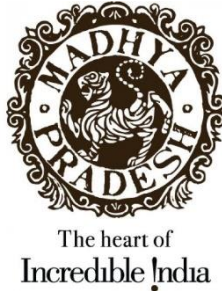


MADHYA PRADESH TOURISM BOARD (MPTB)

RFP

For selection of Agency under Challenge Based Destination Development (CBDD) Scheme under Swadesh Darshan 2.0 for Development, Operations, Maintenance and Management of Tourism Experience: “Orchha A Medieval Splendour 2.0”



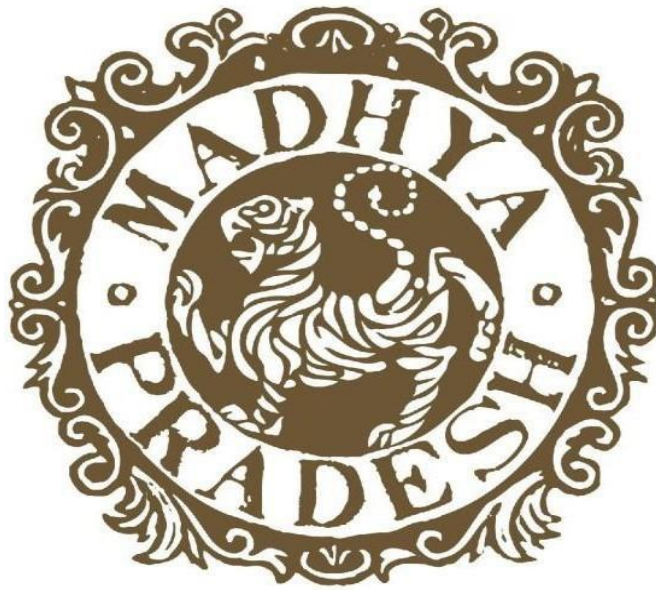
Address: MADHYA PRADESH TOURISM BOARD.

6th Floor, Lily Trade Wing (Above D Mart),
Jehangirabad, Bhopal, Madhya Pradesh 462008

Madhya Pradesh Tourism Board (MPTB) Contract Agreement

For

**Development, Operations, Maintenance and Management of Tourism Experience: “Orchha A
Medieval Splendour 2.0”**



The heart of
Incredible India

.....06.2025

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CONTRACT AGREEMENT

PART I. PRELIMINARY

CONTRACT AGREEMENT

This **CONTRACT AGREEMENT** (“**Agreement**”) is entered into on this _____ 20____ at _____.

BETWEEN

1. Madhya Pradesh Tourism Board (MPTB) represented by the [_____] ¹ with its principal office at _____] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns) of One Part;

AND

2. _____ **LIMITED**, a company incorporated under the provisions of the Companies Act, 2013 with its registered office at _____, India (hereinafter referred to as the “**Selected Agency**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

The Authority and the Selected Agency shall collectively be referred to as “**Parties**” and individually as a “**Party**”.

WHEREAS:

- (A) Ministry of Tourism has formulated Challenge Based Destination Development Scheme (hereinafter referred as “**Scheme**” or CBDD) to identify destination for holistic development through Destination Master Plan, Strategy and Action Plan. The Scheme is being implemented in the State Madhya Pradesh through its designated State Implementation Agency Madhya Pradesh Tourism Board (MPTB) as (hereinafter referred as “**Authority**”). The destination “Orchha a Medieval Splendour 2.0” (hereinafter referred as “**Destination**”) has been notified for holistic development of the destination.
- (B) A Destination Management Committee (hereinafter referred as “**DMC**”) has also been constituted for the Destination under District Collector for coordinating, facilitating and providing guidance for development of the destination.
- (C) The Authority for development of the project has decided to undertake development, operations, maintenance and management of the said Project and has, therefore, decided to carry out the bidding process for selection of **Tourism Experience Development and Management Agency**, TEDMA (hereinafter referred as “**Agency**”), a private entity as the bidder to whom the Project may be awarded.
- (D) The Authority had accordingly invited proposals under its [Request for Proposal No.

¹ Name of the department to be inserted.

_____]² dated [●] (the “**Request for Proposal**” or “**RFP**”) for selection of bidders for undertaking the Project. The selected Bidder/consortium comprising and (collectively, the “**Consortium**”) with.....as its lead member (the “**Lead Member**”) was one of the bidders who had submitted its bid for the Project (the “**Bid**”).

- (E) Following the evaluation of the bids submitted by the bidders, including that of the Selected Bidder, the Authority had accepted the Bid. Subsequently, the Authority had issued the letter of award no. [●] dated [●] (the “**Letter of Award**” or “**LOA**”) to the Selected Bidder.
- (F) The Authority, through its [letter dated _____]³, had agreed to the request of the Selected Bidder, and accordingly intends to enter into this Agreement with the Selected Agency for execution of the Project, subject to and on the terms and conditions set forth hereinafter.
- (G) Madhya Pradesh Tourism Board has authorized Madhya Pradesh State Tourism Development Corporation (MPSTDC) as Authority’s Representative according to Article 43 of this agreement for monitoring & supervision of execution as per scope of work specified in Annexure – “A” for Phase-1 & Phase-2 of the project.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the adequacy of which is hereby acknowledged and confirmed, the terms and conditions of this Agreement are set out below.

² To be inserted upon issuance of the RFP.

³ Relevant details to be inserted

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 43) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2. INTERPRETATION

1.2.1. In this Agreement, except where the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye-laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re- enacted;
- (c) references to a **“person”** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are only for convenience of reference and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words **“include”** and **“including”** are to be construed without limitation and shall be deemed to be followed by **“without limitation”** or **“but not limited to”** whether or not they are followed by such phrases;
- (f) references to **“construction”** or **“building”** include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **“construct”** or **“build”** shall be construed accordingly;
- (g) references to **“development”** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and **“develop”** shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to such time according to Indian Standard Time;
- (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) any reference to day shall mean a reference to a calendar day;
 - (k) 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 the State/UT or Centre) on which Banks are generally open for business;
 - (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
 - (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
 - (n) any reference to any period commencing 'from' a specific date or date and 'till' or 'until' a specific day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
 - (o) the words importing singular shall include plural and vice versa;
 - (p) references to any gender shall include the other and the neutral gender;
 - (q) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
 - (r) “**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;
 - (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Article
 - (t) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - (u) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
 - (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (w) references to Recitals, Articles, Sub-Articles, provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sub-Articles, provisos and Schedules of or to this Agreement; reference to an Annexure shall, subject to anything to the contrary specified therein, be construed as a reference to an Annexure to the Schedule in which such reference occurs; and reference to a paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a paragraph of the Schedule or Annexure, as the case may be, in which such reference appears;
 - (x) the damages payable by either Party to the other of them, as set forth in this Agreement, are mutually agreed genuine pre-estimate of loss and damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and

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

- 1.2.1 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Selected Agency to the Authority shall be provided free of cost and in 3 (three) copies, and if the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.
- 1.2.2 The rule of construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply.
- 1.2.3 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

1.3. MEASUREMENTS AND ARITHMETIC CONVENTIONS

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

1.4. PRIORITY OF DOCUMENTS:

- (a) The documents referred to in this Agreement and forming part thereof are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Authority shall issue any necessary clarification or instruction to the Selected Agency, and the priority of the documents shall be as follows:
- i. The Agreement and letter of award and letter of intent.
 - ii. The written Clarifications of the pre-bid meeting.
 - iii. The bid submitted by the Selected Agency.
 - iv. RFP Document issued by the Authority.
- (b) Subject to the provisions of Article 1.4 (a), in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (i) 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 Articles;
 - (ii) between the Articles of this Agreement and the Schedules, the Articles shall prevail;
 - (iii) between any two Schedules, the Schedule more relevant to the issue under consideration shall prevail;
 - (iv) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
 - (v) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
 - (vi) between any value written in numerals and that in words, the latter shall prevail.

PART II. THE CONTRACT

ARTICLE 2: SCOPE OF THE PROJECT

2.1. The scope of the project during the contract period shall mean and include the following (the “Scope of the Project”):

- (a) to **design, develop, operate, maintain and manage** the Project on the Project Site set forth in **Schedule A**, in accordance with the provisions of this Agreement;
- (b) to develop the Project as specified in **Schedule B**, in conformity with the **Specifications and Standards** set forth in **Schedule C**;
- (b) to operate, maintain and manage the Project in accordance with the provisions of this Agreement, including the Key Performance Indicators as specified in Article 21.
- (c) to **provide Ancillary Facilities** in accordance with the provisions of this Agreement
- (d) to **transfer the Project to the Authority upon Termination** in accordance with the provisions of this Agreement; and
- (e) to **perform and fulfil all other obligations of the Selected Agency** 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 Selected Agency under this Agreement.

2.2. The Selected Agency shall be entitled to develop additional facilities, within the Project Site for providing additional tourist facilities and experience, in accordance with Applicable Laws. The Selected Agency shall be responsible for the maintenance, up keep and security of any such facilities developed by the Selected Agency. The Selected Agency shall ensure that all activities are managed and undertaken in accordance with Applicable Laws and Applicable Permits as defined by or mutually agreed upon with the Authority.

ARTICLE 3: GRANT OF CONTRACT

- 3.1.1. Subject to and in accordance with the provisions of this agreement, applicable laws and applicable permits, the authority, awards to the selected Agency the contract set forth herein including exclusive right, license and authority to construct, operate and maintain the Project and provide hospitality services (the “Contract”), for the Contract Period, and the Selected Agency hereby accepts the Contract and agrees to implement the Project subject to and in accordance with the terms and conditions set forth in this agreement.
- 3.1.2. Subject to and in accordance with the provisions of this agreement, the CONTRACT hereby granted shall oblige or entitle (as the case may be) the Selected Agency to:
- (a) the Right of Way, access and leave and license rights to use the Project Site for the purpose of developing the Project, to the extent conferred by the provisions of this Agreement;
 - (b) design, develop and construct the Project during the Construction Period;
 - (c) achieve Project COD in accordance with the provisions of Article 15.1 and subsequently, manage, operate and maintain the Project Infrastructure throughout the Contract Period;
 - (d) provide Services and Tourist Experience in accordance with the standards and terms set out in this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice;
 - (e) demand, collect and appropriate Revenue from the Users for the Tourist Experience in accordance with this Agreement;
 - (f) pay Annual Fee to the Authority in accordance with the provisions of Article 24;
 - (g) perform and fulfil all the obligations of the Selected Agency under and in accordance with this Agreement;
 - (h) bear and pay all costs, expenses and charges / taxes in connection with or incidental to the performance of the obligations of the Selected Agency under this Agreement;
 - (i) appoint Contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Agreement in accordance with its terms;
 - (j) upon Termination of the Contract Period transfer the Project to the Authority in accordance with the terms of this Agreement;
 - (k) neither assign, transfer or sub-let or create any lien or encumbrance on this Agreement, or the Contract hereby granted or on the whole or any part of the Project Site, nor sell, transfer, exchange, lease or part possession thereof;
 - (l) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for safety, security, development, management, operation or maintenance of the Project and the Project Site, subject only to the terms of this Agreement and in accordance with Applicable Permits, Applicable Laws and Good Industry Practice;
 - (l) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to implement, manage, operate and maintain the Project; and

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

3.1.3. Subject to and in accordance with the provisions of this agreement, applicable laws and applicable permits, this agreement shall, from the Appointed Date, entitle the selected Agency to undertake designing, construction, development, operation and maintenance and management of the additional facilities as provided in **Schedule B** and that may be approved and/or notified, in writing, by the authority from time to time during the Contract Period as part of the project (the “**Ancillary Facilities**”). Provided, however, that the selected Agency shall not, in any event, commence the operation and/or use of the ancillary facilities prior to the project COD.

3.2. CONTRACT PERIOD

- (a) **Contract Period:** Subject to early termination of this Agreement in accordance with its terms, the term of this Agreement is 10 months + 10 Years from the Appointed Date (the “**Contract Period**”) including a maximum of 10 Months period for construction.
- (b) The Authority may consider extension of the contract period for additional period of *10 years in two blocks of 5 years each*, on the same terms and conditions, based on satisfactory performance during the initial contract period of the Agency. The Agency shall have the first right of refusal to accept or refuse another term of 5 years contract on conclusion of the first contract period.
- (c) **The Authority shall, at any time prior to the date of expiry of the Contract** Period, have the right to grant extension with respect to the Project for a period which it may determine at its sole discretion, after the expiry of the Contract Period, through competitive bidding. The Authority further agrees that the *Agency* shall have the right to participate in such competitive bidding and make its offer in accordance with the terms thereof.

ARTICLE 4: CONDITIONS PRECEDENT

4.1. CONDITIONS PRECEDENT

4.1.1. Save and except as expressly provided in articles 4, 7, 8, 9, 10, 11, 16, 26, 29, 35, 36, 38, 41, 42, 43 and any related schedules or unless the context otherwise requires, the respective rights and obligations of the parties under this agreement shall be subject to the satisfaction in full of the conditions precedent specified in this article 4.1 (the “**Conditions Precedent**”). Provided, however, that a party may grant waiver from satisfaction of any condition precedent by the other party in accordance with the provisions of articles 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that condition precedent shall be deemed to be fulfilled for the purposes of this article 4.1.1.

4.1.2. The selected Agency upon providing the performance security to the Authority in accordance with Article 9 and at any time after 30 (Thirty) days from the execution date satisfy any or all of the conditions precedent set forth in this article 4.1.2 within a period of 30 (Thirty) days and the conditions precedent required to be satisfied by the authority shall be deemed to have been fulfilled when the authority shall have:

- (a) Facilitate the Selected Agency to obtain the Right of Way for the Project Site in accordance with Article 10; and
- (b) Facilitate the Selected Agency to obtain all Applicable Permits as provided in **Schedule E** including permits in relation to environmental protection and conservation.

Provided, that upon request in writing by the Authority, the Selected Agency may, in its discretion, waive the Conditions Precedent set forth in this Article 4.1.2.

4.1.3. the conditions precedent required to be satisfied by the selected agency within a period of 30 (Thirty) days from the execution date shall be deemed to have been fulfilled when the selected agency shall have:

- (a) provided the Performance Security to the Authority pursuant to Article 9;
- (b) executed and procured execution of the Escrow Account Agreement and opened and operationalised the Escrow Account in accordance with Article 26;
- (c) execute and procure execution of the Substitution Agreement;
- (d) procured all Applicable Permits specified in **Schedule E** unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Applicable Permits, have been fulfilled as on date the Selected Agency claims satisfaction of all the Conditions Precedent under this Agreement;
- (e) delivered to the Authority {from the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-Article (l), {(m)} and (n) of Article 7.1;
- (f) delivered to the Authority a legal opinion from the legal counsel of the Selected Agency with respect to the authority of the Selected Agency to enter into this Agreement and the enforceability of the provisions thereof;
- (g) delivered to the Authority the copies (certified as true copies by an authorised officer of the Selected Agency) of the constitutional documents of the Selected Agency;
- (h) executed the Financing Agreements, if applicable, and delivered to the Authority [3

(three)] true copies thereof, duly attested by a director of the Selected Agency;

- (i) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a director of the Selected Agency, along with copies of the Financial Model in an editable version either in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (j) delivered to the Authority copies (certified as true copies by a director of the Selected Agency) of all resolutions adopted by the board of directors of the Selected Agency authorising the execution, delivery and performance by the Selected Agency of the Agreement; and
- (k) provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Selected Agency.

Provided that upon request in writing by the Selected Agency, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Article 4.1.3.

- 4.1.4. Each party shall make all reasonable endeavours to satisfy the conditions precedent within the time stipulated and shall provide the other party with such reasonable cooperation as may be required to assist that party in satisfying the conditions precedent for which that party is responsible.
- 4.1.5. The parties shall notify each other in writing at least once a month on the progress made in satisfying the conditions precedent. Each party shall promptly inform the other party when any condition precedent for which it is responsible has been satisfied.
- 4.1.6. The selected agency shall, upon satisfaction or waiver, as the case may be, of all the conditions precedent, notify the authority of the occurrence of the appointed date.

4.2. 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 Article 4.1.2 within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Selected Agency or due to Force Majeure Event, the Authority shall pay Damages to the Selected Agency of an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.

4.3. DAMAGES FOR DELAY BY THE SELECTED AGENCY

In the event that: (i) the Selected Agency does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.3 within the period specified in that Article; and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure Event, the Selected Agency shall pay Damages to the Authority of an amount calculated at the rate of [0.2% (zero point two per cent)] of the Performance Security for each day's delay until the fulfilment or waiver of such Conditions Precedent, up to the maximum amount equal to the Bid Security and upon reaching such maximum amount, the Authority may, in its sole discretion and subject to the provisions of Article 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Article 4.1.2, no Damages shall be due and payable by the Selected Agency under this Article 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Article 4.1.2.

4.4. COMMENCEMENT OF THE CONTRACT PERIOD

The date on which all the Conditions Precedent specified in Article 4.1, are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of the commencement of the Contract Period. For avoidance of doubt, the Parties agree that the Selected Agency may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence development of the Project in accordance with the terms of this Agreement.

4.5. TERMINATION UPON DELAY

Without prejudice to the provisions of Articles 4.2 and 4.3, and subject to the provisions of Article 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of 30 (thirty) days from the Execution Date or the extended period provided in accordance with this Agreement, then all rights, privileges, claims and entitlements of the Selected Agency under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Selected Agency and the Agreement may be terminated by the non-defaulting Party. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Selected Agency, the Performance Security or the Bid Security, as the case may be, of the Selected Agency shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5: OBLIGATIONS OF THE SELECTED AGENCY

5.1. GENERAL OBLIGATIONS OF THE SELECTED AGENCY

- (a) Subject to and on the terms and conditions of this Agreement, the Selected Agency shall implement the Project, procure for and undertake the development, engineering, procurement, equipping, operation, maintenance and management of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder. The Authority however shall fund the Minimum Development Obligation as per the terms and conditions of this agreement.
- (b) The Selected Agency shall arrange for and procure, at its own cost and risk, all allied infrastructure facilities and utilities for the 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 Selected Agency shall obtain all Applicable Permits and comply with the conditions thereunder for the procurement and use of such infrastructure facilities and utilities.
- (c) During the Contract Period, the Selected Agency shall obtain from the relevant Government Instrumentalities, the Applicable Permits (other than the Applicable Permits required to be obtained by the Authority under Article 4.1.2) and keep in force and comply with the conditions of all Applicable Permits for the development, operation and maintenance of the Project and upon Termination, the transfer of the Project to the Authority.
- (d) The Selected Agency shall comply with all Applicable Laws and conditions of all Applicable Permits (including keeping them valid and in force as required) while performing its obligations under this Agreement. Further, the Selected Agency shall ensure and procure that its Contractors, if any, comply with all Applicable Permits and Applicable Laws during their performance of any of the Selected Agency's obligations under this Agreement.
- (e) Subject to the provisions of Articles 5.1(a) and (b), the Selected Agency shall ensure that its Contractors, if any, shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- (f) The Selected Agency shall pay the Annual Fee to the Authority in accordance with Article 24.
- (g) The Selected Agency shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
 - (i) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (ii) perform and fulfil its obligations under the Financing Agreements, if applicable;
 - (iv) 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;
 - (v) not do or omit to do any act, deed or thing which may in any manner violates any provision of this Agreement;
 - (vi) ensure that the Users are treated with due courtesy and consideration and

provided with ready access to services and information;

- (vii) ensure employment of the local population during the Contract Period in accordance with Article 5.13;
- (viii) procure registration from the Department of Tourism, Authority;
- (viii) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement or Applicable Laws and Applicable Permits;
- (ix) procure that all equipment and facilities comprising the Project are developed, operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice;
- (x) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (xi) transfer the Project Assets to the Authority upon Termination in accordance with the provisions of this Agreement; This transfer of Project Assets shall be done within a period of thirty days from the date of Termination. The agency shall transfer the Project Assets developed under Minimum Development Obligation as per Annexure – I, Schedule B. and all immovable assets developed by the Agency under the Project shall be transferred to Authority without any consideration. In case, the Selected Agency fails to transfer the Project Assets back in terms of the afore-stated, the Authority shall have right to takeover possession of Project, Project Assets.; and
- (xii) upon written request from the Authority, execute the Substitution Agreement.

5.2. OBLIGATIONS RELATING TO PROJECT AGREEMENTS

- 5.2.1. It is expressly agreed that the selected agency shall, at all times, be responsible and liable for all its obligations under this agreement. Notwithstanding anything contained in the project agreements or any other agreement, and no default under any project agreement or any other agreement shall excuse the selected agency from its obligations or liability hereunder.
- 5.2.2. Before finalisation, the selected agency 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, 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 selected agency. Selected agency shall appropriately consider all such comments/ observations. Within 7 (seven) days of execution of any project agreement or amendment thereto, the selected agency shall submit to the authority a true copy thereof, duly attested by a director of the selected agency, 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 selected agency 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.
- 5.2.3. The selected agency shall not make any addition, replacement or amendments to any of the financing agreements without the prior written consent of the authority if such addition,

replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the authority, and in the event that any replacement or amendment is made without such consent, the selected agency shall not enforce such replacement or amendment nor permit enforcement thereof against the authority. For 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 selected agency.

- 5.2.4. Notwithstanding anything to the contrary contained in this agreement, the selected agency shall not sub-lease, sub-license, 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.
- 5.2.5. The selected agency shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Selected Agency in the event of termination or suspension (the “**covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the transfer date, the project agreements shall be deemed to cease to be in force and effect on the transfer date without any liability whatsoever on the authority and the covenant shall expressly provide for such eventuality. The selected agency expressly agrees to include the covenant in all its project agreements and undertakes that it shall, in respect of each of the project agreements, procure and deliver to the authority an acknowledgment and undertaking, in a form acceptable to the authority, from the counter party(ies) of each of the project agreements, where such counter party(ies) shall acknowledge and accept the covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the authority in the event of termination or suspension.
- 5.2.6. Notwithstanding anything to the contrary contained in this agreement, the selected agency agrees and acknowledges that selection or replacement of the contractor and execution of the Project Agreement shall be subject to the 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 selected agency and undertake that it shall not give effect to any such selection or contract without prior approval of the authority. For 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 selected agency or its contractors from any liability or obligation under this agreement.

5.3. OBLIGATIONS RELATING TO CHANGE IN OWNERSHIP

- (a) The Selected Agency shall not undertake or permit any Change in Ownership except with the prior written approval of the Authority.
- (b) Notwithstanding anything to the contrary contained in this Agreement, the Selected Agency agrees and acknowledges that during the Contract 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 25% (twenty-five per cent) or more of the total Equity of the Selected Agency; or
 - (ii) acquisition of any control directly or indirectly of the Board of Directors of the Selected Agency by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a “**Change in Ownership**” requiring prior approval of the Authority, the decision of the Authority in this regard being final, conclusive and binding on the Selected Agency, and undertakes that it shall not give effect to any such acquisition of equity or control of the Board of Directors of the Selected Agency without such prior approval of the Authority. 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 Selected Agency from any liability or obligation under this Agreement.

