loss**" means any indirect or consequential loss (including loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements, or liability to third parties) resulting from such breach and whether or not the Party committing the breach ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach and includes the payment or repayment of any amounts (or any acceleration thereof) to lenders or creditors of the aggrieved Party from time to time, but excludes death or personal injury resulting from the negligence of the Party liable, its officers, employees or agents.

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of AUTHORITY:

SIGNED, SEALED AND DELIVERED

For and on behalf of Selected Bidders

Annex – I

Selected Bidders

{Insert the Names of Selected Bidders}

Annex-II

RESERVED MATTERS

- t.** to alter or add to the provisions of the memorandum of association;
 - u.** to alter or add to the articles of association;
 - v.** to change the name of the Concessionaire;
 - w.** to purchase the Concessionaire's own shares or specified securities;
 - x.** to issue sweat equity shares;
 - y.** to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
 - z.** to reduce the share capital;
 - aa.** to remove the registered office of the Concessionaire outside the limits of the State;
 - bb.** to commence any new lines of business;
 - cc.** to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
 - dd.** to consent to a director or his relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the Concessionaire;
 - ee.** to make inter-corporate-loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10% (ten per cent) of the Concessionaire's paid-up share capital;
 - ff.** to apply to a Court to wind-up the Concessionaire;
 - gg.** to wind-up the Concessionaire voluntarily;
 - hh.** for various other matters pertaining to the winding up of the Company;
 - ii.** to change the name of the Project;
 - jj.** to approve the un-audited and audited financial statements of the Concessionaire; and
 - kk.** any other matter which is required by the Companies Act, 2013 (or the relevant Act in force) or any statutory re-enactment thereof to be passed by a special resolution of the shareholders of the Concessionaire.
- II.** The Parties agree that the Shareholders' Agreement shall provide that till the time the Authority holds the Golden Share, it shall be entitled to nominate one person of its choice for appointment as non-retiring Directors on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such persons as Directors in accordance with Applicable Laws.

Annex- III

DEED OF ADHERENCE

This **DEED OF ADHERENCE** ("**Deed**") is executed this day of , by a company/ body corporate incorporated under the laws of India, with its registered office at (the "**Transferee**")

WHEREAS:

- A. By a Shareholders' Agreement dated _20... (the "**Shareholders' Agreement**") amongst the Authority, and the Concessionaire, the Shareholders agreed to a mutual distribution / regulation of their rights and liabilities as Shareholders of the Concessionaire.
- B. Clause 3.2.1 (ii) of the Shareholders' Agreement requires, inter alia, that, concurrently with the transfer of shares in the equity capital by any Shareholder ("**Parent**") to any third party, such third party shall, as a pre-condition of such transfer of shares to it, execute this Deed and be bound by the Shareholders' Agreement.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Definitions and Interpretation:

Capitalised terms used but not defined in this Deed shall, unless the context otherwise requires, have the respective meanings ascribed thereto in the Shareholders Agreement.

2. Undertakings

The Transferee hereby acknowledges that it has heretofore received a copy of, and has read and understands the Shareholders' Agreement, the Concession Agreement and other Project Agreements, and covenants, agrees and confirms that it shall be bound by all provisions of the Shareholders' Agreement as if it was an original party thereto, including with respect to the rights and obligations of the transferor Party contained therein, and the Shareholders' Agreement shall have full force and effect on it, and shall be read and construed to be binding on it.

3. Governing Law

This Deed shall be governed by and construed in accordance with the laws of the India. The terms and conditions of the Shareholders' Agreement in relation to the provisions regarding arbitration specifically at clause 10 and other terms and conditions shall be deemed to have been incorporated in this Deed.

By

Name and Title: In the presence of:

Witness

1.

2.