For the purposes of this Article 5.3(b):

- (i) 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 Selected Agency;
 - (ii) 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 the shares of the Selected Agency; and
 - (iii) 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 Selected Agency, not less than half of the directors on the Board of Directors of the Selected Agency or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five one per cent) of the Equity of the Selected Agency, shall constitute acquisition of control, directly or indirectly, of the board of directors of the Selected Agency.
- c) The selected Agency (Lead Member and JV Member) shall not be allowed to effect change in ownership during the entire agreement period unless otherwise allowed by the Authority.

5.4. OBLIGATIONS RELATING TO EMPLOYMENT OF TRAINED PERSONNEL

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

5.5. OBLIGATIONS RELATING TO AESTHETICS & QUALITY OF THE PROJECT

The Selected Agency shall maintain a high standard in the appearance and aesthetic quality of the Project and achieve integration of the Project with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Selected Agency shall engage professional architects of repute for ensuring that the design of the Project meets the aforesaid aesthetic standards.

5.6. BRANDING OF PROJECT

The Selected Agency may, in its discretion, name or brand the Project or any part thereof in accordance with the Applicable Laws and Applicable Permits.

5.7. FACILITIES FOR PHYSICALLY CHALLENGED AND ELDERLY PERSONS

The Selected Agency shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, GOI or a substitute thereof and any policy issued by the concerned State Government, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Project.

5.8. EHS STANDARDS AND L&FS STANDARDS

5.8.1 The Selected Agency shall at all times and throughout the Contract Period (designing, development, construction, operation and maintenance) 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”).

5.8.2 The Selected Agency shall prepare and comply with the performance standards, including an environmental and sustainability plan stating how the Selected Agency intends to manage and mitigate risks in relation to EHS. Such performance standards shall take into consideration the principles set out in:

[To be customised by the State]

- (a) National EHS regulations (<http://www.moef.nic.in/> and others);
- (a) Real Estate (Regulation and Development) Act, 2016;
- (b) 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
- (c) L&FS Standards.

5.9. OBLIGATIONS RELATING TO TAXES

The Selected Agency shall pay, at all times during the subsistence of this Agreement, all Taxes including GST, fees, levies, duties, cesses and all other statutory charges payable in respect of the Project and Project Infrastructure.

5.10. OBLIGATIONS RELATING TO EXPERIENCE

- (a) The Selected Agency shall at all times operate the experience in accordance with the Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.
- (b) The Selected Agency shall use the Licensed Premises only for the development, operation and maintenance of the Project and Project Infrastructure and any use thereof in violation of Applicable Laws or this Agreement shall constitute a Selected Agency's Event of Default.
- (c) The Selected Agency shall complete the construction of the Project to achieve Project COD in accordance with the provisions of Article 15.
- (d) The Selected Agency shall employ trained personnel for providing Hospitality Services.

5.11. OBLIGATIONS RELATING TO INFORMATION

5.12.1. Without prejudice to the provisions of applicable laws, applicable permits and this agreement, upon receiving a notice from the authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the selected Agency shall provide such information to the Authority forthwith and in the manner and form required by the authority.

5.12.2. After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the selected Agency's activities under or pursuant to this agreement which the authority proposes to publish, the selected agency shall provide such comments to the Authority in the manner and form required by the Authority.

5.12. OBLIGATIONS RELATING TO EMPLOYMENT OF LOCALS

The Agency shall comply with the requirements of employing the existing personnel/ labour. The Selected Agency shall make necessary efforts to employ locals to the extent possible by providing necessary skill training. All labour law compliance shall be that of the Agency alone.

5.13. OBLIGATIONS RELATING TO OTHER CHARGES

The Selected Agency shall make timely payments for all utility services in respect of the Project Site, including water, sewage, electricity, telecommunication, internet and cable charges etc.

ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

6.1. GENERAL OBLIGATIONS OF THE AUTHORITY

- (a) The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.
- (b) Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Authority agrees to provide support to the Selected Agency and undertakes to observe, comply with and perform the following:
 - (i) upon written request from the Selected Agency, and subject to the Selected Agency complying with Applicable Laws, provide reasonable support and assistance to the Selected Agency in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project, subject to the Selected Agency submitting its applications complete in all respect in a timely manner. The Authority agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Selected Agency;
 - (ii) upon written request from the Selected Agency, provide reasonable assistance to the Selected Agency in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Selected Agency than those generally available to commercial customers receiving substantially equivalent services;
 - (iii) transfer the Project Site on leave and license basis free from Encumbrance to the Selected Agency from the Government Instrumentality and ensure that no barriers are erected or placed on or about the Project Site and/or Project and Project Infrastructure by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of Safety Requirements, Emergency, national security, or law and order;
 - (iv) not do or omit to do any act, deed or thing which may in any manner violate the provisions of this Agreement;
 - (v) support, cooperate with and facilitate the Selected Agency in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (vi) Deleted.
 - (vii) upon written request from the Selected Agency and subject to the provisions of Article 5.5, provide reasonable assistance to the Selected Agency at the Selected Agency's cost and expense and any expatriate personnel of the Selected Agency or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Selected Agency or its Contractors their obligations under this Agreement and the Project Agreements. No such assistance or lack thereof by the Authority shall absolve the Selected Agency of its obligations under this Agreement or amount to Force Majeure under this Agreement.

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

ARTICLE 7: REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

7.1. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS OF THE SELECTED AGENCY

The Selected Agency represents, warrants and undertakes to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and 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;
- (b) it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (e) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (f) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (g) the information furnished in the Bid and as updated on or before the Execution Date is true and accurate in all respects as on the Execution Date;
- (h) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (i) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial, Government Instrumentality or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (k) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which

in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

- (l) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 5.3;
- (m) the {Selected Bidder/Consortium Members} and {its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (n) the {Selected Bidder/Consortium Members} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Selected Agency pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (o) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any Person, save and except as expressly provided in this Agreement;
- (p) no representation or warranty given by it contained herein or in any other document furnished by it to the Authority, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- (q) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (r) all information provided by the (Selected Bidder/ Consortium Member) in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (s) agree that execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts;
- (t) 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; and
- (u) further representations as may be added depending on the specific circumstances of the Selected Agency.

7.2. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AUTHORITY

The Authority represents, warrants and covenants to the Selected Agency that:

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

obligations, under this Agreement;

- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement; and
- (f) 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 Selected Agency for the development of the Project in accordance with the provisions of this Agreement.

7.3. DISCLOSURE

- (a) In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of it. 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 a Party under this Agreement.
- (b) Neither the Authority nor any of its agents or employees shall be liable to the Selected Agency 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 of inadequacy of any kind whatsoever in the data disclosed by the Authority to the Selected Agency in relation to the Project; and/or
 - (ii) any failure to make available to the Selected Agency any materials, documents, drawings, plans or other information relating to the Project.

ARTICLE 8: DISCLAIMER

- (a) The Selected Agency acknowledges that prior to the execution of this Agreement, the Selected Agency has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, 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 or completeness of any assessment, assumption, statement or information provided by it and the Selected Agency confirms that it shall have no claim whatsoever against the Authority in this regard.
- (b) The Selected Agency acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in 8(a) above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Selected Agency, Associates or any person claiming through or under any of them.
- (c) The Parties agree that any mistake or error in or relating to any of the matters set forth in 8(a) above shall not vitiate this Agreement or render it voidable.
- (d) In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in 8(a) 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 8(d) shall not prejudice the disclaimer of the Authority contained in 8(a) and shall not in any manner shift to the Authority any risks assumed by the Selected Agency pursuant to this Agreement.
- (e) Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Selected Agency and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 9: PERFORMANCE SECURITY & SECURITY DEPOSIT

9.1. PERFORMANCE SECURITY

- (a) The Selected Agency shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority within 15 (fifteen) days from the Letter of Acceptance, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. [●] (Rupees [●])⁴ substantially in the format set forth in Schedule F (the “**Performance Security**”). The Selected Agency shall maintain and keep in force the Performance Security for the entire duration of the Performance Security Period in accordance with this Article 9. Until such time the Performance Security is provided by the Selected Agency 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 Selected Agency.

For avoidance of doubt it is clarified that the amount of Performance Security as above shall include the amount Additional Performance Security, if applicable, as per the provisions of the RFP.

- (b) Notwithstanding anything to the contrary contained in this Agreement, in the event that the Performance Security is not provided by the Selected Agency within the above specified period, the Authority shall have the right to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Selected Agency under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Selected Agency, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

- (c) Retention Money / Security Deposit shall be collected by deductions from the running bills / payments of the Agency at the rate of 5% of the gross amount of the bill / payments during the Construction Period (the " Retention Money / Security Deposit"), subject to the condition that the maximum amount of Retention Money shall not exceed 5% (five per cent) of the Contract Price. The Security Deposit so deducted shall be released after the completion of the Defect Liability Period as per MPPWD Manual.

9.2 APPROPRIATION OF PERFORMANCE SECURITY

Upon occurrence of a Selected Agency Default or failure to meet any Condition Precedent or failure to make any payment which becomes due and payable to the Authority under and in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable as liquidated damages from the Performance Security as Damages for such Selected Agency Default or failure to meet any Condition Precedent or failure to pay such amounts which are due and payable by the Selected Agency to the Authority under and in accordance with the provisions of this Agreement. Upon such encashment and appropriation of the Performance Security, the Selected Agency shall, within [15 (fifteen)] days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 32. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Selected Agency shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Selected Agency Default or for satisfying any Condition

⁴ Calculated at 2.5% (two and half per cent) of the amount specified in the definition of Total Project Cost.

Precedent, and in the event of the Selected Agency not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 32.

9.3 RELEASE OF PERFORMANCE SECURITY

The Performance Security shall remain in force and effect for a period of [6 (six) months] after completion of Contract Period (the “**Performance Security Period**”); provided, however, that the Performance Security shall not be released if the Selected Agency is in breach of this Agreement. Upon request made by the Selected Agency for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Article 9.3 and subject to the Authority shall release the Performance Security forthwith.

9.4 APPROPRIATION OF PERFORMANCE SECURITY

Upon any amounts becoming due and payable by the Selected Agency to the Authority under and in accordance with the terms of this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the amounts due and payable. For avoidance of doubt, the Parties expressly agree that upon the Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.5 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 Selected Agency 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 Selected Agency and/or any amounts due and payable by the Selected Agency 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.

ARTICLE 10. RIGHT OF WAY

10.1 THE PROJECT SITE

The site of the Project and the Project Infrastructure shall comprise the land as described in Schedule A, and in respect of which the Right of Way shall be provided and granted by the Authority to the Selected Agency on a leave and licensee basis under and in accordance with this Agreement (the “**Project Site**”).

10.2 LICENSE, ACCESS TO THE PROJECT SITE

- 10.2.1 The Authority hereby grants access to the Project Site to the Selected Agency for carrying out surveys, investigations and soil tests of the Project Site that the Selected Agency may deem necessary prior to the Appointed Date, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of the survey, investigations and tests carried out or work undertaken by the Selected Agency on or about the Project Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Contract Fee, this Agreement and the covenants and warranties on the part of the Selected Agency herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Selected Agency, commencing from the Appointed Date, leave and license rights in respect of all the land comprising the Project Site which is described in Schedule A. The Project Site shall be handed-over to the Selected Agency and provided on an 'as is where is' basis, free of any Encumbrances, to develop, operate and maintain the Project, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the 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 Contract Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3 The license, access, Right of Way and all other rights to the Project Site granted under this Agreement by the Authority to the Selected Agency shall always be subject to existing rights of way.
- 10.2.4 It is expressly agreed that the Selected Agency's rights to the Project Site shall terminate automatically and forthwith, without the need for any action to be taken by the Authority, upon the Termination of this Agreement for any reason whatsoever. For avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Project Site by the Selected Agency or its Contractors, the rights of the Selected Agency in respect of the Project Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 The Selected Agency hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Selected Agency a transfer or surrender of the rights granted hereunder at any time after the Contract Period has expired or has been Terminated in terms hereof, whichever is earlier, a sufficient proof of which shall be the declaration of any duly authorised officer of the Authority, and the Selected Agency consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Project Site are the property of the Authority except that the Selected Agency shall be entitled to exercise usufructuary rights thereon during the Contract Period.

10.3 PROCUREMENT OF THE PROJECT SITE

- 10.3.1 Pursuant to the notice specified in Article 4.1.2, the Authority Representative and the Selected Agency shall, on a mutually agreed date and time but in any event no later than [10 (ten)] days prior to the Appointed Date, inspect the Project Site and prepare a memorandum containing an inventory of the Project Site including the vacant land, buildings, structures, road works, trees and any other immovable property on or attached to the Project Site, free from any Encumbrance. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Project Site to which vacant access and Right of Way has not been granted to the Selected Agency. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Article 10.2.1, be deemed to constitute a valid Right of Way to the Selected Agency for free and unrestricted use and development of the Project Site which is vacant and free from any Encumbrance during the Contract Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For avoidance of doubt, it is agreed that rights, including the Right of Way with respect to the parts of the Project Site as set forth in the Appendix shall be deemed to have been granted to the Selected Agency upon vacant access thereto being provided by the Authority to the Selected Agency.
- 10.3.2 In case of any dispute between the Selected Agency and the Authority in relation to the survey of the Project Site and the Appendix, the decision of the Authority shall prevail and shall be binding on the Selected Agency.
- 10.3.3 Without prejudice to the provisions of Article 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted [vacant access and Right of Way such that the Appendix shall not include more than [10% (ten per cent)] of the total area of the Project Site required and necessary for the Project and Project Infrastructure]. For avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the development of the Project and Project Infrastructure.
- 10.3.4 On and after signing the memorandum referred to in Article 10.3.1, and until the Transfer Date, the Selected Agency shall maintain a round-the-clock vigil over the Project Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Selected Agency shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expense.
- 10.3.5 Upon receiving Right of Way to and in respect of any land included in the Appendix, the Selected Agency shall complete the Development Works in accordance with the Project Completion Schedule set forth in Schedule G.
- 10.3.6 The Authority shall procure any additional land that may be required for the Project or for work specified in Change of Scope Order issued under Article 16, in accordance with the provisions of this Agreement, and upon procurement thereof, such land shall form part of the Project Site; provided that no land to be acquired by the Authority hereunder shall be deemed to be included in the Appendix referred to in this Article
- 10.3 and dealt with accordingly. For avoidance of doubt, the Parties agree that any land required for the Project, in addition to the land included in Schedule A, shall be acquired at the sole discretion of the Authority and the Selected Agency shall have no right to claim in the event the Authority declines any such acquisition in whole or in part.

10.4 PROJECT SITE TO BE FREE FROM ENCUMBRANCES

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

10.5 PROTECTION OF PROJECT SITE FROM ENCROACHMENTS

During the Contract Period, the Selected Agency shall protect the Project Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Selected Agency 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 Selected Agency therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 SPECIAL OR TEMPORARY RIGHT OF WAY

The Selected Agency 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 Selected Agency 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 Project Infrastructure and the performance of its obligations under this Agreement.

10.7 ACCESS TO THE AUTHORITY

The Right of Way and right to the Project Site granted to the Selected Agency hereunder shall always be subject to the right of access of the Authority, its representatives or authorised personnel, the Authority and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 DEVELOPMENT OF PROJECT SITE

The Selected Agency 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 PERMITTED USE

- 10.9.1 The Selected Agency shall use or cause to be used any or all part of the Project Site for operating, managing and maintaining the Project and Project Infrastructure as approved for the applicable tourism experience by the Authority and in accordance with Applicable Laws and Applicable Permits. Any use of the Project Site in violation thereof shall constitute a Selected Agency Default under this Agreement.

ARTICLE 11: UTILITIES AND ASSOCIATED ROADS

11.1 EXISTING UTILITIES AND ROADS

Notwithstanding anything to the contrary contained herein, the Selected Agency shall ensure that the Government Instrumentality owning the existing roads, 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. Further, the Authority shall, upon written request from the Selected Agency, initiate and undertake at the Selected Agency's cost, legal proceedings for acquisition of any Right of Way necessary for such diversion.

11.2 SHIFTING OF OBSTRUCTING UTILITIES

The Selected Agency shall, subject to Applicable Laws, provisions of Applicable Permits and with the 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 and/or the Project Infrastructure. The cost of such shifting shall be borne by the Selected Agency, and in the event of any delay in shifting thereof, the Selected Agency shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 FELLING OF TREES

The Authority shall assist the Selected Agency in procuring the Applicable Permits for felling of trees to be identified by the Selected Agency for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Project and the Project Infrastructure. In the event of any delay in felling thereof for reasons beyond the control of the Selected Agency, it shall in the sole discretion of the Authority, be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Selected Agency and any revenues thereof shall be paid to the Authority.

ARTICLE 12: DEVELOPMENT OF TOURIST EXPERIENCE AND PROJECT INFRASTRUCTURE

12.1 OBLIGATIONS RELATING TO DEVELOPMENT WORKS

12.1.1 Prior to the commencement of Development Works, the Selected Agency shall, along with the Drawings:

- (a) submit to the Authority its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule G;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits.

12.1.2 The Selected Agency shall inform the Authority for any structural change to the Project Site or demolition of any part of the Project Site prior to undertaking such structural change or demolition.

12.1.3 Any specific works necessary under repair inside/outside or in the vicinity of heritage building or precinct, that require intervention into the historic fabric of the sites including restoration, conservation, change in design of fittings or historic fixtures, *jaali*, flooring, any wall mounted displays/ signages, plaster or surface finishes, paintings, etc. should be undertaken after written permission from the authority.

12.1.4 The Selected Agency acknowledges and agrees that any or all Development Works which are in any manner attached to the floors, walls or ceiling, including any linoleum or other floor coverings of similar character that may be cemented or otherwise adhesively affixed to the floor, and any heating, ventilating or air- conditioning equipment, the removal of which may cause any damage to the Project Site, shall remain upon the Project Site, and shall be transferred to the Authority upon Termination, without any cost to the Authority; provided, however, that the Authority may, by written notice to the Selected Agency, require the removal of such alteration or addition, in which case the Selected Agency shall repair, at its own cost and expense, any and all damages to the Project Site resulting from such removal. For the avoidance of doubt, the Parties agree that the Selected Agency shall at all times be entitled to remove any fixtures and furniture installed by it on the Project Site.]⁵

12.2 DRAWINGS

In respect of the Selected Agency's obligations relating to the Drawings of the Project and Project Infrastructure, the following shall apply:

- (a) the Selected Agency shall prepare and submit no later than 30 days from the execution date and in such sequence as is consistent with the Project Completion Schedule, the copies of all Drawings to the Authority for review. Such Drawings shall be prepared for a Project taking into account the capacities envisaged under the Minimum Development Obligations;

⁵ In the event the land is vacant, these Articles 12.1.2. and 12.1.4 shall be omitted.

- (b) by submitting the Drawings for review to the Authority, the Selected Agency shall be deemed to have represented that it has determined and verified that the design and engineering are in conformity with the Scope of the Project, the Specifications and Standards, Applicable Laws and Good Industry Practice;
- (c) within 15 (fifteen) days of the receipt of the Drawings, the Authority shall review the same and convey its observations to the Selected Agency with particular reference to their conformity or otherwise with the scope of Project and the Specifications and Standards. The Selected Agency shall not be obliged to await the observations of the Authority on the Drawings submitted pursuant hereto beyond the specified period and may begin or continue Development Works at its own discretion and risk;
- (d) if the aforesaid observations of the Authority indicate that the Drawings are not in conformity with the Scope of Project and the Specifications and Standards, such Drawings shall be revised by the Selected Agency and resubmitted to the Authority for review within 7 (seven) days. The Authority shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) no review or observation of the Authority and/or its failure to review or convey its observations on any Drawings shall relieve the Selected Agency of its obligations and liabilities under this Agreement in any manner nor shall the Authority or the Authority be liable for the same in any manner;
- (f) without prejudice to the foregoing provisions of this Article 12.2, the Selected Agency shall submit to the Authority for review and comments, its Drawings relating to the location and layout of the Project, Project Infrastructure and general arrangement drawings thereof within 30 day of the Appointed Date and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within [15 (fifteen)] days of the receipt of such Drawings. The provisions of this Article 12.2 shall apply *mutatis mutandis* to the review and comments thereunder;
- (g) within 30 (thirty) days of the Project COD, the Selected Agency shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and its editable digital format or in such other medium as may be acceptable to the Authority, reflecting the Project and the Project Infrastructure, as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and Project Infrastructure and setback lines, if any, of the buildings and structures forming part of the Project. It is clarified that the Selected Agency shall submit the Drawings in accordance with Schedule D.

12.3 CONSTRUCTION AND DEVELOPMENT OF PROJECT

- 12.3.1 On or after the Appointed Date, the Selected Agency shall undertake development of the Project on the Project Site as specified in Schedule B and in conformity with the Specifications and Standards set forth in Schedule C (the “**Minimum Development Obligations**”). The Selected Agency shall undertake the Minimum Development Obligations, where the Development Works shall commence from the Appointed Date and shall be completed in accordance with the Project Completion Schedule as set forth in Schedule G.
- 12.3.2 The Selected Agency shall develop and construct the Project in accordance with the Project Completion Schedule set forth in Schedule G. In the event that the Selected Agency fails to achieve any Project Milestone within 30 (thirty) days from the date set forth for such Project Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons solely and directly attributable to the Authority, the Authority shall take following action(s);

-
- a) Authority shall retain an amount from the sums payable and due to the Selected Agency as per following scale -
- i. Slippage up to 25% in financial target during the milestone under consideration
— 2.5% of the work remained unexecuted in the related time span.
 - ii. Slippage exceeding 25% but up to 50% in financial target during the milestone under consideration
— 5% of the work remained unexecuted in the related time span.
 - iii. Slippage exceeding 50% but up to 75% in financial target during the milestone under consideration
—7.5% of the work remained unexecuted in the related time span.
 - iv. Slippage exceeding 75% in financial target during the milestone under consideration
—10% of the work remained unexecuted in the related time span.

For arriving at the dates of completion of time span related to different milestones, delays which are not attributable to the Agency shall be considered. The slippage on any Project Milestone is if made good in subsequent milestones or at the time of stipulated period of completion provided in Schedule G, the amount retained as above shall be refunded.

- b) Agency shall pay Damages to the Authority in a sum calculated at the rate of 1% (one per cent) per week subject to maximum 10% of the Project Cost; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule G has been amended as above; provided further that in the event Project COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Article 12.3.2 shall be refunded by the Authority to the Selected Agency, but without any interest thereon. For avoidance of doubt, it is agreed that recovery of Damages under this Article 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, or otherwise including the right of Termination thereof.

- 12.3.3 In the event that the Development Works pertaining to the Minimum Development Obligations is not completed within 90 (ninety) 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 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 90 (ninety) days and allow for a weekly extension beyond such period of 90 (ninety) days; provided that the Selected Agency agrees and pays in advance, the Damages calculated in accordance with Article 12.3.2 above, for each week of such extension. To the extent that the Authority has agreed to allow for an extension and the Selected Agency has paid the Damages in advance as stated above, the Authority shall not terminate this Agreement in accordance with the provisions of this Article 12.3.3. Notwithstanding the foregoing, the Parties agree that this Article shall not prejudice, in any manner whatsoever, the Authority's right of Termination under any other provision of this Agreement.

12.4 TESTS

- 12.4.1 No later than 30 (thirty) days prior to the likely completion of the Development Works, the Selected Agency shall notify the Authority of its intent to subject the Project and Project Infrastructure to Tests. The date and time of each of the Tests shall be

determined by the Authority in consultation with the Selected Agency, and notified to the Authority who may designate its representative to witness the Tests. The Selected Agency shall provide such assistance as the Authority may reasonably require for conducting the Tests. In the event of the Selected Agency and the Authority failing to mutually agree on the dates for conducting the Tests, the Selected Agency shall fix the dates, but not less than [10 (ten)] days' notice to the Authority.

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

12.5 SAFETY CERTIFICATION PRIOR TO PROJECT COD

The Selected Agency shall, not later than [15 (fifteen)] days prior to the likely Project COD, notify the Authority and the Authority of the compliance or Safety Requirements and invite them to observe any or all the Tests that may be specified by the Authority in accordance with Applicable Laws, Applicable Permits and Good Industry Practice to determine that the Project and Project Infrastructure is safe for entering into commercial service, and the costs of such Tests shall be borne by Agency irrespective of the number of times such tests are conducted in case of failure of Test.

12.6 OPTIONAL DEVELOPMENT OBLIGATION

- 12.6.1 The Selected Agency shall have the right but not the obligation to construct and develop any unutilised land which forms part of the Project Site for building any facility, which may include permanent and temporary structures, extension of the building façade, construction of facilities for adventure sports, etc., for the benefit of the Users which by its nature may increment the Tourist Services and Experience and may lead to the potential increase in the Revenue from the Project on or after the Project COD during the period up to [5 (five) years] prior to the expiry of the Contract Period (the “**Optional Development Obligation**”), provided, that it has got prior permission from the Authority of its proposal to undertake the Optional Development Obligation. In the event that the Selected Agency exercises its right to undertake the Optional Development Obligation, it shall do so at its own risk, cost and expense provided that such obligation does not affect the existing Project and the Project Infrastructure. All the terms, conditions, rights and obligations of the Selected Agency in relation to construction and operation of the Minimum Development Obligations including submission of Drawings in accordance with Article 12.2 shall apply *mutatis mutandis* for the construction, development and operation of any facility as part of the Optional Development Obligation including, submission of periodic reports and other relevant documents to the Authority under Article 13, Article 14, and Article 15.

- 12.6.2 It is clarified that in the event that the Authority approves the construction and development of any Optional Development Obligation proposed to be developed by the Selected Agency in accordance with Article 12.6.1, the Authority shall be bound to perform all its obligations under this Agreement with respect to such Optional Development Obligation, including its obligations to pay Termination Payments to the Selected Agency in accordance with the provisions of this Agreement.
- 12.6.3 Further, it is clarified that in the event the Selected Agency exercises Optional Development Obligation, the Selected Agency will procure all necessary approvals/ permits including as mentioned at Clause 4.1.2, as applicable, for the additional build up area it wishes to develop under Optional Development Obligations, at its own cost and risk.

ARTICLE 13. MONITORING OF DEVELOPMENT WORKS

13.1 MONTHLY PROGRESS REPORTS

During the Construction Period, the Selected Agency shall, within [7 (seven)] days after the close of each month, furnish to the Authority or Authority's Representative, a monthly report on progress of the Development Works and shall promptly give such other relevant information as may be required by the Authority and/or Authority's Representative. The provisions of this Article 13 shall apply *mutatis mutandis* to the Development Works undertaken for the Minimum Development Obligations and the Optional Development Obligation.

13.2 INSPECTION

During the construction of Development Works, the Authority or Authority's Representative shall inspect the Project and Project Infrastructure, at least once in 3 (three) months and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Specifications and Standards. It shall send a copy of the Inspection Report shall be send to the Selected Agency within [7 (seven)] days of such inspection and upon receipt thereof, the Selected Agency shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Notwithstanding the foregoing, such inspection or submission of Inspection Report by the Authority shall not relieve or absolve the Selected Agency of its obligations and liabilities hereunder in any manner whatsoever.

13.3 TESTS

- 13.3.1 For determining that the development works conform to the agreement and specifications and standards, the Authority shall require the selected agency 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 Authority from time to time in accordance with good industry practice for quality assurance. the size of sample for such tests shall, to the extent possible not exceed [10% (ten per cent)] of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with good industry practice. the selected agency shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Authority and furnish the results thereof to the Authority. One half of the costs incurred on such tests, and to the extent certified by the Authority as reasonable, shall be reimbursed by the Authority to the Selected Agency. Provided however, that the Authority may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the selected agency for its own quality assurance in accordance with good industry practice, and in such an event, the selected agency shall cooperate with, and provide the necessary assistance to, the Authority for discharging its functions hereunder. For 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 Selected Agency.
- 13.3.2 in the event that results of any tests conducted under this article 13.3 establish any defects or deficiencies in the development works, the Selected Agency shall carry out remedial measures and furnish a report to the Authority in this regard. the Authority shall require the Selected Agency to carry out or cause to be carried out tests to determine that such remedial measures have brought the development works into compliance with specifications and standards, and the procedure under article13.3 shall be repeated until such development works conform to the specifications and standards. for avoidance of doubt, it is agreed that the tests pursuant to

this article

13.3 shall be undertaken in addition to and independent of the tests carried out by the selected agency for its own quality assurance in accordance with applicable laws, applicable permits and good industry practice. it is also agreed that a copy of the results of such test shall be sent by the Selected Agency to the Authority forthwith.

13.4 DELAYS DURING CONSTRUCTION

Without prejudice to the provisions of Article 12.1, if the rate of progress of Development Works is such that the Minimum Development Obligation is not likely to be completed within the time period stipulated, the Selected Agency shall inform the Authority and the Authority at fortnight intervals, in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project COD.

ARTICLE 14. COMPLETION CERTIFICATE

14.1 COMPLETION CERTIFICATE

- 14.1.1 Agency on completion of construction of the project shall request the Authority for issuance of completion certificate.
- 14.1.2 Within 30 (thirty) days after receiving the request and upon being satisfied by the documents provided by the Selected Agency, the Authority shall inspect the Project and either:
- (a) issue to the Selected Agency and the Authority a certificate substantially in the form set forth in Schedule I (the “**Completion Certificate**”), if the components of projects are found to be constructed and completed in accordance with the terms of the agreement; or
 - (b) issue a written notice to Selected Agency listing the items remaining to be completed along with the timelines to complete them.
- 14.1.3 In the event the Selected Agency fails to complete the items within the timeline mentioned in this Article, then the Authority without prejudice to any of its rights under this Agreement including Termination thereof, may waive of completion of such items. Authority’s decision in this regard shall be at its discretion and shall be final and binding.

14.2 DEEMED COMPLETION CERTIFICATE

In the event that upon successful determination by the Authority of the successful completion of all Tests in accordance with Article 12.4 above, the Authority fails to issue the Completion Certificate to the Selected Agency within the time specified in Article 14.1, at the end of such period, such Completion Certificate shall be deemed to have been issued to the Selected Agency in accordance with the provisions of this Article 14.2 (the “**Deemed Completion Certificate**”).

14.3 RESCHEDULING OF TESTS

If the Authority / Authority’s Representative certifies to the Selected Agency that it is unable to certify the completion of the facilities required for rendering Hospitality Services or issue the Completion Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Selected Agency at its own cost and expense, shall be entitled to re- schedule the Tests and hold the same as soon as reasonably practicable. The provisions of the Article 14.2 shall apply *mutatis mutandis* to such re-scheduled Tests.

ARTICLE 15: ENTRY INTO COMMERCIAL SERVICE

15.1 COMMERCIAL OPERATION DATE

The Minimum Development Obligations shall be deemed to be complete when the Project have been completed and Completion Certificate or the Deemed Completion Certificate, as the case may be, in respect of the Project, is issued under the provisions of Article 14, and accordingly the commercial operation date, shall be the date on which such Completion Certificate or the Deemed Completion Certificate, as the case may be, is issued (the “**Project COD**”). The Minimum Development Obligations shall enter into commercial service on Project COD whereupon the Selected Agency shall be entitled to provide Hospitality Services and charge Revenue from the Users, subject to compliance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement.

ARTICLE 16. CHANGE OF SCOPE

16.1 CHANGE OF SCOPE

- (a) The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Provided that, the Authority shall be entitled to require the Selected Agency to undertake any Change of Scope only during the Construction Period. Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Selected Agency and reimbursed to it by the Authority in accordance with Article 16.3.
- (b) If the Selected Agency determines at any time that a Change of Scope is necessary for providing safer and improved Hospitality Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within [15 (fifteen)] days of receipt of such notice, either accept such Change of Scope as it is or with modifications, if any, and initiate proceedings therefore in accordance with this Clause or inform the Selected Agency in writing of its reasons for not accepting such Change of Scope.
- (c) Any works or services which are provided under and in accordance with this Clause 16.1 shall form part of the Project and Project Infrastructure and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 PROCEDURE FOR CHANGE OF SCOPE

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Selected Agency a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Selected Agency shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documents in support of:
 - (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period;
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the market rates applicable to the works assigned by the Authority to its contractors, any impact on the operations or the cost of operation of the Project and Project Infrastructure, along with the proposed premium or discount on such rates; provided that the cost incurred by the Selected Agency in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Authority as reasonable; and
 - (c) its likely impact on the Gross Revenue and profitability of the Project.
- 16.2.3 Upon receipt of information set forth in Article 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Selected Agency, and the Parties shall, with assistance, thereupon of the Authority, make good faith efforts to agree upon the

time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Selected Agency to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Selected Agency to proceed with the performance thereof pending resolution of the Dispute.

- 16.2.4 The provisions of this Agreement, insofar as they relate to Development Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Selected Agency under this Article 16.

16.3 PAYMENT FOR CHANGE OF SCOPE

In case of issuance of change of scope by the Authority, the Selected Agency shall, after commencement of work, present to the Authority bills for payment in respect of works in progress or completed works, as the case may be, supported by such Documents as is reasonably sufficient for the Authority to determine the accuracy thereof. Upon the receipt of such bills, the Authority shall disburse to the Selected Agency such amounts as are certified by the Authority, as reasonable and after making applicable deductions, in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure in Article 39.

16.4 RESTRICTIONS ON CERTAIN WORKS

- 16.4.1 Notwithstanding anything to the contrary contained in this Article 16, the Authority shall not require the Selected Agency to undertake any works or services if such works or services are likely to delay the Project COD; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such order shall not be reckoned for the purposes of determining completion of the Project and issuing the Completion Certificate or Deemed Completion Certificate.
- 16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Selected Agency shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed [20% (twenty per cent)] of Project Cost.

16.5 FINANCING BY THE SELECTED AGENCY

Notwithstanding anything to the contrary contained in this Article 16, the Parties may, subject to this Article 16.5 agree on determining the Change of Scope which may be financed entirely by the Selected Agency, if such arrangement enables the Selected Agency to provide the financing and undertake its recovery in accordance with the provisions of this Agreement.

ARTICLE 17: OPERATION AND MAINTENANCE

17.1 O&M OBLIGATIONS OF THE SELECTED AGENCY

17.1.1 During the operation period, the Selected Agency shall operate and maintain the Project and the project infrastructure in accordance with this agreement if required, modify, repair or otherwise make improvements to the Project and the project infrastructure to comply with the provisions of this agreement, applicable laws and applicable permits, and conform to specifications and standards and good industry practice. The obligations of the selected agency hereunder shall include:

- (a) ensuring safe, hygienic and efficient Services and maintaining a high standard of cleanliness and hygiene in the Project;
- (b) undertaking operation and maintenance of the Project 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 Selected Agency is able to optimally use the Project Infrastructure during the Operation Period such that the Project is self-sustained;
- (d) carrying out periodic preventive maintenance of the Project and Project Infrastructure;
- (e) undertaking routine maintenance including prompt repairs of all elements and components of the Project and Project Infrastructure so as to ensure compliance with the Maintenance Requirements and the Specification and Standards;
- (f) undertaking major maintenance, replacement of components and parts, repairs to structures, and repairs and development of associated facilities, including the Project Infrastructure;
- (g) providing round the clock security at the Project Site and preventing with the assistance of the concerned law enforcement agencies, any encroachments on or authorised entry on the Project Site;
- (h) 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;
- (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project and Project Infrastructure and for providing Hospitality Services in conformity with the Good Industry Practice;
- (j) maintaining a public relations unit to interface with and attend to suggestions from the Users, Government Instrumentality, media and other agencies;
- (k) complying with the Safety Requirements; and
- (l) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement.

17.1.2 The Selected Agency shall remove promptly from the Project Site all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident

debris) and keep the Project and Project Infrastructure in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.

17.1.3 The Selected Agency shall maintain, in conformity with Good Industry Practice and Applicable Laws and Applicable Permits, all stretches of approach roads, or other structures situated on the Project Site.

17.1.4 If the Selected Agency fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Selected Agency, 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. In the event the Authority is required to pay any penalty to the Government Instrumentality under any Applicable Laws then the Authority shall be entitled to be indemnified by the Selected Agency under Article 37.

17.2 MAINTENANCE REQUIREMENTS

The Selected Agency shall procure that at all times during the Operation Period, the Project and the Project Infrastructure are maintained in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the “**Maintenance Requirements**”), as more specifically set out in Schedule J.

17.3 SAFETY, BREAKDOWNS AND ACCIDENTS

- 17.3.1 The Selected Agency shall ensure safe conditions at the Project Site for the Users and Authority, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures in conformity with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In the event of occurrence of any damage, breakdowns and/or accidents, the Selected Agency shall undertake removal of obstruction and debris without delay.
- 17.3.2 Selected Agency's responsibility for rescue operations in the Project and Project Infrastructure shall include safe evacuation of all Users, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction, which may endanger or interrupt the Hospitality Services.

17.4 AUTHORITY’S RIGHT TO TAKE REMEDIAL MEASURES

- 17.4.1 In the event the Selected Agency does not maintain, repair and/or rectify any defects and deficiencies in the Project and/or the Project Infrastructure or any part thereof in conformity with the Maintenance Requirements and fails to commence remedial works within [15 (fifteen)] days of receipt of the O&M Inspection Report or notice in this behalf from the Authority or the Authority, as the case may be, the Authority, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Selected Agency, and to recover its cost from Selected Agency. In addition to recovery of the aforesaid cost, a sum equal to [20% (twenty per cent)] of such cost shall be paid by the Selected Agency to the Authority as Damages. For avoidance of doubt, the rights of the Authority under this Article 17.4 shall be without prejudice to its rights and remedies under Article 17.3.]

17.5 OVERRIDING POWERS OF THE AUTHORITY

- 17.5.1 If in the opinion of the Authority, the Selected Agency is in material breach of its obligations under this Agreement and in particular, the Maintenance Requirements, and such breach is causing or is likely to cause material hardship or danger to any person or property, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Selected Agency to take reasonable measures immediately for removing such hardship or danger as the case may be.
- 17.5.2 In the event the Selected Agency, upon notice under Article 17.5.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may take over the performance of any or all the obligations of the Selected Agency to the extent deemed necessary by it for removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Selected Agency in accordance with the provisions of Article 17 along with the Damages specified therein.

17.6 RESTORATION OF LOSS OR DAMAGE TO THE PROJECT AND PROJECT INFRASTRUCTURE

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

17.7 MODIFICATIONS TO THE PROJECT AND PROJECT INFRASTRUCTURE

The Selected Agency shall not carry out any material modifications to the Project and the Project Infrastructure, save and except where such modifications are necessary for the Project and the Project infrastructure to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Selected Agency shall notify the Authority of the proposed modifications along with particulars thereof at least [15 (fifteen)] days before commencing work on such modifications and shall reasonably consider any suggestions which the Authority may make within [15 (fifteen)] days of receiving Selected Agency's proposal. For avoidance of doubt if the modification has a Material Adverse Effect on the safety thereof or the safety of Users and other persons, the same shall be subjected to tests and certification specified in Article 13.3. For avoidance of doubt all modifications hereunder shall comply with the safety requirements, Specifications and Standards, Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice.

17.8 EXCUSE FROM PERFORMANCE OF OBLIGATIONS

The Selected Agency shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to Users, or the Project Infrastructure is not available for the use of the Project on account of any of the following for the duration thereof:

- (a) a Force Majeure Event;

- (b) measures taken to ensure the safe use of the Project and Project Infrastructure, except when unsafe conditions occurred because of failure of the Selected Agency to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project or Project Infrastructure.

Provided, that any such event and particulars thereof shall be notified by the Selected Agency to the Authority without any delay.

Notwithstanding the above, the Selected Agency shall keep all unaffected parts of the Projects open to Users provided that Hospitality Services can be provided safely.

Article 18 SAFETY REQUIREMENTS

18.1 SAFETY REQUIREMENTS

The Selected Agency shall comply with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice for securing the safety of the Project, Project Infrastructure, safety of the Users and other persons present in the premises. In particular, the Selected Agency shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project and the Project Infrastructure and shall comply with the safety requirement set forth in Schedule K (the “**Safety Requirements**”).

18.2 EXPENDITURE ON SAFETY REQUIREMENTS

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

Article 19 MONITORING OF OPERATION AND MAINTENANCE

19.1 BI-ANNUAL STATUS REPORTS

During Operation Period, the Selected Agency shall, no later than [7 (seven)] days after the close of every six months from date of COD, furnish to the Authority a report, in a mutually agreed format, stating in reasonable detail the condition of the Project and Project Infrastructure, including its compliance or otherwise with the Maintenance Requirements and the Safety Requirements, and shall promptly give such other relevant information as may be required by the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 INSPECTION

The Authority shall inspect the Project and the Project Infrastructure at least once every quarter. 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 Selected Agency within [15 (fifteen)] days of such inspection.

19.3 TESTS

For determining that the Project and the Project Infrastructure conforms to the Maintenance Requirements, the Authority shall require the Selected Agency to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Selected Agency 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 cost incurred on such tests, and to the extent certified by the Authority as reasonable, shall be reimbursed by the Authority to the Selected Agency.

19.4 REMEDIAL MEASURES

- 19.4.1 The Selected Agency 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 19.3 and furnish a report in respect thereof to the Authority and the Authority within [15 (fifteen)] days of receiving the O&M Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than [15 (fifteen)] days, the Selected Agency shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 19.4.2 The Authority shall require the Selected Agency to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project and Project Infrastructure into compliance with the Maintenance Requirements and the procedure set forth in this Article 19.4.2 shall be repeated until the Project and the Project Infrastructure conforms to the Maintenance Requirements.

Article 20 SAFETY AND SECURITY

20.1 SECURITY OBLIGATIONS OF THE SELECTED AGENCY

- 20.1.1 The Selected Agency shall provide and maintain perimeter fencing or other suitable protection around the Project and the Project Infrastructure and shall be responsible for the security arrangements for the Project in order to maintain safe and orderly conduct of its business and the security thereof.
- 20.1.2 The Selected Agency shall install and operate a closed-circuit television system to monitor the Project and such other parts of the Project as may be necessary and expedient for safe operations of the Project in accordance with Good Industry Practice.
- 20.1.3 The Selected Agency shall engage and depute trained personnel for maintaining the security and safety of Users inside the Project Site in accordance with Good Industry Practice.
- 20.1.4 The Selected Agency shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority's actions or the actions of any organization authorised by the Authority other than those resulting from willful or grossly negligent acts and omissions of the Authority. The Authority agrees that it shall cause the relevant organization to take such actions as reasonably deemed necessary by them for the security of the Project, without unduly disrupting the operations of the Project or interfering with the exercise of rights or fulfilment of obligations by the Selected Agency under this Agreement. The Selected Agency agrees that it shall extend its full support and cooperation to the Authority and to the other organization authorised by the Government in discharge of their obligations for and in respect to the security of the Project and the Project Infrastructure.
- 20.1.5 The Selected Agency shall abide by and implement any instructions of the Authority and the Authority for enhancing the security within and around the Project and Project Infrastructure. The Selected Agency shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the implementation of any instruction of the Authority or the Authority.

Article 21 KEY PERFORMANCE INDICATORS

21.1 QUALITY OF TOURIST SERVICES

- (a) The Selected Agency shall procure that all Users in the Project receive quality services in accordance with the provisions of this Agreement and Good Industry Practices.
- (b) The Selected Agency shall procure and ensure that all personnel engaged in the provision of Services, are suitably qualified and receive sufficient training and instructions in accordance with Good Industry Practice and standards of their relevant professional body, if any, for execution of their duties, which shall at a minimum, be compliant with the performance standards set out at Schedule C. The Selected Agency shall regularly supervise and monitor the performance of the personnel to ensure that they comply with this Agreement, Applicable Laws and Good Industry Practice.
- (c) The Selected Agency shall address to any complaints received from the Users in a prompt and effective manner and take all reasonable efforts to accommodate the requests of the Users.

21.2 Additional Services

Notwithstanding anything to the contrary contained herein, the Selected Agency shall be entitled to undertake any services which become permissible by any Change in Law. In the event that the Selected Agency intends to undertake any such services, it shall obtain all necessary applicable permits in accordance with such Change in Law and comply with such Change in Law throughout the Contract Period.

Article 22 INDEPENDENT EXPERTS
Article Deleted

Article 23 FINANCIAL CLAUSE

Article Deleted

Article 24 PROJECT COST AND ANNUAL FEE

24.1 PAYMENT AGAINST PROJECT COST

- 24.1.1 The payment against the Project Cost a sum of Rs. [●] + **GST as applicable** shall be disbursed to the agency in accordance with the provisions of this Clause 24.1.
- 24.1.2 Deleted.
- 24.1.3 the project cost shall be disbursed in accordance with the project milestones achieved and subject to any deductions such as Security Deposit etc.in accordance with the provisions of the agreement. The payments shall be made in accordance with Schedule G.
- 24.1.4 in the event of occurrence of an agency default, disbursement of payment against the Project Cost shall be suspended till such agency default has been cured by the agency.

24.2 ANNUAL FEE

- 24.2.1 In consideration of the cost of the Contract, the Selected Agency shall during the Contract Period, pay to the Authority by way of **Annual Fee a sum of Rs. [●] per annum + GST** as applicable in the manner laid down in Article 24.3.1, increased @ 7% (Seven percent and compounded annually).
- The annual increase shall be applied for the annual fee payable from second accounting year if the Project COD is 6 (six) months before the end of the first accounting year or financial year.
- 24.2.2 In the event the Selected Agency undertakes future expansion in accordance with Article 12.6.1 and /or Additional Services in accordance with Article 21.3, then the Selected Agency shall be liable to pay to the Authority, (mutually agreed percentage, which shall not be less than the percentage of the Annual Fee to the Revenue collected by the Agency in the first year) of the actual Revenue from such Future Expansion and /or Additional Services, as the case may be ("**Additional Annual Fee**")
- 24.2.3 The selected agency shall maintain a separate record for monthly revenue from such activities. The record will detail tariff and other details of the revenue generation and shall be audited and certified by the statutory auditor of the selected agency. The revenue generation from such activities and corresponding records shall be reviewed by the Authority on quarterly basis.

24.3 PAYMENT OF ANNUAL FEE

- 24.3.1 the annual fee and the additional annual fee (if any) to be paid by the selected agency shall be due and payable within [15 (fifteen)] days of the commencement of the accounting year / financial year. Provided that the annual fee for the first accounting year shall be paid within [15 (fifteen)] days of the occurrence of the COD
- 24.3.2 the Selected Agency shall, with each payment of the annual fee and additional annual fee submit: (a) a certificate that the amounts paid are correct and in accordance with the provisions of the agreements; (b) details in respect of taxes/duties payable/reimbursable /deductibles in accordance with the provisions of this agreement; (c) details in respect of other damages payable in accordance with the provisions of this agreement; and (d) net amount payable under the provisions of this agreement and (e) details of the revenue in the relevant year generated from the date of commissioning of the Future Expansion.

24.4 DELAYED PAYMENTS

All amounts due and payable by the Selected Agency under the provisions of this Agreement shall be paid on or before the time period stipulated in Article 24.2. In the event of delay beyond

30 (thirty) days of such period the Selected Agency shall pay interest @ 7 (seven) % for the period of delay. The time period for such delayed payment shall not exceed 90 (ninety) days. In case payment is delayed beyond this period, it will be considered Agency's event of default.

24.5 DISPUTED AMOUNTS

24.5.1 The Authority shall, within [15 (fifteen)] days of receiving the Annual Fee, notify the Selected Agency of the disputed amounts along with details thereof (the “**Disputed Amounts**”). Within [7 (seven)] days of receiving such notice, the Selected Agency shall present any information or evidence as may be reasonably required for determining that such Disputed Amounts are not payable. The Authority may, if necessary, meet a representative of the Selected Agency for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure in accordance with Article 39 shall apply.

24.5.2 If any amount is payable by either Party upon determination of a dispute regarding any Disputed Amount, such amount shall be deemed to be payable on the date when it first became due and interest for the period of delay shall be due and payable at the rate specified in Article 24.4.

24.6 SET-OFF

24.6.1 Except as provided in Article 25, the Selected Agency 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 Selected Agency under this Agreement which has fallen due and payable against any amount due to the Selected Agency under this Agreement.

24.6.2 If the payment or deduction of any amount pursuant to Article 24 is disputed, then any undisputed element of that amount shall be paid, and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure in Article 39.

Article 25 TARIFF**25.1 TARIFF STRUCTURE**

- 25.1.1 The revenue generation shall be from the rentals, tickets, events, parking, proceeds of sale of food items, retails and items such as advertisement, brand sponsorship, accommodations, camping, amenities etc. The Selected Agency may determine the tariff structure for services in such manner as it deems fit; provided however, that such tariffs shall not be combined with any facility or service that is not directly connected with the Project.
- 25.1.2 For essential services, the upper ceiling for the sale cost and other tariff shall be as prescribed by the Authority [Authority to provide table of Maximum Tariff Rates for essential service]

Sn	Service	Upper Ceiling for the Tariff (in INR)
1.	Drinking Water (Filter water Tap or Dispenser)	Free of Charge
2.	Toilet	Urinal Free and WC @ 10/-
3.	Parking	Notified charges as per the ULB

- 25.1.3 The Selected Agency may also recover rent or fee for use of commercial or other spaces of every description and kind, provided by the Selected Agency.

25.2 SERVICE CHARGES

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

25.3 TAXES AND DUTIES

All Taxes, duties, levies, cess, fees and duties shall be paid by the Selected Agency.

Article 26 ESCROW ACCOUNT

26.1 ESCROW ACCOUNT

26.1.1 The Agency and Authority shall, 30 days before the start of Operation & maintenance Date, enter into an escrow agreement with the Escrow Bank, substantially in the form set forth in Schedule L (the “**Escrow Agreement**”) for the establishment and maintenance of Escrow Accounts as may be specified in the Escrow Agreement. The Parties expressly agree that the Escrow Accounts shall be established and maintained {an Escrow Bank selected by the Authority at its sole discretion.}

26.1.2 The nature and scope of the Escrow Account are fully described in the Escrow Agreement.

26.2 DEPOSITS INTO ESCROW ACCOUNT

26.2.1 The Selected Agency and the Authority, as the case may be shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) Agency must ensure that all Fees and any other revenues, from or in respect of the Tourist Experience, including the proceeds of any rentals, deposits, capital receipts or insurance claims, in the Escrow Account;
- (b) Agency shall ensure that any funds received by the Agency from its lenders or shareholders, in any manner or form, other than funds for meeting the Total Project Cost, in the Escrow Account;
- (c) The Agency must ensure that at least 120% (One Hundred and Twenty percent) of the Annual Fee payable to the Authority, from the annual revenue from the Project, for the Accounting Year, at least 15 (fifteen) days prior to the date the Annual Fee is due and payable to the Authority is maintained in Escrow Account. In case the annual revenue from the Project is less than 120% of the Annual Fee, then the Selected Agency shall make good the balance amount to reach the 120% of the Annual Fee from its own sources;
- (d) Additional Annual Fee payable (if any) to the Authority for the Accounting Year at least 15 (fifteen) days prior to the date the Additional Annual Fee is due and payable to the Authority.
- (e) Termination Payments, as and when due and payable in accordance with this Agreement, in the Revenue Account; and
- (f) Any other amounts required to be paid by the Agency to the Authority not specifically provided for in the Escrow Agreement.

26.3 WITHDRAWALS DURING CONTRACT PERIOD

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

- (a) Annual Fee and Additional Annual Fee due and payable to the Authority;
- (b) all payments and Damages certified by the Authority as due and payable to it by the Selected Agency; and
- (c) balance, if any, in accordance with the instructions of the Selected Agency.

26.3.2 The Selected Agency shall not in any manner modify the order of payment specified in Article 26.3.1, except with the prior written approval of the Authority.

26.3.3 The Selected Agency may open any other account at its discretion for making such payments as provided in Article 26.3.1 save and except Annual Fee due and payable to the Authority which must be appropriated from the Escrow Account.

26.4 WITHDRAWALS UPON TERMINATION

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

- (a) all Taxes due and payable by the Selected Agency for and in respect of the Project;
- (b) Outstanding Annual Fee and Additional Annual Fee;
- (c) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Selected Agency; and
- (d) balance, if any, in accordance with the instructions of the Selected Agency.

26.4.2 The provisions of this Article and the instructions contained in the Escrow Account Agreement shall remain in full force and effect until the obligations set forth in Article 26.4.1 have been discharged.

26.5 REVENUE ACCOUNT

The Authority shall, on or before the Appointed Date, open and maintain a dedicated Revenue Account with a Scheduled Commercial Bank (the “**Revenue Account**”) for the purpose of receiving all amounts payable by the Concessionaire under this Agreement. The Authority shall utilize the amounts deposited in the Revenue Account for purposes related to the Project or as deemed appropriate by the Authority in accordance with applicable laws and this Agreement.

Article 27 INSURANCE

27.1 INSURANCE DURING CONTRACT PERIOD

27.1.1 The Selected Agency shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and /or the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Selected Agency 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 Selected Agency during the Contract Period. The Selected Agency shall procure that in each insurance policy, the Authority shall be a co-insured.

27.2 INSURANCE COVER

27.2.1 Without prejudice to the provisions contained in Article 27.1, the Selected Agency shall, during the Construction Period and the Operation and Maintenance 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 Selected Agency, 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 and Project Infrastructure;
- (c) the Selected Agency's general liability arising out of the Contract;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Selected Agency and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (d) above.

27.3 NOTICE TO THE AUTHORITY

No later than [45 (forty-five)] days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Selected Agency 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 27. Within [30 (thirty)] days of receipt of such notice, the Authority may require the Selected Agency 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 in Article 39 shall apply.

27.4 EVIDENCE OF INSURANCE COVER

All insurances obtained by the Selected Agency in accordance with this Article 27 shall be maintained with insurers on terms consistent with Good Industry Practice. Within [15 (fifteen)] days of obtaining any insurance cover, the Selected Agency 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 Selected Agency to the Authority.

27.5 REMEDY FOR FAILURE TO INSURE

If the Selected Agency fails to effect and keep in force all insurances 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 Selected Agency, 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 Selected Agency.

27.6 WAIVER OF SUBROGATION

All insurance policies in respect of the insurance obtained by the Selected Agency pursuant to this Article 27 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.

27.7 SELECTED AGENCY'S WAIVER

The Selected Agency 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 Selected Agency 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 Selected Agency 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.

27.8 APPLICATION OF INSURANCE PROCEEDS

The proceeds from all insurance claims, except life and injury, shall be paid to the Selected Agency and it shall notwithstanding anything to the contrary contained in this Agreement, apply such proceeds towards payment of Damages and balance remaining, if any, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement in the Project and Project Infrastructure.

27.9 COMPLIANCE WITH CONDITIONS OF INSURANCE POLICIES

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

Article 28 ACCOUNTS AND AUDIT

28.1 AUDITED ACCOUNTS

- 28.1.1 The Selected Agency shall maintain books of accounts recording all its receipts (including the Revenues from room charges, restaurants, sale of food and provision of Associated Services, and all incomes derived or collected by it from or on account of the Project and/or its use etc.), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. The Selected Agency shall provide [2 (two)] copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within [90 (ninety)] days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the Revenue records of the Selected Agency 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 only 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.
- 28.1.2 The Selected Agency shall, within [30 (thirty)] days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange
- 28.1.3 On or before the [31st (thirty-first)] day of May each year, the Selected Agency shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on Revenues and such other information as the Authority may reasonably require.

28.2 APPOINTMENT OF AUDITORS

- 28.2.1 The Selected Agency shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm having at least two practicing Chartered Accountants on its rolls. All fees and expenses of the Statutory Auditors shall be borne by the Selected Agency.
- 28.2.2 The Selected Agency may terminate the appointment of its Statutory Auditors after a notice of [45 (forty-five)] days to the Authority, subject to the replacement Statutory Auditors being appointed in accordance with the Article 28.2.1.
- 28.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right but not the obligation, to appoint at its cost from time to time and at any time, another firm of Chartered Accountants (the “**Additional Auditors**”) to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

28.3 CERTIFICATION OF CLAIMS BY STATUTORY AUDITORS

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

28.4 SET-OFF

In the event any amount is due and payable by the Authority to the Selected Agency, it may set-off any sums payable to it by the Selected Agency and pay the balance remaining. Any exercise by the Authority of its rights under this Article 28.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

Article 29 FORCE MAJEURE

29.1 FORCE MAJEURE

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 29.2, 29.3 and 29.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event: (a) is beyond the reasonable control of the Affected Party; and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and (c) has Material Adverse Effect on the Affected Party.

29.2 NON-POLITICAL EVENT

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, tsunami, chemical or radioactive contamination or ionisation radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project and Project Infrastructure);
- (b) strikes or boycotts (other than those involving the Selected Agency, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project and Project Infrastructure for a continuous period of [24 (twenty-four)] hours and an aggregate period exceeding [7 (seven)] days in an Accounting Year, and not being an Indirect Political Event set forth in Article 29.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Selected Agency by or on behalf of such Contractor;
- (d) any delay or failure of an overseas Contractor to deliver any critical equipment required for the Project and Project Infrastructure and not available in India if such delay or failure is caused outside India by any event specified in Sub-Article (a) above and which does not result in any offsetting compensation being payable to the Selected Agency by or on behalf of such Contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Selected Agency in any proceedings for reasons other than (i) failure of the Selected Agency 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;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through an inspection of the Project Site; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

29.3 INDIRECT POLITICAL EVENT

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of

foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of [24 (twenty-four)] hours and exceeding an aggregate period of [7 (seven)] days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents operation of the Project or Project Infrastructure by the Selected Agency for an aggregate period exceeding [7 (seven)] days in an Accounting Year;
- (e) failure of the Authority to permit the Selected Agency to continue the Development Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) any failure or delay of a Contractor to the extent caused by an Indirect Political Event and which does not result in any offsetting compensation being payable to the Selected Agency by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of any nature analogous to any of the foregoing.

29.4 POLITICAL EVENT

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 36 and its effect, in financial terms, exceeds the sum specified in Article 36.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Selected Agency or of the Contractors;
- (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 Selected Agency or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Selected Agency's or any Contractor'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) Deleted
- (e) any event or circumstance of a nature analogous to any of the foregoing.

29.5 DUTY TO REPORT FORCE MAJEURE EVENT

29.5.1 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 29 with evidence in support thereof;

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- (b) the estimated duration and 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.

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

29.5.3 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 under Article 29.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

29.6 EFFECT OF FORCE MAJEURE EVENT ON THE CONTRACT

29.6.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Article 4.1 for fulfilment of the Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) before Project COD, the Contract Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after Project COD, whereupon the Selected Agency is unable to provide the Project and Project Infrastructure services despite making best efforts or it is directed by the Authority or any Governmental Instrumentality to suspend the aforesaid services during the subsistence of such Force Majeure Event, the Contract Period shall be extended by a period equal in length to the period during which the Selected Agency was prevented from providing the aforesaid services on account thereof; provided that in the event of reduction in Project and Project Infrastructure services on account of partial suspension of services which cause the Gross Revenue to decline below [75% (seventy five per cent)] of the Average Daily Gross Revenue for the corresponding period over the preceding [2 (two) years or period completed prior to 2 (two) years of O&M], the Authority shall extend the Contract Period in proportion to the loss of such Gross Revenue due to Force Majeure. For the avoidance of doubt, loss of [25% (twenty-five per cent)] in Gross Revenue for [4 (four)] days as compared to the Average Daily Gross Revenue for the corresponding period during the preceding [2 (two) years or period completed prior to 2 (two) years of O&M] shall entitle the Selected Agency to the extension of [1 (one)] day in the Contract Period.

29.7 ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE

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

29.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project and Project Infrastructure (the

“**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Selected Agency, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Selected Agency; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Selected Agency.

29.7.3 For avoidance of doubt, Force Majeure Costs may include, O&M Expenses, any increase in the cost of Development Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Revenues from room charges, restaurants and sale of food and all incomes derived or collected by it from or on account of the Project, Project Infrastructure and Associated Services, or debt repayment obligations etc.

29.7.4 Save and except as expressly provided in this Article, 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.

29.8 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 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 the other Party to make a representation and may after the expiry of such [15 (fifteen)] day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

29.9 TERMINATION PAYMENT FOR FORCE MAJEURE EVENT

29.9.1 If Termination is on account of a Non- Political Event or Indirect Political Event, either party shall make a Termination Payment limited to any amount due towards the other Party in accordance with the agreement and for a period till the occurrence of the event of default. For avoidance of doubt Authority shall make payment for the unpaid work done by the Agency during the Construction Period and Agency shall make payment any Annual Fee or other payments due towards Authority prior to the occurrence of event of default during Operation Period.

29.9.2 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Selected Agency in an amount that would be payable under Article 32.3.2 as if it were an Authority.

29.10 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 in accordance with Article 39; 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.

29.11 EXCUSE FROM PERFORMANCE OF OBLIGATIONS

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

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

Article 30 COMPENSATION FOR BREACH OF AGREEMENT

30.1 COMPENSATION FOR DEFAULT BY THE SELECTED AGENCY

Subject to the provisions of Article 30.4, in the event of the Selected Agency being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within [30 (thirty)] days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Article 30.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

30.2 COMPENSATION FOR DEFAULT BY THE AUTHORITY

Subject to the provisions of Article 30.4, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Selected Agency by way of compensation, all direct costs suffered or incurred by the Selected Agency 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, O&M Expenses and all other costs directly attributable to such material breach or default but shall not include loss 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 Project, Project Infrastructure and Associated Services, debt repayment obligations, or other consequential losses, and for determining such compensation, information contained in the Financial Model may be relied upon to the extent it is relevant.

30.3 EXTENSION OF CONTRACT PERIOD

Subject to the provisions of Article 30.4, in the event that a material breach or default of this Agreement set forth in Article 30.2 causes delay in achieving COD or leads to reduction in the realisation of Gross Revenues, as the case may be, the Authority shall, in addition to payment of compensation under Article 30.2, extend the Contract Period, such extension being equal in duration to the period by which COD was delayed or Gross Revenue was reduced on account thereof, as the case may be; and in the event of reduction in Gross Revenue to decline below [75% (seventy five per cent)] of the Average Daily Gross Revenue for the corresponding period during the preceding [2 (two)] years, the Authority shall, in addition to payment of compensation hereunder, extend the Contract Period in proportion to the loss of Gross Revenue. For the avoidance of doubt, loss of [25% (twenty-five per cent)] in realisation of Gross Revenue for [4 (four)] days, as compared to the Average Daily Gross Revenue for the corresponding period during the preceding [2 (two)] years shall entitle the Selected Agency to extension of [1 (one)] day in the Contract Period.

30.4 COMPENSATION TO BE IN ADDITION

Compensation payable under this Article 30 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

30.5 MITIGATION OF COSTS AND DAMAGE

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 the Agreement by the other Party.

Article 31 SUSPENSION OF SELECTED AGENCY'S RIGHTS

31.1 SUSPENSION UPON SELECTED AGENCY DEFAULT

Upon occurrence of Selected Agency Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to (a) suspend all rights of the Selected Agency under this Agreement including the Selected Agency's right to receive any Revenues from room charges, restaurants and sale of food and all other incomes received by it from or on account of the Project, Project Infrastructure and Associated Services pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorised any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Selected Agency and may extend up to a period not exceeding [90 (ninety)] days from the date of issue of such notice; provided that upon written request from the Selected Agency, the Authority may extend the aforesaid [90 (ninety)] days by a further period not exceeding [30 (thirty)] days.

In the event the Selected Agency ceases, obstructs, or fails to carry out the Operation and Maintenance (O&M) of the entire site for a continuous period of seven (7) days, except where a written request for closure of the site, along with justification, has been submitted and mutually agreed upon by the Authority, the Authority shall have the right to issue a notice requiring immediate resumption of O&M activities. Failure by the Selected Agency to resume O&M within fifteen (15) days from the date of such notice shall constitute an event of default.

31.2 AUTHORITY TO ACT ON BEHALF OF SELECTED AGENCY

31.2.1 During the period of Suspension, the Authority shall, on behalf of the Selected Agency, collect all Revenues under and in accordance with this Agreement, and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Article 26.3.

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

31.3 REVOCATION OF SUSPENSION

31.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding [90 (ninety)] days from the date of Suspension, it shall revoke the suspension forthwith and restore all rights of the Selected Agency under this Agreement. For

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.

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

31.4 TERMINATION

- 31.4.1 At any time during the period of Suspension under this Article 31, the Selected Agency may by notice request the Authority to revoke the Suspension and issue a Termination Notice. the Authority shall, within [15 (fifteen)] days of receipt of such notice, terminate this Agreement under and in accordance with Article 32 as if it is a Selected Agency Default under Article 32.1.
- 31.4.2 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 31.1, this 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 Selected Agency Default.

Article 32 TERMINATION

32.1 TERMINATION FOR SELECTED AGENCY DEFAULT

32.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Selected Agency fails to cure the default within a Cure Period of [60 (sixty)] days, the Selected Agency shall be deemed to be in default of the Agreement (the “**Selected Agency Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Performance Security has been encashed and appropriated in accordance with Article 9.2 and the Selected Agency fails to replenish or provide fresh Performance Security within a Cure Period of [15 (fifteen)] days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article 9.2, or cure the Selected Agency Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of [60 (sixty)] days;
- (c) the Selected Agency does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule G and continues to be in default for [60 (sixty)] days;
- (d) the Selected Agency abandons or manifests intension to abandon the development or operation of the Project and the Project Infrastructure without the prior written consent of the Authority;
- (e) Project COD does not occur on or before the Scheduled Completion Date;
- (f) the Agency commits default(s) in any year commencing from COD, in conforming to the Key Performance Indicators as set forth in Article 21 and O&M obligations as set forth in Article 17, which results in the total Damages payable for such defaults exceed the amount of Performance Security;
- (g) the Selected Agency is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) Deleted
- (i) Deleted
- (j) the Selected Agency has failed to make any payment to the Authority including the Annual Fee within the period specified in this Agreement;
- (k) a default under the Escrow Agreement has occurred and the Agency fails to cure the default within a Cure Period of 15 (fifteen) days;
- (l) a breach of any of the Project Agreements by the Selected Agency has caused a Material Adverse Effect;
- (m) the Selected Agency creates any Encumbrance in breach of this Agreement;
- (n) the Selected Agency repudiates this Agreement or otherwise takes an action or evidences or conveys an intention not to be bound by the Agreement;
- (o) a Change in Ownership has occurred in breach of the provisions of Article 5.3;
- (p) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Selected Agency under any of the Project Agreements, or of (ii) all or part of the assets

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- or undertaking of the Selected Agency, and such transfer causes a Material Adverse Effect;
- (q) an execution levied on any of the assets of the Selected Agency has caused a Material Adverse Effect;
 - (r) the Selected Agency is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Selected Agency or for the whole or material part of its assets that has a material bearing on the Project;
 - (s) the Selected Agency 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 Selected Agency are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Selected Agency under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Selected Agency as at the Appointed Date; and
 - (iii) each of the Project Agreements remain in full force and effect.
 - (t) occurrence of any Insolvency Event;
 - (u) any representation or warranty of the Selected Agency herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Selected Agency is at any time hereafter found to be in breach thereof;
 - (v) the Selected Agency 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;
 - (w) the Selected Agency has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
 - (x) the Selected Agency issues Termination Notice in violation of the provisions of this Agreement;
 - (y) the Selected Agency commits a default in complying with any other provisions of this Agreement if such default causes or may cause a Material Adverse Effect on the Authority; or
 - (z) the Selected Agency violates any of the terms and conditions of the Applicable Permits obtained by the Authority, as provided in Schedule E.

32.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Selected Agency Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Selected Agency; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Selected Agency of its intention to issue such Termination Notice and grant [15 (fifteen)] days to the Selected Agency 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 32.3.3.

32.2 TERMINATION FOR AUTHORITY DEFAULT

32.2.1 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 [60 (sixty)] days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “**Authority Default**”) unless the default has occurred as a result of any breach of this Agreement by the Selected Agency 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 Selected Agency;
- (b) the Authority has failed to make any payment due and payable to the Selected Agency within the period specified in this Agreement;
- (c) the Authority fails to provide any land which is necessary and required for construction of any essential element or part of the Project and/or the Project Infrastructure; or
- (d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

32.2.2 Without prejudice to any other right or remedy which the Selected Agency may have under this Agreement, upon occurrence of a Authority Default, the Selected Agency 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 Selected Agency shall by a notice inform the Authority of its intention to issue the Termination Notice and grant [30 (thirty)] days to the Authority to make a representation, and may after the expiry of such [30 (thirty)] days, whether or not it is in receipt of such representation, issue the Termination Notice.

32.3 TERMINATION PAYMENT

32.3.1 a) Upon Termination on account of a Selected Agency Default during the Construction Period, the Authority shall:

- i) encash and appropriate the Performance Security and Security Deposit / Retention Money;
- ii) encash and appropriate the bank guarantee, if any, to the extent of the outstanding Advance Payment and interest thereon.
- iii) pay to the Selected Agency, by way of Termination Payment, an amount equivalent to the value of unpaid works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and all taxes due to be deducted at source.

b) Upon Termination on account of a Selected Agency Default during the Operations Period, the Authority shall:

- i) encash and appropriate the Performance Security;
- ii) encash and appropriate the bank guarantee, if any, to the extent of the outstanding Advance Payment, including interest thereon.

32.3.2 a) Upon Termination on account of a Authority Default during the Construction Period, the Authority shall:

- i. return the Performance Security and Security Deposit / Retention Money forthwith;
- ii. encash and appropriate the bank guarantee, if any, to the extent of the outstanding Advance Payment, including interest thereon; and

iii. pay to the Selected Agency, by way of Termination Payment, an amount equivalent to the value of unpaid works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement, and all taxes due to be deducted at source.

iv. Deleted.

b) Upon Termination on account of a Authority Default during the Operations Period, the Authority shall:

- i. return the Performance Security and Security Deposit / Retention Money ,if any, immediately;
- ii. Return the part of the Annual Fee pertaining to the remaining part of the accounting year.
- iii. Authority shall pay a mutually agreed amount subject to maximum of two month's O&M cost, the amount shall be determined based on the average monthly O&M expenditure of previous two year. The Independent Engineer/Engineer-in-Charge shall be the agency to determine this amount from the books of account maintained by the Selected Agency and duly certified by the Statutory Auditors.

32.3.3 Termination Payment shall become due and payable to the Selected Agency within [90 (ninety)] days of a demand being made by the Selected Agency to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to the existing Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed [150 (one hundred fifty)] days. For avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

32.3.4 Upon Termination on expiry of the Contract Period by efflux of time, no Termination Payment shall be due and payable to the Selected Agency. At the end of the Contract Period, all Project Assets shall be transferred to the Authority at free of cost.

32.3.5 The Selected Agency expressly agrees that Termination Payment under this Article 32 shall constitute a full and final settlement of all claims of the Selected Agency on account of Termination of this Agreement for any reason whatsoever and that the Selected Agency or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

32.4 OTHER RIGHTS AND OBLIGATIONS OF THE AUTHORITY

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Project and the Project Infrastructure forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Project and the Project Infrastructure;
- (c) be entitled to restrain the Selected Agency and any person claiming through or under the Selected Agency from entering the Project and the Project Infrastructure;
- (d) require the Selected Agency to comply with the Requirements for transfer of rights and interest set forth in Article 33.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Selected Agency, to the interests of the Selected Agency under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming

due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Selected Agency. For avoidance of doubt, the Selected Agency acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Selected Agency and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

- (f) In the event of termination of this Agreement due to a Default by the Selected Agency, the Authority shall have the right to take over possession of the Project, Project Assets and appoint any third party or agency, at its sole discretion, to undertake and continue the Operation and Maintenance or any other residual obligations, without any liability or obligation towards the Selected Agency.

32.5 SURVIVAL OF RIGHTS

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 32.3.6, 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 Requirements for transfer of rights and interest, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

In the event of termination of this Agreement due to a Default by the Selected Agency, the Authority shall have the right to take over possession of the Project, Project Assets and appoint any third party or agency, at its sole discretion, to undertake and continue the Operation and Maintenance or any other residual obligations, without any liability or obligation towards the Selected Agency.

Article 33 TRANSFER OF RIGHTS AND INTEREST

33.1 REQUIREMENTS

33.1.1 Upon Termination, the Selected Agency shall comply with and conform to the following Transfer Requirements:

- (a) notify to the Authority/any other agency or department assigned by the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project and Project Infrastructure, 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 over on an as is where is basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete as built Drawings as on the Transfer Date, provided that in the event the Selected Agency has used the brand name and/or logo of the Selected Bidder/Consortium Members, if any, in relation to the Project or otherwise, the Selected Agency shall not be obliged to deliver and transfer such brand name and/or logo to the Authority. For the avoidance of doubt, the Selected Agency represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;
- (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 Selected Agency in the Project and Project Infrastructure, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the transfer and assignment of all rights, title and interest of the Selected Agency in the Project and Project Infrastructure, free from all Encumbrances, absolutely unto the Authority or to its nominee.

33.1.2 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 Selected Agency, 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.

33.2 INSPECTION AND CURE

Not earlier than [90 (ninety)] days prior to Termination but not later than [15 (fifteen)] days prior to the effective date of such Termination, the Authority shall verify, after giving due notice to the Selected Agency specifying the time, date and venue of such verification and/or inspection, compliance by the Selected Agency with the Maintenance Requirements, and if

required, cause appropriate tests to be carried out at the Selected Agency's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Selected Agency at its cost and the provisions of Article 34 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 33.

33.3 COOPERATION AND ASSISTANCE ON TRANSFER OF PROJECT

- (a) 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.
- (b) The Parties shall provide to each other, [6 (six) 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 Selected Agency shall further provide such reasonable advice and assistance as the Authority, its Selected Agency or agent may reasonably require for operation of the Project until the expiry of [6 (six) months] after the Transfer Date.
- (c) The Authority shall have the option to purchase or hire from the Selected Agency at a fair market value, determined by a reputed firm mutually agreed upon and appointed by the Parties, and free from any encumbrance all or any part of Project and Project Infrastructure but which does not form part of the assets specified in Article 33.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure in Article 39 shall apply.

33.4 VESTING CERTIFICATE

The transfer of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Transfer Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule M (the “**Vesting Certificate**”), which shall have the effect of constituting evidence of transfer by the Selected Agency of all of its rights, title and interest in the Project and Project Infrastructure, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Transfer 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 and Project Infrastructure on the footing that all Transfer Requirements have been complied with by the Selected Agency.

33.5 COSTS

- (a) The Selected Agency shall bear and pay all costs incidental to transfer of all of the rights, title and interest of the Selected Agency in the Project in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Selected Agency in connection with such transfer shall be borne by the Authority.
- (b) In the event of any dispute relating to matters covered by and under this Article, the Dispute Resolution Procedure in Article 39 shall apply.

Article 34 DEFECTS LIABILITY AFTER TERMINATION

34.1 LIABILITY FOR DEFECTS AFTER TERMINATION

The Selected Agency shall be responsible for all defects and deficiencies in the Project and the Project Infrastructure for a period of 3 (three) years commencing from the Project COD (the “Defects Liability Period”), and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Project and the Project Infrastructure during the aforesaid period. In the event that the Selected Agency fails to repair or rectify such defect or deficiency within a period of [15 (fifteen)] days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Selected Agency’s risk and cost so as to make the Project and the Project Infrastructure conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Selected Agency to the Authority within [15 (fifteen)] days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Performance Security.

Article 35 ASSIGNMENT AND CHARGES

35.1 RESTRICTIONS ON ASSIGNMENT AND CHARGES

- 35.1.1 Subject to Articles 35.2 and 35.3, this Agreement shall not be assigned by the Selected Agency 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.
- 35.1.2 Subject to the provisions of Article 35.2, the Selected Agency 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 Selected Agency 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.

35.2 PERMITTED ASSIGNMENT AND CHARGES

- 35.2.1 The restraints set forth in Article 35.1 shall not apply to:
- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project or liens or encumbrances required by any Applicable Law;
 - (b) mortgages, pledges or hypothecation of goods or 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 and Project Infrastructure; and
 - (c) assignment of rights, interest and obligations of the Selected Agency to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements.
- 35.2.2 The Selected Agency shall not, directly or indirectly, transfer, mortgage, pledge, assign, hypothecate, encumber, let or sub-let or part with the occupation of the Project or the Project Infrastructure or any part thereof and/or the benefits arising out of this Agreement or any part thereof in any manner whatsoever to any person, without the prior written consent of the Authority. The Selected Agency may permit or sub-let any third party to operate permissible activities in the Project and Project Infrastructure such as offices, retail areas, food trucks, etc or any other facilities within the Project Site for a period that shall be coterminous with or, less than the Contract Period and upon expiry of the Contract Period or Termination of the Agreement, all such permissions granted to third parties to operate or maintain any facilities or amenities as aforesaid shall automatically cease and terminate forthwith.

35.3 ASSIGNMENT BY THE AUTHORITY

- 35.3.1 Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving [60 (sixty)] days' notice to the Selected Agency, 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.
- 35.3.2 Any assignment under this Article 35 shall be subject to the approvals and consents required therefore under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

Article 36 CHANGE IN LAW

36.1 INCREASE IN COSTS

- 36.1.1 If as a result of Change in Law, the Selected Agency suffers any additional costs in the execution of the works or in relation to the performance of its other obligations under this Agreement, the Selected Agency shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in costs, notify the Authority with a copy to the Independent Engineer/Engineer-in-Charge of such additional costs due to Change in Law.
- 36.1.2 The Independent Engineer/Engineer-in-Charge shall, within 30 (thirty) days from the date of receipt of notice from the Selected Agency determine any addition to the Project Cost, due to the Change in Law. In case of the dispute in any such determination the same shall be settled in accordance with the Dispute Resolution Procedure laid down in . For the avoidance of doubt, it is agreed that this Article 36.1 shall be restricted to Change in Law directly affecting the Selected Agency's cost of performing its obligations under this Agreement.

36.2 REDUCTION IN COSTS

- 36.2.1 If as a result of Change in Law, the Selected Agency benefits from any reduction in costs for the execution of the works or in relation to the performance of its other obligations under this Agreement, the Selected Agency shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in costs, notify the Authority with a copy to the Independent Engineer/Engineer-in-Charge of such additional costs due to Change in Law.
- 36.2.2 The Independent Engineer/Engineer-in-Charge shall, within 30 (thirty) days from the date of receipt of notice from the Authority determine any reduction to the Project Cost, due to the Change in Law. In case of the dispute in any such determination the same shall be settled in accordance with the Dispute Resolution Procedure laid down in Article 39. For the avoidance of doubt, it is agreed that this Article 36.2 shall be restricted to Change in Law directly affecting the Selected Agency's cost of performing its obligations under this Agreement.

36.3 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 Selected Agency any sums on account of a Change in Law if the same are recoverable from the Users for and in respect of the services utilised by such Users.

Article 37 LIABILITY AND INDEMNITY

37.1 GENERAL INDEMNITY

37.1.1 The Selected Agency shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities or 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 Selected Agency 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 Selected Agency to the Authority or to any User or from any act and/or omission by the Selected Agency arising out of gross negligence, fraud or willful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, 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.

37.1.2 The Authority shall indemnify, defend, save and hold harmless the Selected Agency 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 Project Site; and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Selected Agency 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 Selected Agency, its subsidiaries, Affiliates, contractors, servants or agents, the same shall be the liability of the Selected Agency.

37.2 INDEMNITY BY THE SELECTED AGENCY

37.2.1 Without limiting the generality of Article 37.1 the Selected Agency shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Selected Agency to comply with Applicable Laws and Applicable Permits;
- (b) payment of Taxes required to be made by the Selected Agency in respect of the income or other Taxes of the Contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Selected Agency or any of its Contractors which are payable by the Selected Agency or any of its Contractors;
- (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) the accuracy of the representation, warranty or covenants made by the Selected Agency in this agreement.

37.2.2 Without limiting the generality of the provisions of this Article 37, the Selected Agency shall

fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Selected Agency or by the Contractors in performing the Selected Agency's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Selected Agency shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project or the Project Infrastructure, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Selected Agency shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorising continued use of the infringing work. If the Selected Agency is unable to secure such license within a reasonable time, the Selected Agency 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.

37.3 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 37 (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.

37.4 DEFENSE OF CLAIMS

- 37.4.1 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, 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.
- 37.4.2 If the Indemnifying Party has exercised its rights under Article 37.3, 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).

37.4.3 If the Indemnifying Party exercises its rights under Article 37.3, 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 authorised in writing by the Indemnifying Party;
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-Articles (b) (c) or (d) of this Article 37.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence 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.

37.5 NO CONSEQUENTIAL CLAIMS

Notwithstanding anything to the contrary contained in this Article 37, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

37.6 LIMITATION OF LIABILITY

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

- (a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and willful misconduct;
- (b) breach of any Applicable Laws or any Applicable Permits;
- (c) any claims or loss on account of Intellectual Property rights violation by the Selected Agency;
- (d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (e) any loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

37.7 SURVIVAL ON TERMINATION

The provisions of this Article 37 shall survive Termination.

Article 38 RIGHTS TO THE SITE

38.1 RIGHTS TO THE PROJECT SITE

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

38.2 ACCESS RIGHTS OF THE AUTHORITY AND OTHERS

38.2.1 The Selected Agency shall allow free access to the Project Site at all times to the Authority Representatives and to the persons duly authorised by any Government Instrumentality to inspect the Project and the Project Infrastructure and to investigate any matter within their authority, and upon reasonable notice, the Selected Agency shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

38.2.2 The Selected Agency shall, for the purpose of operation and maintenance of any utility or road specified in Article 11 allow free access to the Project Site at all times for the authorised persons and vehicles of the relevant Government Instrumentality.

38.3 PROPERTY TAXES

All taxes including property tax with respect to the Project Site shall be payable by the Selected Agency.

38.4 RESTRICTION ON SUB-LETTING

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

Article 39 DISPUTE RESOLUTION

39.1 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 Article 39.2.
- (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 non-privileged records, information and data pertaining to any Dispute.

39.2 CONCILIATION

In the event of any Dispute between the Parties, either Party may call upon the Authority's Engineer, or such other person as the Parties may mutually agree upon (the "Conciliator"), to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Conciliator or without the intervention of the Conciliator, as the case may be, either Party may require such Dispute to be referred to Principal Secretary to the Authority and the Chairman of the Board of Directors of the Selected Agency for amicable settlement, and upon such reference, the said persons shall meet no later than [7 (seven)] days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the [7 (seven)] day period or the Dispute is not amicably settled within [15 (fifteen)] days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within [30 (thirty)] days of the notice in writing referred to in Article 39.1 (a) or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 39.3.

39.3 ARBITRATION

- (a) Any dispute which remains unresolved between the parties through the mechanisms available/ prescribed in the Agreement, irrespective of any claim value, which has not been agreed upon/ reached settlement by the parties, will be referred to the Arbitral Tribunal as per the Arbitration and Conciliation Act 1996 or any other statutory modifications or a re-enactment thereof. The venue of the arbitration shall be Bhopal and the language of the arbitration proceeding shall be English.
- (b) Deleted
- (c) The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 39 shall be final and binding on the Parties as from the date it is made, and the Selected Agency and the Authority agree and undertake to carry out such Award without delay.
- (d) The Selected Agency and the Authority agree that an Award may be enforced against the Selected Agency and/or the Authority, as the case may be, and their respective assets wherever situated.
- (e) 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. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each Party shall proceed with the performance of its respective

obligations, pending resolution of Dispute in accordance with this Article.

39.4 ADJUDICATION BY REGULATORY AUTHORITY OR COMMISSION

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon disputes between the Selected Agency and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Article 39.3, be adjudicated upon by such regulatory authority or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

Article 40 DISCLOSURE

40.1 DISCLOSURE OF SPECIFIED DOCUMENTS

The Selected Agency shall make available for inspection by any person, copies of this Contract Agreement (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Selected Agency's registered office and the Project. The Selected Agency shall prominently display at the Project and Project Infrastructure, public notices stating the availability of the Specified Documents for such inspection and shall provide copies of the same to any person upon payment of copying charges on a no profit no loss basis.

40.2 DISCLOSURE OF DOCUMENTS RELATING TO SAFETY

The Selected Agency shall make available for inspection by any person copies of all Documents and data relating to safety of the Project and Project Infrastructure, free of charge, during normal business hours on all working days, at the Selected Agency's registered office. The Selected Agency shall make copies of the same available to any person upon payment of copying charges on a no profit no loss basis.

40.3 WITHHOLDING DISCLOSURE OF PROTECTED DOCUMENTS

Notwithstanding the provisions of Articles 40.1 and 40.2, the Authority shall be entitled to direct the Selected Agency, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Articles 40.1 and 40.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

Article 41 REDRESSAL OF PUBLIC GRIEVANCES

41.1 COMPLAINTS REGISTER

- (a) The Selected Agency shall maintain a public relations office at the Project 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**”) in compliance with the minimum standards set out in Article 21.1. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Selected Agency at the Project and its website so as to bring it to the attention of all Users.
- (b) The Complaint Register 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 Selected Agency. Immediately after a complaint is registered, the Selected Agency shall give a receipt to the Complainant stating the date and complaint number.
- (c) Without prejudice to the provisions of Article 41.1 (a) and (b), the Selected Agency in consultation with the Authority, specify the procedure for making complaints in electronic form and for responses thereto.

41.2 REDRESSAL OF COMPLAINTS

- a) The Selected Agency shall develop a detailed Grievance Redressal Mechanism (GRM) in consultation and approval of the Authority. The Selected Agency must get the GRM approved before the Project COD.
- b) The Selected Agency shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint in accordance with the Grievance Redressal Mechanism (GRM) duly approved by the Authority. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Selected Agency to the Complainant under a certificate of posting.
- c) Within [7 (seven)] days of the close of each month, the Selected Agency shall send to the Authority and 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 Selected Agency to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance.

The Selected Agency 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 42 MISCELLANEOUS

42.1 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 **Bhopal, Madhya Pradesh** shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

42.2 WAIVER OF IMMUNITY

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any 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).

42.3 DELAYED PAYMENTS

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 [60 sixty] days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 7 (seven) % rate, save and except as otherwise specified in this Agreement. All interest payment under this Agreement shall, save and except as otherwise specified, be calculated at quarterly, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

42.4 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 Agreement:
 - (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 Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement 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 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.

42.5 LIABILITY FOR REVIEW OF DOCUMENTS AND DRAWINGS

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Authority of any Project Agreement, Document or Drawing submitted by the Selected Agency nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Selected Agency 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 Selected Agency by reason of any review, comment, approval, observation or inspection referred to in Sub- Article (a) above.

42.6 EXCLUSION OF IMPLIED WARRANTIES

This Agreement expressly excludes any warranty, condition or other undertaking implied by 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.

42.7 SURVIVAL

Termination shall:

- (a) not relieve the Selected Agency 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.

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

42.8 ENTIRE AGREEMENT

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

42.9 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 shall 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 in Article 39 or otherwise.

42.10 NO PARTNERSHIP

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

42.11 THIRD PARTIES

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

42.12 SUCCESSORS AND ASSIGNS

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

42.13 NOTICES

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

- (a) in the case of the Selected Agency, 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 Selected Agency may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in Sub-Article (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Selected Agency may from time to time designate by notice to the Authority.

{Name:

Designation:

Address:

Fax No:

Email:}

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Selected Agency; provided that if the Selected Agency does not have an office in the same city as the Authority, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

{Name:

Designation:

Address:

Fax No:

Email :}; and

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

42.14 LANGUAGE

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

42.15 CONFIDENTIALITY

- (a) 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.
- (b) Sub-Article (a) 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.
- (c) 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.
- (d) 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 co-operate with other Party's efforts to obtain confidential treatment of material so disclosed.
- (e) 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.
- (f) 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.

42.16 STAMP DUTY

Any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Selected Agency.

42.17 COUNTERPARTS

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

42.18 TITLE TO EQUIPMENT

Title of equipment shall remain with the Agency for the duration of this understanding and any renewal thereof. The equipment shall be handed over to Authority, free-of-cost, in good working condition, on completion of the agreed concession period or any mutually agreed extended period thereof, where after the Agency shall have no claim or right & lien on the equipment.

Article 43 DEFINITIONS

43.1 DEFINITIONS

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

“Accounting Year” 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;

“Additional Auditors” shall have the meaning set forth in Article 28.2.3;

“Additional Annual Fee” shall have the meaning set forth in Article 24;

“Affected Party” shall have the meaning set forth in Article 29.1;

“Agreement” shall mean this Agreement, its Recitals and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Ancillary Facilities” shall have the meaning set forth in Article 3.1.3;

“Appendix” shall have the meaning set forth in Article 10.3.1;

“Applicable Laws” shall mean all laws, brought into force and effect by GOI or the Government of Madhya Pradesh including rules, regulations, notifications, directives, policies and office memorandums, made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect on or before the Bid Due Date;

“Applicable Permits” shall mean all clearances, licenses, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the development, construction, operation and maintenance of the Project and the Project Infrastructure during the

subsistence of this Agreement and upon termination, the transfer of the Project and Project Infrastructure to the Authority;

“Appointed Date” shall mean the date on which the Conditions Precedent are either satisfied and/or waived in accordance with the terms of this Agreement, and shall be deemed to be the date of commencement of the Contract Period;

“Approved Valuer” shall mean a firm of valuers recognized as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 Cr. (Rupees one hundred crore) each in value;

“Arbitration Act” shall mean the Arbitration and Conciliation Act, 1996 and shall include amendments, modifications to or any re-enactment thereof, as in force from time to time;

“Associate” or **“Affiliate”** shall mean, in relation to either Party {and/or Consortium Members}, 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 company or corporation, the ownership, directly or indirectly, of more than [50% (fifty per cent)] of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“Associated Services” shall have the meaning set forth in Article 25.1.3;

“Authority” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Authority Default” shall have the meaning set forth in Article 32.2;

“Authority Indemnified Persons” shall have the meaning set forth in Article 37.1.1;

“Authority Representative” shall mean such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

MPTB designates MPSTDC (Madhya Pradesh State Tourism Development Corporation) as the Authority's Representative only to oversee and execute specific sections of the Scope of Work (Phase I and Phase II) as outlined in Annexure A. Consequently, as the designated Representative, MPSTDC will monitor and report on the Concessionaire's performance, ensuring compliance with the Scope of Work specified in Annexure A.;

“Average Daily Gross Revenue” shall mean the average daily Gross Revenue determined upon division of the annual Gross Revenue of the preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by [5% (five per cent)]; provided that the Average Daily Gross Revenue for any period prior to completion of the first Accounting Year following Project COD shall be simple average of the Gross Revenue realised with respect to every day during the period between Project COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred;

“Award” shall have the meaning set forth in Article 39.3;

“Bank” shall mean a any scheduled commercial bank incorporated in India and having a minimum net worth of [Rs 1,000 crore (Rupees one thousand crore)] acceptable to the Authority,

“Bank Rate” shall mean the rate of annual interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“Bid” shall mean the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof;

“Bid Due Date” shall mean the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal (RFP);

“Bid Security” shall mean the security provided by the Selected Bidder to the Authority along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“Change in Law” shall mean the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Indian law as applicable to the Project;
- (b) the repeal, modification or re-enactment of any existing Applicable Law;
- (c) the commencement of any Indian law which has not entered into effect until the Bid Due Date;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” shall mean a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {existing promoters/selected bidder/Consortium Members}, together with {its/their} Associates in the total equity to decline below (i) [51% (fifty one per cent)] at any time prior during the Contract Period; (ii) the shareholding of each member of the Consortium declines below [26% (twenty six per cent)] and (iii) [26% (twenty six per cent)] thereof, or such lower proportion as may be permitted by the Authority during the Contract Period; provided that any material variation (as compared to the representations made by the Selected Agency during the

bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be) in the proportion of the equity holding of {existing promoters/Selected Bidder/ any Consortium Member} to the total equity, if it occurs, shall constitute Change in Ownership;

“**Change of Scope**” shall have the meaning set forth in Article 16.1;

“**Change of Scope Notice**” shall have the meaning set forth in Article 16.2;

“**Change of Scope Order**” shall have the meaning set forth in Article 16.2;

“**Companies Act**” shall mean, as applicable, the Companies Act, 1956 and the Companies Act, 2013 as amended from time to time;

“**Completion Certificate**” shall have the meaning set forth in Article 14.2;

“**Complainant**” shall have the meaning set forth in Article 41.1;

“**Complaint Register**” shall have the meaning set forth in Article 41.1;

“**Contract**” shall have the meaning set forth in Article 3.1;

“**Selected Agency**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Selected Agency Default**” shall have the meaning set forth in Article 32.1.1;

“**Contract Fee / Annual Fee**” shall have the meaning set forth in Article 24.2;

“**Contract Period**” shall have the meaning set forth in Article 3.2;

“**Conditions Precedent**” shall have the meaning set forth in Article 4.1;

“**Consortium**” shall have the meaning as set forth in Recital (C);

{“**Consortium Member** or **Member**” shall mean a company specified in Recital (C) as a member of the Consortium;}

“**Construction Period**” shall mean the period beginning from the Appointed Date and ending on Project COD and subject to the provisions of this Agreement, which shall be a period of [12 (twelve) months] from the Appointed Date, provided the Construction Period of the Optional Development Obligation shall be mutually agreed by the Parties;

“**Contractor**” shall mean the person or persons, as the case may be, with whom the Selected Agency has entered into any of the EPC Contracts, the O&M Contracts, or any other material agreement for the construction, operation and/or maintenance of the Project or the Project Infrastructure or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Selected Agency;

“**Covenant**” shall have the meaning set forth in Article 5.2.5;

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

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

provided that if the cure of any breach by the Selected Agency requires any reasonable action by the Selected Agency that must be approved by the Authority or the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Authority

after the receipt of the relevant information to accord their approval;

“**Damages**” shall have the meaning set forth in Article 1.2.1 (w);

“**DBFOT**” Design Built Finance Operate Transfer;

“**DBOT**” Design Built Operate Transfer;

“**Deemed Completion Certificate**” shall have the meaning set forth in Article 14.3;

“**Performance Security**” shall have the meaning as set forth in Article 9.4;

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

“**Development Works**” shall mean all construction works and things necessary to complete the Minimum Development Obligation and Optional Development Obligation, if applicable in accordance with this Agreement;

“**Dispute**” shall have the meaning set forth in Article 39.1;

“**Disputed Amounts**” shall have the meaning set forth in Article 24.6.1;

“**Dispute Resolution Procedure**” shall mean the procedure for resolution of Disputes set forth in Article 39;

“**Transfer Requirements**” shall mean the obligations of the Selected Agency for and in respect of Termination as set forth in Article 33;

“**Document**” or “**Documentation**” shall mean documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“**Drawings**” shall mean all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule D, and shall include as built drawings of the Project and Project Infrastructure;

“**EHS**” shall have the meaning set forth in Article 5.12;

“**EPC Contract**” shall mean the engineering, procurement and construction contract or contracts entered into by the Selected Agency with one or more EPC Contractors for, *inter alia*, engineering and construction of the Project in accordance with the provisions of this Agreement;

“**EPC Contractor**” shall mean the person with whom the Selected Agency has entered into an EPC Contract;

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

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

“**Equity**” shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Selected Agency 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 loans advanced by any shareholder of the Company for meeting such equity component;

“Execution Date” shall mean the date with 30 days of issue of Letter of Award, on which this Agreement is executed / signed by the Parties;

“Financial Close” shall mean the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning set forth in Schedule O;

“Financial Model” shall mean the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein, it is clarified that Financial Model defined here is only applicable to Optional Development Obligations or any other Project facilities built by Selected Agency on DBFOT basis ;

“Financial Package” shall mean 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;

“Financial Year” shall mean a year commencing on 1st April of a calendar year and ending on 31st March of the immediately succeeding calendar year;

“Financing Agreements” shall mean the agreements executed by the Selected Agency in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Article 5.2.3;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Article 29.1;

“Force Majeure Costs” shall have the meaning ascribed to it in Article 29.7;

“GOI” shall mean Government of India;

“Good Industry Practice” shall mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Selected Agency in accordance with this Agreement, Applicable Laws and Applicable Permits and includes prudent Project and Project Infrastructure practices generally accepted by the hotel and hospitality industry for ensuring reliable, safe, economical and efficient construction, operation and maintenance of the Project and Project Infrastructure;

“Government Instrumentality” shall mean any department, division or sub-division of the Authority or the Madhya Pradesh Tourism Board and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Authority or the Madhya Pradesh Tourism Board, as the case may be, and having jurisdiction over the Project and the Project Infrastructure or the performance of all or any of the services or obligations of the Selected Agency under or pursuant to this Agreement;

“Gross Revenue” of the Project for and in respect of any Accounting Year shall mean the total amount of gross Revenues and receipts of every kind (from both cash and credit transactions computed prior to payment of any commission or service charge or fee thereon) derived by the Selected Agency from the operation of the Project and its facilities and provision of Associated Services, Hospitality Services and/or any other activity related to the Project, and shall include Revenues and receipts from and on account of food, beverages, outdoor catering, vending machines, parking, etc use of commercial or other spaces for rent or fee of every description and kind, and any other services or facility provided by the Selected Agency under the project, but shall exclude the following:

- (a) All statutory applicable indirect Taxes such as GST, expenditure tax, and the like by whatever name called now or in future, which the Selected Agency is bound to pay;
- (b) Any revenue earned by the Selected Agency on sale of assets of a capital nature which are owned by the Selected Agency; and

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

“Hospitality Services” shall mean the services performed under this Agreement such as reception of Users, provision of food and beverages, room services and any other services performed by the Selected Agency towards creating Revenue from the Project;

“Indemnified Party” shall mean the Party entitled to the benefit of an indemnity pursuant to Article 37;

“Indemnifying Party” shall mean the Party obligated to indemnify the other Party pursuant to Article 37;

“Independent Engineer/ Engineer-in-Charge” shall mean a person or entity or department designated/appointed by the Authority;

“Indirect Political Event” shall have the meaning set forth in Article 29.3;

“Insolvency Event” in respect of a Party shall mean:

- (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party’s ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 (the **“Code”**); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or
- (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking: (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts; (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days; or (C) directions with the

same or similar effect happen under the provisions of the Companies Act or the Code in relation to the winding up of the company;

“Inspection Report” shall have the meaning set forth in Article 13.2;

“Insurance Cover” shall mean the aggregate of the maximum sums insured under the insurances taken out by the Selected Agency pursuant to Article 27, and includes all insurances required to be taken out by the Selected Agency under Article 27.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“Keys” shall mean a room with maximum occupancy of two persons;

“L&FS” shall have the meaning set forth in Article 5.9;

“L&FS Standards” shall mean the standards prescribed under the National L&FS Standards and at least one internationally accepted L&FS standards such as US Life Safety Code (NFPA), as amended from time to time;

“Lead Member” shall have the meaning as set forth in Recital (C);

“LOA or Letter of Award” shall mean the letter of award referred to in Recital (D);

“Maintenance Requirements” shall have the meaning set forth in Article 17.2;

“Minimum Development Obligations” shall have the meaning set forth in Article 12.3.1

“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;

“Nominated Company” shall mean a company selected by the Lenders' Representative and proposed to the Authority for substituting the Selected Agency in accordance with the provisions of the Substitution Agreement;

“Non-Political Event” shall have the meaning set forth in Article 29.2;

“NPV” shall have the meaning set forth in Article 36.3;

“O&M” shall mean the operation and maintenance of the Project and the Project Infrastructure and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Revenue in accordance with the provisions of this Agreement;

“O&M Contract” shall mean the operation and maintenance contract that may be entered into between the Selected Agency and an O&M Contractor for performance of the O&M obligations in accordance with this Agreement;

“O&M Contractor” shall mean a contractor with whom the Selected Agency has entered into an O&M Contract, if any;

“O&M Expenses” shall mean expenses incurred by or on behalf of the Selected Agency or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees; (b) cost of materials, supplies, utilities and other services; (c)

prima for insurance; (d) all Taxes, duties, cess and fees due and payable for O&M; (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs; (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M; and

(g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning set forth in Article 19.2;

“Operation Period” shall mean the period commencing from Project COD of the Minimum Development Obligations and ending on the Transfer Date;

“Optional Development Obligation” shall have the meaning set forth in Article 12.6.1;

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

“Performance Guarantee” shall have the meaning set forth in Article 34.2.2;

“Performance Security” shall have the meaning set forth in Article 9.1;

“Performance Security Period” shall have the meaning set forth in Article 9.3;

“Political Event” shall have the meaning set forth in Article 29.4;

“Project” shall mean the construction, development operation and maintenance of the Project and Project Infrastructure and undertaking Minimum Development Obligations and Optional Development Obligation on a DBFOT basis in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Escrow Account Agreement” shall have the meaning set forth in Article 26.1.2;

“Escrow Bank” shall have the meaning set forth in Article 26.1.1;

“Project Agreements” shall mean this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Selected Agency with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to [Rs. 1,00,00,000 (Rupees one crore)] for each such agreement;

“Project Assets” shall mean all physical and other assets relating to and forming part of the Project, Project Infrastructure and the Project Site including:

- (a) rights over the Project Site in the form of Right of Way;
- (b) tangible assets such as civil works including foundations, drainage works, pavements, electrical systems, communication systems, fare collection systems, rest areas and administrative offices;
- (c) Ancillary Facilities situated on the Project Site;
- (d) Buildings and immovable fixtures or structures forming part of the Project and Project Infrastructure;
- (e) all rights of the Selected Agency under the Project Agreements;
- (f) financial assets, such as receivables, security deposits etc. insurance proceeds; and
- (g) Applicable Permits and authorisations relating to or in respect of the Project and Project Infrastructure;

(h) Minimum Development Obligations and Optional Development Obligations

Project Cost” shall have the meaning set forth in Article 24.1;

“Project COD” shall have the meaning set forth in Article 15.1 and shall include commercial operations date of Minimum Development Obligations or of any Optional Development Obligation, as the case may be;

“Project Completion Schedule” shall mean the progressive Project Milestones set forth in Schedule G for completion of the Project and Project Infrastructure on or before the Scheduled Completion Date;

“Project Infrastructure” shall mean collectively the captive facilities to be developed at the Project Site for the exclusive use of the Project the trunk infrastructure including water treatment plant, sewage treatment plant; the RO plant; the power facility(s); and the infrastructure to carry out the Associated Services;

“Project Milestones” shall mean the project milestones set forth in Schedule G

“Project Site” shall have the meaning set forth in Article 10.1;

“Protected Documents” shall have the meaning set forth in Article 40.3;

“Provisional Certificate” shall have the meaning set forth in Article 14.1;

“Punch List” shall have the meaning set forth in Article 14.1;

“Request for Proposals” or **“RFP**” shall have the meaning set forth in Recital (C);

“Project Website” shall have the meaning set forth in Clause 6.9.7 of RFP.

“Revenue” shall mean all amounts charged and recovered by the Selected Agency from the Users on mutually agreed terms and shall include user charges for use of the Project and Hospitality Services by the Users and shall also include but not be limited to all charges, rent, license fees, tariff, fee, compensation, benefits, deposits (whether long term or short term and whether refundable or not), capital receipts, insurance claims, or any other similar payment by whatever name called, received by or paid to the Selected Agency or receivable by the Selected Agency or payable to the Selected Agency or due and realisable by the Selected Agency, for or with respect to use of the Project and any of the Hospitality Services;

“Right of Way” shall mean the constructive possession of the Project Site, together with all way leaves, easements unrestricted access and other rights of way howsoever described, necessary for construction, operation and maintenance of the Project and the Project Infrastructure in accordance with this Agreement;

“Rs.” or “Rupees” or “Indian Rupees” shall mean the lawful currency of the Republic of India;

“Safety Requirements” shall have the meaning set forth in Article 18.1;

“Schedule” shall mean a schedule under this Agreement;

“Scheduled Completion Date” shall mean the scheduled date(s) for achieving Project COD as set forth in Schedule G;

“Scope of the Project” shall have the meaning set forth in Article 2

“Selected Bidder” shall mean the Bidder selected by the Authority to award the Project following the completion of the bidding process in accordance with the RFP);

“Specifications and Standards” shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project and Project Infrastructure, as set forth in Schedule C, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project and Project Infrastructure submitted by the Selected

Agency to, and expressly approved by, the Authority;

“**Specified Documents**” shall have the meaning set forth in Article 40.1;

“**Statutory Auditors**” shall mean a reputable firm of chartered accountants acting as the statutory auditors of the Selected Agency under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Article 28.2;

“**Substitution Agreement**” shall have the meaning set forth in 35.3;

“**Suspension**” shall have the meaning set forth in Article 31.1;

“**Taxes**” shall mean any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project and Project Infrastructure charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” shall mean the expiry or termination of this Agreement and the Contract hereunder;

“**Termination Notice**” shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Termination Payment**” shall mean the amount payable by the Authority to the Selected Agency, under and in accordance with this Agreement, upon Termination;

“**Tests**” shall mean the tests set forth in Schedule H to determine the completion of Project in accordance with the provisions of this Agreement;

“**Transfer Date**” shall mean the date on which this Agreement and the Contract hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**Unforeseen Events**” shall have the meaning as set forth in Article 29.12.1;

“**Users**” shall mean the third parties which use the Project or any part thereof, in accordance with the provisions of this Agreement and Applicable Laws;

“**Vesting Certificate**” shall have the meaning set forth in Article 33.4; and

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

Annexure A

The scope of work/responsibilities to be performed by **MPSTDC (Authority Representative)**

Phase-1

1. Providing assistance in approval of detailed drawings, design, estimates, construction methodology of Minimum Development Obligations as well as Optional Development obligation to MPTB and DMC.
2. Providing technical sanctions, approvals required as per the agreement. Technical supervision for maintaining required quality & specification of work, record maintenance, making payment as per milestones, observation of timelines & proportionate progress, implementation of penalty clause & time extension.
3. Submission of progress reports as per milestone to MPTB & DMC. Issuing completion certification after joint inspection with MPTB and DMC.
4. Performing all technical responsibilities as per the agreement on behalf of MPTB & taking opinion, approval from MPTB as & when required.

Phase-2

1. Periodic supervision of O&M after commercial operation date & submission of report to MPTB & DMC & authority as per KPIs mentioned in the agreement.
 2. Supervision of maintenance/upgradation work being done by the agency after start of commercial operation date.
 3. Proposing penalty as per penalty clause mentioned under RFP & Contract for O&M.
- Other works on behalf of MPTB as & when required as per the agreement.

SIGNATORIES

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

THE COMMON SEAL OF **SELECTED AGENCY** has been affixed pursuant to the resolution passed by the Board of Directors of the Selected Agency at its meeting held on the _____ day of _____ 20____

I, _____, hereunto affixed the common seal 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 **THE SELECTED AGENCY**
by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1. _____, Director
2. _____, Company Secretary

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

(Signature)

(Name)

(Designation)

(Address)

For and on behalf of _____by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

For and on behalf of _____by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SCHEDULES

SCHEDULE A: SITE OF THE PROJECT

(See Article 2.1(a))

1. The Project Site

Project Site of the Project shall include the land, as described in Annex-1 of this Schedule A.

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

Additional land required for ancillary buildings, extension/ addition of Project or for construction of works specified in Change of Scope Order issued under Article 16.2.3 of this Agreement shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Project Site and vest in the Authority.

Annex-I
(Schedule-A)

(As per Section 6 of the RFP)

SCHEDULE B: DEVELOPMENT OF THE PROJECT

(See Article 2.1(b))

Development of the Project shall include development of the Project and the Project Infrastructure.

Development of the Project shall include construction of the Project as described in this Schedule B. Development of the Project shall conform with the provisions of Annex-I (Description of the Project) and Annex -II (Description of Ancillary Facilities) of this Schedule B.

Project shall be completed by the Selected Agency in conformity with the Specifications and Standards set forth in Schedule C.

**Annex-I
(Schedule-B)**

Minimum Development Obligations

(As per the RFP)

Sno	Monuments
A	Destination management
1	Tourist Experience Centre
1.1	Orchha Tactile Model
1.2	Tourist Centre for orientation of Orchha
1.3	Immersive Experience at Tourist Experience Centre
1.4	Booking Kiosk
1.5	Landscaping, Children Play area
1.6	Pink Toilet and Open Café
1.7	Services (HVAC, Fire Fighting, CCTV)
1.8	Lighting and Electrical
2	Hunarshala
2.1	O.A.T.
2.2	Craft Area for Artists with direct access for Tourist
2.3	Hands-on Workshop Area
2.4	Open area, Landscape court with Demonstration Area
3	Visitor Entry Plaza
3.1	Visitor Entry Plaza on both sides of Moat (in Parking and Citadel) E - Changing Station, Seating and Drop-off and Paving, QR Codes for Tickets
3.2	Services (Lighting and Electrical Works)
3.3	E - Changing Station, Seating and Drop-off and Paving, QR Codes for Tickets
4	Orchha City Experience Heritage Streetscaping (façade control along two Major Axes)
4.1	Street Façade Upgradation (Colour, Arches, Awning, Chajja, Railing/Parapet, Shop Signage)
4.2	New Pavement/Pathway
4.3	Repair Existing Pavement/Pathway
4.4	Street Furniture and Street Signages
4.5	Street Illumination
4.6	Festivals and Events
B	Green Tourism / Sustainability Interventions
5	Hop-On Hop-Off Services for Tourist
5.1	Traditional Themed Transportation (HOHO Buses 12-15 seater EV)
5.2	HOHO Bus Stop Signages and QR Codes
C	Digitization Interventions
6	Website and App Development
6.1	Website Design & integration of Live Features (Live Darshan, Prashad Vitran etc.)
6.2	Website Content Development

	(Tourist Experience Enhancement, 360-degree views for Attractions)
D	Skilling Interventions
7	Skill Development Training
E	Interventions to support Tourism MSME
8	Tourism MSME Training

1. Scope of Work:

(As per Section 6 of the RFP document)

2. Specifications and Standards

The Project shall be constructed in conformity with the specifications and Standards specified in Schedule-C.

Annex-II (Schedule B)

Refer Clause 3.1.3

Description of Ancillary Facilities

The Project shall be a self-sustainable project and shall include, *inter alia*, following supporting infrastructure components:

- Trunk/supporting infrastructure (water and septic tank, levelling, grading, boundary wall, fencing, roads, drainage, power distribution, street lighting, landscaping)
- RO plant
- Power facility.

The Selected Agency shall construct the Ancillary Facilities described in this Annex-II to form part of the Project. The Ancillary Facilities shall include, *inter alia*, following:

- Levelling, Grading, Boundary wall, Fencing, Roads, Drainage, Power Distribution, Street lighting, Landscaping.
- Waste Disposal – waste disposal to be made as per the guidelines mentioned prescribed by MoEF&CC.
- **Online Information and Booking Facility:** A comprehensive online platform provides detailed information about attractions, activities, and booking facilities for tickets and attractions. Tourists can also provide feedback on their experience, allowing for continuous improvement.
- **Arrival and Traffic Management:** Efficient traffic management systems are implemented to ensure smooth arrivals and adequate parking facilities are provided, minimizing congestion and inconvenience for visitors.
- **Hawking/Vending Zone:** Designated areas for vendors ensure a controlled and organized environment, offering visitors a variety of authentic local products and cuisine.
- **On-Site Ticketing and Holding Area:** Dedicated ticketing counters with efficient queuing systems reduce wait times for visitors. Holding areas are organized to provide comfort and convenience while awaiting entry.
- **Visitor Flow Management:** Strict queue management and express entry lanes are implemented to maintain an orderly flow of visitors. Universal accessibility measures are in place to ensure all visitors can enjoy the attractions, supported by clear signage and way finding systems.
- **Interpretation & Sensitization:** An interpretation center equipped with guided tours, audio guides, and interactive exhibits helps visitors understand the cultural and historical significance of the attractions, enhancing their overall experience.
- **Public Conveniences:** Clean and well-maintained restroom facilities are strategically located throughout the experience zone to cater to the needs of visitors, enhancing their comfort and convenience.
- **Souvenir, Food & Beverage, and Retail:** A diverse range of souvenir shops, food stalls, and retail outlets offer visitors the opportunity to purchase memorabilia, local delicacies, and other goods, adding to their overall experience and providing opportunities for local economic growth.

- **Cleanliness:** Cleanliness is paramount for tourists and visitors as it directly impacts their overall experience and well-being. A clean environment not only enhances aesthetic appeal but also promotes health and safety. Tourists seek destinations where cleanliness standards are upheld, as it reflects the level of care and attention given to their comfort.
- **Security Arrangement:** Security is paramount for tourists and visitors as it directly affects their peace of mind and overall experience. Whether exploring a new destination or enjoying local attractions, travellers want to feel safe and protected. Adequate security measures not only deter crime but also ensure prompt assistance in emergencies.

Any other supporting infrastructure deemed necessary by the Selected Agency to carry out the scope of work as referred in Annexure-1

SCHEDULE C: SPECIFICATIONS AND STANDARDS

(See Article 2.1(b))

1. Project

- 1.1. The Project shall conform with the Specifications and Standards as specified in this Schedule-C and in this Agreement.
- 1.2. The Specifications and Standards applicable to the design and construction of the Project shall conform with the National Building Code of India, relevant specifications and standards specified by the Bureau of Standards, other Applicable Laws and Good Industry Practice.
- 1.3. In the absence of any specific provision in this Agreement, the following standards shall apply in order of priority:
 - I. MPPWD
 - II. National Building Code
 - III. Bureau of Indian Standards (BIS); and
 - IV. International guidelines including [GRIHA/LEED/Green Globe]
 - V. Any other specifications/standards/codes proposed by the Selected Agency and reviewed by the Authority.
- 1.4. The latest version of the specified codes and standards which were notified published at least [60 (sixty)] days prior to the Bid Date in respect of this Agreement shall apply.
- 1.5. The Project shall conform to following standards and specifications in addition to as provided under Section-6 of the RFP.

The following specifications and standards cover the minimum requirements for the proposed experience. The agency shall, establish resources, procure and construct the proposed tourism experience and allied facilities strictly conforming to the relevant code/s of Bureau of Indian Standards and the best industry practices

Whether the requirements are explicitly stated or not in this document, the agency must note that the Authority envisages a world-class facility in all respects and expects a truly international quality and standards from the Preferred Bidder, as the binding contractual obligation.

DEVELOPMENT SPECIFICATIONS AND STANDARDS

Site Development related specifications

The Agency should maintain and operate auxiliary site infrastructure including landscaping, internal road network, pathways, rainwater, storm water and parking areas and other public utilities / amenities within the site.

Signage

The Agency shall provide signage so as to facilitate necessary information to the visitors regarding amenities and their location. The signage would be provided separately.

- i. Information Signs,
- ii. Directional Signs
- iii. Dos and Don't s
- iv. Facility Signs
- v. Other Signs.

Parking Area

- i. The agency shall be responsible for operations and management of the facility.
- ii. All parking spaces shall be paved to withstand vehicle loads and forces due to frequent acceleration and deceleration of vehicles. Parking bays/ lots shall have proper cross slopes and drainage. They shall be marked with paint as per Indian Standards to demarcate parking and circulation space.

Commercial spaces/ area permitted under the Project.

The Agency may also develop commercial space as approved under the project i.e. souvenir shop, retail showrooms, business area, etc. All relevant rules and regulations shall be followed by the Agency for developing commercial spaces/ area. Parking provisions catering to the needs of the Commercial space/ area, as per Local Bye-laws shall be made.

Support Facilities and Amenities

The Agency shall provide all the necessary support facilities and amenities conforming to the development controls and meeting the relevant Indian and international standards.

Fire Fighting Facilities

The Agency shall provide all the required firefighting equipment and facilities including fire exits, fireproof doors, etc. conforming to the relevant standards and the applicable rules and regulations.

Facilities for Physically Challenged Persons

The Agency shall provide all the necessary facilities to the entry/ exit, seating and movement of physically challenged persons including wheelchairs, ramps, specially designed seats, toilets, etc.

SCHEDULE D: DRAWINGS

(See Article 12.2(g))

1. Drawings

In compliance with the obligations set forth in Article 12.2 of this Agreement, the Selected Agency shall furnish to the Authority, free of cost, all Drawings as required by the Authority which shall be informed after the Execution Date but prior to the Appointed Date.

(Refer Appendix-IX of the RFP)

If the Authority determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed hereinabove, it may by notice require the Selected Agency to furnish such drawings forthwith. Upon receiving a requisition to this effect, the Selected Agency shall promptly prepare and furnish such drawings to the Authority as if such drawings formed part of this Schedule D.

SCHEDULE E: APPLICABLE PERMITS

(See Article 4.1.2(b) and 4.1.3(d))

- 1.1 The Authority shall, as required under Applicable Laws, facilitate the Selected Agency for obtaining the following Applicable Permits on or before the Appointed Date:

- (a) Conversion of Land Use (CLU)
- (b) Development Clearance;
- (c) Operation and Maintenance Clearance
- (d) xxx

It is expressly provided that the responsibility of the Authority shall be limited to providing above Applicable Permits, subject to compliance during the Contract, if any. The Selected Agency, at its own risk and cost, shall be solely responsible for adhering to the conditions of Applicable Permits. The Selected Agency shall responsible for making its fully aware about terms and conditions of the Applicable Permits.

It is also expressly provided that Environmental Clearance required to exercise Optional Development Obligation shall be sole responsibility of the Selected Agency.

Any violation of the terms & conditions of the applicable permit obtained by the Authority to facilitate the Selected Agency shall be treated as Selected Agency's default and relevant provisions of default of the Contract Agreement shall be applicable for such occurrence.

- 1.2 The Selected Agency shall obtain all the other required Applicable Permits from the relevant local authorities, as per Applicable Laws, for construction and operation of the Project and Project Infrastructure. An indicative list of Applicable Permits is provided in Annex II to the Schedule E.
- 1.3 The development and maintenance of the Project and Ancillary Facilities shall be in compliance to Form I submitted by the Authority for obtaining/ CRZ Clearance. The Form I submitted for the Project is provided as Annex-I to Schedule E.

Annex-I (Schedule-E)

This Form I for..... clearance is being enclosed separately.

Annex-II (Schedule-E)

The following list of Applicable Permits which are envisaged to be necessary for construction, operation and maintenance of the Eco-Tourism Project is indicative only. The actual Applicable Permits shall be contingent upon nature of the Project and nature of construction and operation methodology proposed by the Selected Agency.

- a) **Conversion of Land Use:** The Authority shall, as required under Applicable Laws, facilitate the Selected Agency for obtaining the Conversion of Land Use (CLU) Permit for the project site on or before the Appointed Date.
- b) **Other Clearances:** The following list of Applicable Permits for construction, operation and maintenance of the Eco-Tourism Project is indicative only. The actual Applicable permits will be contingent upon the nature of construction and operation envisaged by the Selected Agency.

The estimated time frame for obtaining following approvals is 30 days, subject to the Selected Agency submitting its applications complete in all respect in a timely manner. The Authority will provide reasonable support and assistance to the Selected Agency in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project.

S. No.	Applicable Permits and Department
1.	Development Permit by MPPWD/Local Body
2.	Building Permit by MPPWD/Local Body
3.	Consent to Establish by MP Pollution Control Committee
4.	Consent to Operate by MP Pollution Control Committee
5.	Provisional Permit for Eco-friendly Tourist Projects by Tourism Dept.
6.	Operational Permit for Eco-Friendly Tourist Projects by Tourism Dept.
7.	Food License by Food Safety Commissioner, FSSAI
8.	Development works in and around Protected Monuments for MP State Archaeology

In addition to the above permits/clearances and their compliance, the Selected Agency need to comply with following Environment and protection, mitigation measures in Annex-III.

Annex-III (Schedule-E)

2. Environmental compliance and protection measures

Applicability of Acts/Guidelines	Compliance criteria
Environment Protection Act, 1986 - under EIA notification, 2006 (and its subsequent amendments) provides for categorization of projects into category A and B, based on extent of impacts.	The project is not covered in the ambit of the EIA notification as they are not covered either under Category A or Category B of the notification. Hence, the categorization, subsequent environmental assessment, and clearance requirements either from the State Government or the GoI is not triggered.
Wildlife Conservation Act, 1972 , amended in 2003 and 2006, provides for protection and management of Protected Areas.	There is no Wildlife Sanctuary near this project; therefore, this act is not applicable.
Forest Conservation Act, 1980 and its subsequent amendments necessitate obtaining clearance from the MoEF for diversion of forest land for non-forest purposes.	The project does not evolve any land diversion or tree cutting therefore, no clearance required.
Water (Prevention and control of pollution) Act, 1974 and; Air (prevention and control of pollution) Act, 1981	The project complies with the Water (Prevention and control of pollution) Act 1974, Air (prevention and control of pollution) Act 1981. Necessary measures will be taken up to combat pollution. The details are mentioned in the subsequent sections. Consent for Establishment (CFE) & Consent for Operation (CFO) from the State Pollution Control Board for setting up of diesel generators (if any), hot mix plant, wet mix plant, crusher plant (if exclusively for this project) to be obtained by the Contractor, prior to commencement of construction works at site. If the contractor purchases the construction materials (eg. sand, gravel) from third party, he must ensure that materials are coming from approved quarry sites.
Noise Pollution (regulation and Control) Rules, 2000	The project shall put measures for abatement of noise including noise

	emanating from vehicular movements, blowing of horns, and sound producing instruments and ensure that the existing noise levels do not exceed the ambient air quality standards specified under these rules.
River Centric Urban Planning Guidelines by Town and Country Planning Organization Ministry of Housing and Urban Affairs Government of India	No permanent construction is permitted within 100 m buffer, hence all the construction are temporary structures and modification of already existing buildings.
National Green Tribunal Order No. M.A. No. 15/2015, 16/2015 and 17/2015	
The Ancient Monuments and Archaeological Sites and Remains Act, 1958 , and the rules, 1959 provide guidance for carrying out activities, including conservation, construction, and reuse in and around the protected monuments.	Not applicable as neither any such monuments or Archaeological sites present at the site nor the proposed land is under influence of such any issue.
State Tourism Policy	Shall be adopted.
The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996, Employer shall- • Provide and maintain, at suitable point, enough wholesome drinking water, such point shall be at least 6 meters away from any washing areas, urinals or toilets. • Provide sufficient urinals and latrines at convenient place, easily accessible by workers. • Provide free of charge, temporary living accommodations near to work sites with separate cooking place, bathing and lavatory facilities and restore the site as preconditions after completing the construction works. • Provide crèche with proper accommodation, ventilation, lighting, cleanliness, and sanitation if more than fifty female workers are engaged. • Provide first aid facilities in all construction sites. For safety of workers, employers shall provide: • Safe access to site and workplace • Safety in demolition works, use of explosives, operation of transporting Equipment's and lifting appliance, hoist and lifting gears. • Adequate and suitable lighting to every workplace and approach	Contractors are required to follow all the provisions of BOCW Act.

• Prevention of inhalation of dust, smoke, fumes, gases during construction works and provide adequate ventilation in workplace and confined space • Safety in material handling and stacking/un stacking • Safeguarding the machinery with fly-wheel of moving parts • Safe handling and use of plants operated by compressed air • Fire safety • Limit of weight to be lifted by workers individually • Safety in electric wires, apparatus, tools and equipment's • Provide safety net, safety sheet, safety belts while working at height (more than 1.6 mtrs as per OSHA) • Providing scaffolding, ladders and stairs, lifting appliances, chains and accessories where required • Safety in pile works, concrete works, hot asphalt, tar, insulation, demolition works, excavation, underground construction and handling materials • Provide and maintain medical facilities for workers • Any other matters for the safety and health of workers	
Motor Vehicles Act, 1988 No person will be allowed to drive a motor vehicle unless he holds a valid driving license issued to him authorizing him to drive the vehicle	Valid and appropriate (LMV/HMV) driving license of operators and drivers is required to operate or drive vehicle and equipment at construction site
The Petroleum Rules 2002 All due precautions will be taken at all times to prevent escape of petroleum into any drain, sewer, and harbor, river or watercourse or over any public road or railway line.	Do not allow any escape of diesel, lubricants in to drain or any nearby water sources (including ground water)
Gas Cylinder Rules 2004 These rules deal with filling, possession, import and transport of cylinders, safety relief devices, prohibition of smoking, fires, lights etc. Special precautions against accidents, Competent person to be in charge of operations, Handling and use, Restrictions on filling, Loading, unloading and transport of cylinders, Storage of cylinders, ownership and record keeping etc.	All the safety in storage, transportation, handling, usage, maintenance, repairing of gas cylinders and other precautions should be taken and record should be kept maintained.

Applicable Labor Laws The contractor shall base the employment relationship upon equal opportunity and fair treatment and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment or retirement, and discipline. The contractor shall provide equal wages and benefits to men and women for work of equal value or type.	All applicable labor laws including amendments issued from time to time applicable to establishments engaged in construction of civil works has to be followed by the contractor.
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3. Environmental Impact and Mitigation Measures

Phase	Anticipated impacts	Mitigation measures
Land Environment		
Design phase	• Construction activities can have a significant impact on ecologically sensitive areas (ESAs) such as Habitat loss and fragmentation, Erosion and sedimentation and various types of pollution. • Impervious surfaces, such as roads, parking lots, and buildings, prevent water from infiltrating into the ground, leading to increased runoff and flooding. • The removal of vegetation can lead to erosion, sedimentation, water pollution, and habitat loss. • Construction on unstable slopes can landslides, soil erosion, sedimentation etc.	• The proposed site is not in any ecologically sensitive areas. All necessary consents, permits, clearance, NOCs, etc. prior to start of civil works will be obtained. • Maximizing permeable spaces on the site to promote infiltration of rainwater into the ground which will also help to recharge groundwater. • Vegetation cover that binds the soil shall be maintained to prevent any erosion. In some cases, natural protection measures such as planting of vegetation will be done to further reduce the chances of erosion. • Adoption of design compatible with the natural environment and suitable selection of materials to enhance the aesthetic appeal and blend with the natural surroundings. • Identify and avoid areas with unstable slopes and local factors that can cause slope instability (groundwater conditions, precipitation, seismic activity, slope angles, and geologic structure).
Construction Phase	• Clearing the site of vegetation cover, cutting of trees and site levelling may induce soil erosion as the vegetation bind the soil through their roots preventing erosion during rains and storm.	• Minimum vegetation removal will be done during site clearance activities and the topsoil will be preserved and reapplied at different places for plantation purposes. Though the site layout and materials used for ground surfaces promote minimum impermeable surfaces. • Non-invasive vegetation species would be planted.

Construction Phase	• Excavation of soil for laying foundation may cause release of heavy metal or other contaminations topsoil. • Storage and handling of construction equipment and heavy machinery on unpaved or unlined surfaces may affect the soil quality. Any form of leakage or spill during handling and storage of fuel or runoff from material or waste/debris in storage yard will affect the soil as it can penetrate into the soil strata affecting its characteristics. • Repair, maintenance and washing of machinery, trucks and construction equipment on open soil surface will also impact the soil environment. • Disposal of construction waste/debris, waste or oil-soaked cloth; liquid waste into the soil environment will be a major source for pollution. • Vibrations caused by heavy vibration rollers or bedrock blasting leads to soil compaction, which restricts the growth of vegetation on site and also limits the water seepage into the ground.	• Spillage of oil, fuel, concrete, construction materials and liquid/solid waste shall be removed immediately, and the affected soil shall be treated appropriately. • Organized and scheduled construction process with skilled workers to avoid any accidents like spillage of fuel, oil or waste disposal. • Co-ordinate material deliveries to minimize the storage times on site to avoid damage and producing waste material and provide training to site staff in waste minimization practices. • Use modern equipment wherever possible. Such equipment normally has better noise and vibration attenuation than older machines. Modern machinery also offers other benefits, such as reduced emissions, etc. • Provision of segregated waste disposal facilities and ensure it does not contaminate the environment. Maximize the opportunity for reusing/ recycling materials and thereby negate/ minimize the disposal requirements. Provision of bio-toilet facilities for construction workers and prevent open defecation. • No activity has been proposed which would expose ground water. • Identify and include locations and operators of these utilities in the detailed design documents to prevent unnecessary disruption of services during the construction phase. • Site clean-up is necessary after construction activities by the contractor.
Operation Phase	• Disposal of solid and liquid wastes into the soil environment will cause pollution and contamination resulting in degradation of soil quality. • Even if these wastes are properly collected and disposed in the respective facilities, improper handling and storage of these waste onto unpaved soil surface will	• Waste storage and processing facility shall be proposed on site with proper lining. • Use of perforated or hollow paver blocks for pavements and parking area to maximize the area under permeable surface which will help rainwater to seep into ground easily. • Seating with pergola is provided for natural shade, reducing the temperature in the sitting area. It will also create a cooler and more comfortable space.

Operation Phase	contaminate the soil leading to loss of soil fertility, reduction in soil strength, compaction, nutrient availability, degradation of soil quality etc. • If the quality of the treated water exceeds the CPCB standards it will affect the soil environment. • Covering of ground area with impervious materials like concrete or cement will generate more runoff and will also reduce the amount of water seeping into the ground. The runoff may also flow into nearby water bodies.	
Air Environment		
Design Phase	• Emissions from operating heavy machinery and emissions from existing DG sets.	NA
Construction Phase	• Excavation and clearing of land (site levelling and green cover removal) will cause particulate matter suspension in the environment resulting in degradation of air quality. • Emissions from operating heavy machinery and emissions from existing DG sets will release particulate matter, SOx and NOx into the air environment thereby polluting it.	• Site isolation and wind barriers around the construction site should be raised. • Storage of construction materials in confined areas (adequately covered and contained so that they are not exposed to high wind speeds on site leading to dust particle emissions. • The DG sets used for power generation are equipped with BS6 engine resulting in reduced noise and air emissions. The stack heights of DG Sets will be provided as per CPCB/ MoEF&CC norms.
Construction Phase	• Dust emissions during construction of infrastructure facilities, amenities etc. • Movement of construction vehicles, transporting materials, equipment etc. within the proposed site will also affect the air environment and vehicle movement beyond the project site is not envisaged.	• Water Sprinkling system / periodical wetting of site should be done to avoid excess dust emission. • Existing idling control techniques which automatically shut the engine off after the present time can reduce emissions, without interventions from the operators. • Maintain construction vehicles and obtain “pollution under control” certificate from state PCB.

Operation Phase	• Emissions from operating heavy machinery and emissions from existing DG sets will release particulate matter, SOx and NOx into the air environment thereby polluting it. • Emission from vehicle/ machinery operations and suspended particulate matter arising from vehicle movement will alter the baseline air quality.	Solar panels will also be used to meet the energy requirements of the project site. • Provide cycles and electric vehicles to tourists for their local travel. • Regular equipment maintenance to be checked by the contractors at regular intervals throughout the life of the contract.
Noise Environment		
Construction Phase	• Construction for infrastructure and ancillary facilities will produce major noise impacting the surrounding environment, especially to the fauna and construction workers.	• Provision of Personal Protective Equipment (PPE) with mufflers to all the construction workers to prevent any hearing loss or stress. • Proper isolation of construction site and limiting working hours during daytime and completely avoid night-time construction activities.
Construction Phase	• The power demand for construction phase is very little and will be sourced from DG sets only of appropriate capacities which might disturb the noise environment. • As a part of road construction, noise emission is unavoidable.	• DG sets will be provided with acoustics enclosures and will be located away from the eco-sensitive areas. • Use of well-maintained proper equipment and machinery for construction to reduce noise levels. • Provision of PPEs to workers operating the DG Sets.
Operation Phase	• Use of DG sets for power supply may cause some noise.	NA
Water Environment		
Design phase	A poorly designed or maintained drainage system can lead to flooding, erosion, Mosquito breeding, water pollution etc.	• Incorporation of adequate drainage provisions.
Construction Phase	<u>Ground water:</u> • Activities like disposal of solid waste onto an unpaved surface, discharge of sewage and other liquid waste onto the soil will lead to seepage of these wastes into the soil stratum polluting the groundwater quality. • Excavation for construction and piling beyond the	• Excavation will be avoided during the monsoon season. Adequate care will be taken to avoid soil erosion. Any area with loose debris within the site shall be planted. • Prevent spillage and disposal of waste onto soil and surface water bodies: Leak proof containers will be used for storage and transportation of oil/ grease, any wash off from oil/grease areas will be drained through

	required depth may cause variations in the groundwater table. • Surface runoff containing spilled construction materials during transport may leach into the soil and affect the groundwater quality. <u>Surface water:</u> • Disposal of waste generated during the construction phase like used/ waste oil, cloth waste, construction materials, fuel etc. into water bodies will contaminate these water bodies making them unfit for usage. • The runoff from construction materials, waste facilities, mobile toilets etc. may flow towards the water bodies and may impact its water quality. • Runoff from waste segregation facilities/yards, materials handling, machinery/ equipment and trucks repair etc. may enter nearby water bodies and may contaminate it. • Open defecation and waste from mobile toilets setup for construction workers will cause an impact on the water bodies when they come into contact. • Site preparation, levelling and vegetation clearance will result in soil erosion and when this loose soil enters the water bodies as runoff, it will cause turbidity resulting in temporary change in water quality	impervious drains. Waste oil will be transported to mainland for recycling and safe disposal. • Dispose waste oil and lubricants generated as per provisions of Hazardous Waste (Management and Handling) Rules, 1989. • Spillage of diesel from DG Sets and storage tanks if any is being arrested and cleared immediately as per the rules/acts. • No activity has been proposed which would expose ground water.
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Operation Phase	<u>Ground water:</u> - Activities like discharge of untreated wastewater from the wooden huts onto open soil stratum will leach into the sub-surface and contaminate the groundwater. Any spill or leak from the DG sets or fuel storage tanks may leach into the soil and pollute the groundwater. The treated wastewater will be used for landscape purpose within the project area; if the quality of treated wastewater is not meeting the CPCB standards it will affect the groundwater quality when it leaches below sub- strata. <u>Surface water:</u> - Disposal of plastic waste, solid waste, sewage, wastewater and other forms of waste into the available surface water bodies will alter its physical, chemical and biological Characteristics contaminating it.	No wastewater will be disposed into the environment untreated; the treated water will be used for various processes like flushing, landscaping and horticulture, make up water for HVAC etc. causing no impact to the environment. - To recover the green cover lost in construction, compensatory plantations is being done in the spaces available. It is suggested to plant native species of trees and shrubs to replicate the existing ecosystem. Water saving fixtures: Low flow dual flushing systems will be installed to allow different volumes for flushing liquids and solids. The flushing requirements using these fixtures will be 3 litres/flush and 6 litres / flush as compared to the conventional requirement of 9 litres/flush - Any accidental spillage of construction materials during transportation shall be removed immediately to prevent runoff contamination.
Socio-economic Environment		
Design phase + Construction + Operation phase	No Negative Socio- Economic impact is generated from the project.	Livelihood opportunities shall be created by imparting skill development program to the eligible local youths to accommodate the proposed project employment needs. Developers are mandated to undertake skill development and educational awareness building activities. - The project shall promote and sponsor local festivals and events as a way of promoting local culture. - Precautionary measures will be taken for Cyclones/ Storms, floods, Fire accident, COVID etc. - Employment of local citizens for various commercial activities in the project have to be ensured by the Agency

Solid waste, Hazardous and Other Wastes		
Construction Phase	Construction activities generate wastes in the form of solid and liquid, during the construction phase of the project.	- The major quantity of solid waste that will be generated during construction phase is from site excavation from proposed project activities. All soil excavated is used for back filling. If this waste is disposed into the environment, it will affect the quality and cause pollution to various environmental components. Coordinate with Local Municipal Authority for beneficial uses of excavated soils/ silts/ sediments or immediately dispose to designated areas. Leaves and other waste from the clearance shall be treated as solid waste and can be used as compost. - Equipment oil and other waste from the construction must be managed as per the rules. No waste will be incinerated.
Operation Phase	- Operation of project will generate waste in the form of biodegradable and non-biodegradable waste. - Presently, open defecation is being practiced which leads to water and soil pollution. It also creates unhygienic environment. Plastic waste from tourists and other working staff will also impact the environment, causing pollution.	- Ensuring proper disposal of waste and sewage collection. Waste storage and processing facility shall be proposed on site with proper lining. - Provision of public toilets on the ghats to reduce the open defecation. - Maximize the opportunity for reusing/ recycling materials and thereby negate/ minimize the disposal requirements. - Immediate removal of any waste or oil spill that was improperly or accidentally disposed off. - Employment of site supervisor to ensure proper waste segregation and disposal.
Biological Environment		
Design phase + Construction + Operation phase	Loss of habitat because of change in land cover within the site. Exotic species of vegetation cover introduced on the site replaces/affects the native vegetation growth and fauna of the area. Soil compacted to make way for manicured landscapes promoting soil erosion.	- All built up structures will be required to confirm to the environmental standards for the prevention of pollution. Construction machinery & materials shall not be placed in nearby water bodies. - The design and the outlay design should be such that it blends with the natural surroundings and maintains a vernacular look. Minimum vegetation removal will be done during site clearance activities and the topsoil will be preserved and reapplied at different places for plantation purposes. - Alterations in vegetation will be minor and not at a scale to affect the habitat it sustains. Non-invasive vegetation species would be planted.

		Attempt would be made to align the landscape drawing with existing vegetation pattern and any tree cut within the site area shall be replanted.
Traffic		
Construction Phase	During the construction phase of the project there will be an increase in the traffic that will be used for transporting construction materials, heavy machinery such as JCB 's, waste and supply handling trucks/ vehicles and construction workers.	- The required construction materials and waste produced from the construction and its allied activities shall be done in an organized and cumulative manner to reduce the number of trips. Regulating vehicle speed to 20kmph. High vehicle speed increases the amount of fugitive dust created from unpaved areas. Speed bumps will be provided to ensure reduction of speed on unpaved areas.
Operation Phase	Traffic movement in the site	- Provide cycles and electric vehicles (e-rickshaws) to tourist for their local travel which will ensure less air pollution. - Road signs and streetlights should be provided to avoid accidents and ensure safety.

SCHEDULE F: PERFORMANCE SECURITY
(See Article 9.1(a))⁶

WHEREAS:

- (A), (the “**Selected Agency**”) and the [.....]⁷ represented by the Secretary, Department of Tourism (“**Authority**”) and having its principal offices athave entered into a Contract Agreement dated..... (the “**Agreement**”) whereby the Authority has agreed to the Selected Agency undertaking the development, operation, maintenance and management of the Project atin, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Selected Agency to furnish a Performance Security to the Authority in a sum of [Rs. cr. (Rupees crore)] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the period of 1 (one) year from the Appointed Date.
- (C) We, through our Branch at(the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Selected Agency’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Selected Agency, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of a Secretary or equivalent, that the Selected Agency has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Selected Agency is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Selected Agency is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Selected Agency, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge

⁶ To be read as Performance Guarantee with reference to Article 34.

⁷ The name of the authority issuing the Concession to be inserted.

of the Selected Agency for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Selected Agency and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Selected Agency before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Selected Agency contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Selected Agency, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Selected Agency or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Selected Agency under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than [6 (six) months] from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect after expiry of a period of [6 (six)] months from the Project COD, and provided the Selected Agency is not in breach of this Agreement. Upon request made by the Selected Agency for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Selected Agency, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of

post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [____]⁸ from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed thisday of 201.... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature) (Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

⁸ Number of years and months to be included.

SCHEDULE G: PROJECT COMPLETION SCHEDULE

(See Article 10.3.5)

1. Project Completion Schedule

During Construction Period, the Selected Agency shall comply with the requirements set forth in this Schedule G for each of the Project Milestones and Scheduled Completion Date (the **Project Completion Schedule**). Within [15 (fifteen)] days of the date of each Project Milestone, the Selected Agency shall notify the Authority of such compliance along with necessary particulars thereof.

For construction, execution, supervision and related works shall be carried out in accordance with the appendix 2.1 and MPPWD manual.

PROJECT SCHEDULE FOR DEVELOPMENT;

- Total Development Duration (months): 10

Project Schedule/ Progress Monitoring		
Sr. No	Work Details	Time period
1	Work under A3, A4, partial A2, A1	1/4th time allowed
2	Work under partial A1, A2; B1, C1, E1	1/2 of time
3	Work under A1, A2	3/4th of time
4	Complete	End of construction time

- Total O&M Duration (months): 120

2. Project Milestone and Payments

The Agency shall be made payments sequentially in order defined as per milestones mentioned and the payment shall be made directly by the Authority/Authority Representative but not through Escrow account.

S.No	Mobilization Advance		Advance %	
1	Mobilization Advance of the accepted Estimated Project Cost against submission of Advance Bank Guarantee. The advance shall be recovered @25% from instalment subsequent to Mobilization advance.		10%	
S.No	Activities (A)		% of Project Cost Allocated	Project Milestones
A1	Tourist Experience Centre		20.84%	
	1.1	Orchha Tactile Model		5%
	1.2	Tourist Centre for orientation of Orchha including Booking Kiosk		40%
	1.3	Immersive Experience at Tourist Experience Centre		20%
	1.4	Landscaping, Children Play area		10%

	1.5	Services (HVAC, Fire Fighting, CCTV) + Lighting & Electrical		10%
	1.6	Pink Toilet and Open Café		5%
	1.7	Starting of Operation		10%
A2	Hunarshala		6.20%	
	2.1	O.A.T.		15%
	2.2	Craft Area for Artists with direct access for Tourist		40%
	2.3	Hands-on Workshop Area		25%
	2.4	Open area, Landscape court with Demonstration Area		10%
	2.5	Starting of Operation		10%
A3	Arrival and Entry Plaza		4.85%	
	3.1	Plaza on both sides of Moat (in Parking and Citadel)		35%
	3.2	Services (Lighting and Electrical Works)		15%
	3.3	E - Changing Station, Seating and Drop-off and Paving, QR Codes for Tickets		30%
	3.4	Starting of Operation		20%
A4	Orchha City Experience: Heritage Streetscaping		58.55%	
	4.1	Street Façade Upgradation (Colour, Arches, Awning, Chajja, Railing/Parapet, Shop Signage)		45%
	4.2	New Pavement/Pathway		10%
	4.3	Repair Existing Pavement/Pathway		10%
	4.4	Street Furniture and Street Signages		10%
	4.5	Street Illumination		15%
	4.6	Festivals and Events		5%
B1	Hop-On Hop-Off Services for Tourist		7.50%	
	5.1	Traditional Themed Transportation (HOHO Buses 12-15 seater EV)		65%
	5.2	HOHO Bus Stop Signages and QR Codes		10%
	5.3	Starting of Operation		25%
C1	Website and App Development		8.32%	
	6.1	Website Design and integration of Live Features		10%
	6.2	Website Content Development		25%
	6.3	360-degree views for Attractions		45%
	6.4	Audio Guided Systems for Attractions QR based App for Tracking and Online Feedback Mechanism		10%
	6.5	Starting of Operation		10%
D1	Skill Development Training			
	7.1	Development of Training Programme		40%
	7.2	Conduction of the programme		60%
E1	Tourism MSME Training			
	8.1	Development of Training Programme		40%
	8.2	Conduction of the programme		60%

The payment shall be released after satisfactory inspection conducted by the Authority. The Selected Agency shall raise bills to the Authority in accordance with the payment schedule mentioned above. All the bills raised/submitted by the Selected Agency shall be duly verified by the Independent Engineer/Engineer-in-Charge for the payments.

(a) Scheduled Completion Date

The Scheduled Completion Date shall occur on the..... On or before the Scheduled Completion Date, the Selected Agency shall have completed the Project and the Project Infrastructure in accordance with this Agreement.

(b) Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE H: TESTS
(See Article 12.4.2 and 13.3)

1. Schedule for Tests

- 1.1. The Selected Agency shall, no later than [30 (thirty)] days prior to the likely completion of the Project, notify the Authority and the Authority of its intent to subject the Project to Tests, and no later than [7 (seven)] days prior to the actual date of Tests, furnish to the Authority and the Authority detailed inventory and particulars of all works and equipment forming part of the Project.
- 1.2. The Selected Agency shall notify the Authority of its readiness to subject the Project to Tests at any time after [7 (seven)] days from the date of such notice, and upon receipt of such notice, the Authority shall, in consultation with the Selected Agency, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Authority shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 12 and this Schedule H.

2. Tests

- 2.1. In pursuance of the provisions of Article 12.4.2 of this Agreement, the Authority shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.
- 2.2. Visual and Physical Test
The Authority shall conduct a visual and physical check of the Project, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3. Trial run
The Authority shall require the Selected Agency to carry out or cause to be carried out a trial run of all equipment, facilities and systems to determine that the Project is in conformity with the provisions of this Agreement.
- 2.4. Tests for equipment
The Authority shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Project and described in Schedule-H
- 2.5. Environmental audit:
The Authority shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.6. Safety review:
The Authority shall carry out a safety audit of the Project to determine its compliance

3. Agency for Conducting Tests

All Tests set forth in this Schedule H shall be conducted by the Authority or such other agency or person as it may specify in consultation with the Authority.

4. Inspection by the Authority

Upon successful completion of Tests, the Authority shall submit an Inspection Report in accordance with the provisions of Article 12.

5. Tests during Construction

Without prejudice to the provisions of this Schedule H, tests during Construction Period shall be conducted in accordance with the provisions of Article 13.3.1.

SCHEDULE I: FORMAT FOR COMPLETION CERTIFICATE

(See Article 14.2.2(a))

To whom it may concern

In consideration of the requirements of conditions of of the Agreement and the Selected Agency's application for a Provisional Certificate/Completion Certificate, the Authority hereby grants the Provisional Certificate/Completion Certificate

[This Provisional Certificate has been issued pending completion of the Punch List as described in Annex I to the Provisional Certificate]

This Provisional Certificate/Completion Certificate is issued on the understanding that the conditions of the Agreement have been met except for minor outstanding work that does not affect the use and safety of the [Project/Project Infrastructure] and their intended use as certified by Authority through its letter dated [●].

Provisional Certificate/Completion Certificate does not relieve the Selected Agency of any requirements or obligations within the Agreement.

Signed this day of, 20 at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

Selected Agency by:

Authority by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

SCHEDULE J: MAINTENANCE REQUIREMENTS

(See Article 17.2)

1. Maintenance Requirements

- 1.1. The Selected Agency shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In particular, the Selected Agency shall, at all times during the Operation Period, conform to the Maintenance Requirements set forth in this Schedule J.
- 1.2. The Selected Agency shall repair or rectify any defect or deficiency set forth in clause 2 of this Schedule J within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement.

2. Repair/rectification of defects and deficiencies

- 2.1. The obligations of the Selected Agency in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in the Project within reasonable time limit in accordance with Good Industry Practices.
- 2.2. The Selected Agency shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. Other defects and deficiencies

In respect of any defect or deficiency, the Selected Agency shall undertake repair or rectification in accordance with Good Industry Practice.

4. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule J, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification, the Selected Agency shall be entitled to additional time in conformity with Good industry Practice.

5. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule J, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Selected Agency shall promptly take all reasonable measures for eliminating or minimising such danger.

6. Inspection by the Selected Agency

The Selected Agency shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Project and maintain a record thereof in a register. Such record shall be kept

in safe custody of the Selected Agency and shall be open to inspection by the Authority and the Authority at any time during office hours.

7. Transfer Requirements

All defects and deficiencies shall be repaired and rectified by the Selected Agency so that the Project conforms to the Maintenance Requirements on the Transfer Date.

Annex-I
(Schedule J)

Maintenance & Performance Standards and Service levels with penal provisions

(As per Section-6 and Appendix-VIII of the RFP)

SCHEDULE K: SAFETY REQUIREMENTS

(See Article 18.1)

1. Guiding principles

- 1.1. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2. Safety Requirements apply to all phases of construction, development, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule K.

2. Obligations of the Selected Agency

The Selected Agency shall abide by the following:

- (a) Applicable Laws and Applicable Permits;
- (b) provisions of this Agreement;
- (c) relevant Standards/Guidelines contained in nationally accepted codes; and
- (d) Good Industry Practice.

3. Safety measures during Operation Period

- 3.1. The Selected Agency shall develop, implement and administer a safety programme for the Project and Project Infrastructure, staff, Users and other persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 3.2. The Selected Agency shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Selected Agency shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.
- 3.3. The Selected Agency shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in 3 (three) copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Selected Agency pursuant to the provisions of clause 3.1 of this Schedule K for averting or minimising such accidents in future.

4. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of clause 2 of this Schedule K, shall be borne by the Selected Agency in accordance with the provisions of Article 18.2.

Annex - I (Schedule-K)

Safety Guidelines

1. System integrity

In the design of the Project and Project Infrastructure, particular care shall be taken to minimise the likely incidence of failure.

2. Safety management

A safety statement shall be prepared by the Selected Agency once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. [2 (two)] copies of the statement shall be sent to the Authority within [15 (fifteen)] days of the close of every year.

3. Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the **Disaster Management Manual**) to be prepared and published by the Selected Agency prior to Project COD. The Selected Agency shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the Authority no later than [30 (thirty)] days prior to Project COD.

4. Fire safety

- 4.1. To prevent fire in the Project, the Selected Agency shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.
- 4.2. To deal with incidents of fire, the Selected Agency shall provide a hydrant based fire- fighting system in conformity with the provisions of Schedule C.

5. Surveillance and Safety Manual

The Selected Agency shall, no later than [60 (sixty)] days prior to Project COD, evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection.

6. Watch and Ward

The Selected Agency shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety of the Project and all persons affected by it.

SCHEDULE L: ESCROW ACCOUNT AGREEMENT

(See Article 26.1.2)

THIS ESCROW ACCOUNT AGREEMENT is entered into on this the day of
.....20...

AMONGST

.....,..... Limited, a company incorporated under the provisions
of the Companies Act, 2013 and having its registered office at.....(hereinafter
referred to as the “**Selected Agency**” which expression shall, unless repugnant to the context or
meaning thereof, include its successors, permitted assigns and substitutes);

.....(insert name and particulars of the Escrow Bank) and having its registered
office at (hereinafter referred to as the “**Escrow Bank**” which expression shall,
unless repugnant to the context or meaning thereof, include its successors and substitutes); and

The [.....]⁹ represented by the Secretary, Department of Tourism and having its principal
offices at (hereinafter referred to as the “**Authority**” which expression shall, unless
repugnant to the context or meaning thereof, include its administrators, successors and assigns);

WHEREAS:

- A. The Authority has entered into an agreement dated with the Selected Agency (the
“**Contract Agreement**”) for developing, operating, maintaining and management of tourist
experience, in....., and a copy of which is annexed hereto and marked as Annex-A
to form part of this Agreement.
- B. The Contract Agreement requires the Selected Agency 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:

⁹ Name of the authority issuing the Concession agreement to be inserted

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

Unless contrary to the provisions of this Agreement, the capitalised terms used in the Agreement but not defined in this Agreement, shall have meaning assigned to it under the Contract Agreement. 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” shall mean this Escrow Account Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Contract Agreement” shall mean the Contract Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Selected Agency, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Selected Agency asking the latter to cure the breach or default specified in such notice;

“Escrow Account” shall mean an account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Account Default” shall have the meaning ascribed thereto in Article 6.1;

“Lenders’ Representative” shall mean the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“Payment Date” shall mean, in relation to any payment specified in clause 4.1, the date(s) specified for such payment; and

“Sub-Accounts” shall mean the respective sub-accounts of the Escrow Account, into which the monies specified in clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s);

1.2. Interpretation

1.2.1. References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement

and not defined herein but defined in the Contract Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Contract Agreement.

- 1.2.3. References to clauses are, unless stated otherwise, references to clauses of this Agreement.
- 1.2.4. The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Contract Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ESCROW ACCOUNT

2.1. Escrow Bank to act as trustee

- 2.1.1. The Selected Agency hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Selected Agency 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 Selected Agency hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Selected Agency, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Selected Agency 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 Selected Agency, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Selected Agency 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. 30 (thirty) days before the date of the start of operation & maintenance Date, and the Selected Agency 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 Selected Agency shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this

Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Selected Agency. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with clause 4.1.

2.5. Rights of the Parties

Save and except as otherwise provided in the Contract Agreement, the rights of the Authority, the Lenders' Representative and the Selected Agency in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Selected Agency shall have no other rights against or to the monies in the Escrow Account.

2.6. Substitution of the Selected Agency

The Parties hereto acknowledge and agree that upon substitution of the Selected Agency 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 Selected Agency under this Agreement on and with effect from the date of substitution of the Selected Agency with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Selected Agency

3.1.1. The Selected Agency agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) At least 120% (One Hundred and Twenty percent) of the Annual Fee payable to the Authority, from the annual revenue from the Project, for the Accounting Year, at least 15 (fifteen) days prior to the date the Annual Fee is due and payable to the Authority. In case the annual revenue from the Project is less than 120% of the Contract Fee, then the Selected Agency shall make good the balance amount to reach the 120% of the Annual Fee from its own sources; and
- (b) Additional Annual Fee at least 15 (fifteen) days prior the Annual Fee is due and payable to the Authority.

3.1.2. The Selected Agency may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2. Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) all Revenues collected by the Authority, if any, in exercise of its rights under the Contract Agreement; and
- (b) Termination Payments.

Provided that, notwithstanding the provisions of clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Annual Fee due and payable to it by the Selected Agency and the balance remaining shall be deposited into the Escrow Account.

3.3. 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 Selected Agency in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1. Withdrawals during Contract Period

- 4.1.1. At the beginning of every year, or at such shorter intervals as the Lenders' Representative and the Selected Agency may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts, if any, in the relevant Sub- Accounts for making due payments, and if such payments are not due in any year, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) Annual Fee and Additional Annual Fee due and payable to the Authority;
- (b) all payments and Damages certified by the Authority as due and payable to it by the Selected Agency; and
- (c) balance, if any, in accordance with the instructions of the Selected Agency.
- (d) All payment shall be made through new bank account created by the Authority as per article 26.5

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

4.2. Withdrawals upon Termination

Upon Termination of the Contract Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all Taxes due and payable by the Selected Agency for and in respect of the Project;
 - (b) Outstanding Annual Fee and Additional Contract Fee;
-

- (c) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Selected Agency;
and
- (d) balance, if any, in accordance with the instructions of the Selected Agency.

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

4.3. Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4. Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and 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 behalf in the Financing Agreements.

4.5. Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Selected Agency during the period of Suspension under Article 31 of the Contract 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 Selected Agency under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Selected Agency.

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 Selected Agency and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub- Accounts as at the close of business on the immediately preceding business day.

5.3. Communications and notices

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

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

5.4. **No set off**

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5. **Regulatory approvals**

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. **ESCROW ACCOUNT DEFAULT**

6.1. **Escrow Account Default**

6.1.1. Following events shall constitute an event of default by the Selected Agency (an "**Escrow Account Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Selected Agency commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of [5 (five)] business days;
- (b) the Selected Agency causes the Escrow Bank to transfer funds to any account of the Selected Agency in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub- Account in which such transfer should have been made, within a Cure Period of [5 (five)] business days; or

- (c) the Selected Agency 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 Account Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Contract Agreement.

7. TERMINATION OF ESCROW ACCOUNT AGREEMENT

7.1. Duration of the Escrow Account Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Selected Agency in respect of 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 Selected Agency may, by not less than [45 (forty five)] days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Account Agreement with the substitute Escrow Bank.

7.3. Closure of Escrow Account

The Escrow Bank shall, at the request of the Selected Agency and the Lenders' Representative made on or after the payment by the Selected Agency of all outstanding amounts under the Contract Agreement and the Financing Agreements including the payments specified in clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Selected Agency. Upon closure of the Escrow Account hereunder, the Escrow Account Agreement shall be deemed to be terminated.

8. INDEMNITY

8.1. General indemnity

- 8.1.1. The Selected Agency shall indemnify, defend and hold the Authority and Escrow Bank, 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 Selected Agency of any of its obligations under this Agreement or on account of failure of the Selected Agency to comply with Applicable Laws and Applicable Permits.
- 8.1.2. The Authority shall indemnify, defend and hold the Selected Agency harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Selected Agency's obligations under the Contract 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.
- 8.1.3. The Escrow Bank shall indemnify, defend and hold the Selected Agency harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Selected Agency's obligations under the Contract 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.

8.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within [15 (fifteen)] days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

9. DISPUTE RESOLUTION

9.1. Dispute resolution

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 the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be

mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

- 9.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

10. MISCELLANEOUS PROVISIONS

10.1. Governing law and jurisdiction

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

10.2. 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 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).

10.3. Priority of agreements

In the event of a conflict between the Contract Agreement and this Agreement, the provisions contained in the Contract Agreement shall prevail over this Agreement. The contents of this Agreement shall prevail over any other agreement executed for the mechanism of the payment between the Selected Agency and the Senior Lenders under the Financing Agreements.

10.4. 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 authorised representatives of the Parties.

10.5. **Waiver**

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 authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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.

10.6. **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.

10.7. **Survival**

10.7.1. 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
- (c) caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

10.7.2. 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.

10.8. **Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under clause 10.1 of this Agreement or otherwise.

10.9. 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.

10.10. 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 page 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.

10.11. Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

10.12. Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised 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 authorised representative by similar notice.

10.13. Original Document

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

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

THE COMMON SEAL OF SELECTED AGENCY has been affixed pursuant to the resolution passed by the Board of Directors of the Selected Agency 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: (Signature) (Name)	SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative: (Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)
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(Designation) (Address) (Fax No.) (e-mail address) 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)
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SCHEDULE M: VESTING CERTIFICATE

(See Article 33.4)

[The _____]¹⁰ represented by (the “**Authority**”) refers to the Contract Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Selected Agency**”) for a Project, at in

The Authority hereby acknowledges compliance and fulfilment by the Selected Agency of the Transfer Requirements set forth in Article 33.1 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 Selected Agency in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

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 Selected Agency to rectify and remedy any defect or deficiency in any of the Transfer Requirements and/or relieving the Selected Agency in any manner of the same.

Signed thisday of....., 20.... at.....

AGREED, ACCEPTED AND SIGNED For and on behalf of Selected Agency by: (Signature) (Name) (Designation) (Address)	<u>SIGNED, SEALED AND DELIVERED</u> <u>For and on behalf of Authority by:</u> (Signature) (Name) (Designation) (Address)	<u>SIGNED, SEALED AND DELIVERED</u> <u>For and on behalf of Authority Representative by:</u> (Signature) (Name) (Designation) (Address)
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In the presence of:

1.

2.

¹⁰ Name of the authority issuing the Concession agreement to be inserted