

Department of Cultural Affairs, Government of Punjab

Acting Through

Punjab Heritage and Tourism Promotion Board

Invites

Request for Proposal (RFP)

for

**Development, Operation and Maintenance of
Heritage Restaurant cum Recreation Center at Gol
Kothi, Kapurthala**

SECTION – II: DRAFT CONCESSION AGREEMENT

Date: 16 November 2021

(This document is meant for exclusive purposes of submitting the proposal against this RFP document and shall not be transferred, reproduced or otherwise used for purposes other than that for which it is specifically issued)

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Concession Agreement

THIS CONCESSION AGREEMENT is entered into on the ____ day of _____ 2021 at _____.

BETWEEN

THE GOVERNOR OF THE STATE OF PUNJAB in his executive capacity for the Government of the State of Punjab, through Department of Tourism & Cultural Affairs, acting through Punjab Heritage and Tourism Promotion Board (PHTPB), having its office at Punjab Archives Bhawan, Plot No. 3, Sector 38-A, Chandigarh - 160036, acting through its authorized representative _____ (hereinafter referred to as the “**Authority**” or the “**Concessions Authority**”, which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **FIRST PART**;

AND

M/s. _____ [insert the name of the Concessionaire], a _____ incorporated under _____, and having its registered office at _____ acting through _____ its _____, duly authorized in this behalf by way of Power of Attorney dated _____ (hereinafter referred to as the “**Concessionaire**” which expression shall, unless the context otherwise requires, include its successors, permitted assigns and substitutes) of the **SECOND PART**,

AND

M/s _____, a Company / sole proprietorship and having its registered office at _____, M/s _____ incorporated under the Companies Act 1956 and having its registered office at _____ acting through _____ its _____, duly authorized in this behalf by way of Power of Attorney dated _____ (hereinafter referred to as the “**Selected Bidder**” which expression shall, unless the context otherwise requires) of the **THIRD PART**.

OR

{Consortium of (i)) M/s _____{Lead Member} incorporated under the _____ and having its registered office at _____, and (ii) M/s _____{Consortium Member 2} incorporated under the _____ and having its registered office at _____, hereinafter referred to as the “**Selected Bidder**” which expression shall, unless the context otherwise requires) of the **THIRD PART**.}

hereinafter individually referred to as “**Party**” and together referred to as “**Parties**”.

RECITALS:

WHEREAS

- A. The Authority intends Development, Operation and Maintenance of Heritage Restaurant cum Recreation Center at Gol Kothi, Kapurthala through Public Private Partnership (PPP) mode on Operation & Maintenance (O&M) format for a period of 15 (fifteen) years (hereinafter referred to as the “**Project**”).

- B. The Authority is in possession of the Project Site, as given in the Schedule – 1, which shall be given on lease by the Authority to the Concessionaire.
- C. The Authority has designated **Punjab Infrastructure Development Board (“PIDB”)** as the nodal agency, on behalf of the Authority, for selection of a private sector player for the implementation of the Project. PIDB had accordingly, prescribed technical and commercial terms and conditions and invited proposals (the **“Request for Proposal”** or **“RFP”**) from the interested bidders for execution of the above referred Project.
- D. After evaluation of the bids received, PIDB, on behalf of the Authority, had accepted the bid of the{Selected Bidder/ Consortium} and issued its Letter of Award No.dated..... (hereinafter called the **“LOA”**) to the {selected bidder / Consortium} requiring, inter alia, the execution of this Concession Agreement within 60 (sixty) days of the date of issue thereof.
- E. {The Selected Bidder/ Consortium has requested PIDB and the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder/ Consortium under the LOA} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- F. _____[Selected Bidder/ Consortium] has promoted the Concessionaire (**“Special Purpose Vehicle”** or **“SPV”**) in accordance with the terms of the RFP and has requested PIDB and the Authority through a letter bearing number ____ dated ____ to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the Letter of Award, including the obligation to enter into this Agreement pursuant to the Letter of Award for implementing the Project.
- G. {By its letter dated, the Concessionaire has also joined in the said request of the Selected Bidder / Consortium to PIDB and the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder / Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Consortium for the purposes hereof}.
- H. The Selected Bidder has, in compliance with the terms of the LOA and as per the RFP, made the following payments on behalf of the Concessionaire to the Authority:
 - I. An irrevocable, unconditional, bank guarantee, in the name of the Authority, issued by _____, [name & address of the issuing bank] for an amount equal to _____, as a guarantee for the performance of its obligation under this Concession Agreement by the Concessionaire in relation to the Project (herein the ‘Performance Security’).
- J. In response to the Selected Bidder / Concessionaire complying with the terms of the LoA, the Authority has agreed to the said request of the Selected Bidder/ Consortium and the Concessionaire and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on O&M basis, subject to and on the terms and conditions set forth hereinafter.

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

Part I: Preliminary

Article 1: Definitions and Interpretations

1.1 Definitions

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

1. **“Agreement”** or **“Concession Agreement”** means this Agreement, its Recitals, the Schedules, hereto, the RFP and any amendments thereto made in accordance with the provisions contained in this Agreement and the Letter of Award issued by PIDB, on behalf of the Authority.
2. **“Adjusted Equity”** means the Equity funded in Indian Rupees and adjusted on the 1st (first) day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI (the **“WPI”**), and for any Reference Date occurring:
 - a. on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
 - b. from COD and until the 3rd (third) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
 - c. after the 3rd(third) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.3% (zero point three percent) thereof at the commencement of each month following the 3rd(third) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

and the aforesaid shall apply, mutatis mutandis, to the Equity funded in Indian Rupees and expended for capacity augmentation. For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Termination Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made.

3. **“Annual Concession Fee”** or **“ACF”** means as described in Article 19.6 of this Agreement.

4. **“Applicable Laws”** means all laws which are applicable to the Project and / or the Concessionaire extending to the State of Punjab, having been enacted or brought into force by Government of India or Government of Punjab including regulations and rules made thereunder, and judgments, decrees, injunctions, writs and orders of any Court of Record, as may be in force and effect during the subsistence of this Agreement.
5. **“Appointed Date”** means the latter of the date of issuance of the Compliance Certificate to the Authority or the Concessionaire under Article 4.3 and shall be deemed date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to Appointed Date.
6. **“Applicable Permits”** or **“Approvals”** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the implementation of the Project during the subsistence of this Agreement.
7. **“Associates”** means in relation to either Party and / or Consortium partners, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member. As used in this definition, the expression “control” means with respect to a person which is a corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
8. **“Authority”** or **“Concessions Authority”** means Department of Tourism & Cultural Affairs, acting through Punjab Heritage and Tourism Promotion Board (PHTPB).
9. **“Bank Rate”** means one-year MCLR (Marginal Cost of Funds Based Lending Rate) notified by State Bank of India.
10. **“Bid Security”** or **“Proposal Security”** means the security provided by the Selected Bidder to the Authority along with the Bid / Proposal in accordance with the Instructions to Bidders (ITB) and which is to remain in force until substituted by the Performance Security.
11. **“Bid”** or **“Proposal”** means the Concessionaire's quoted Financial Proposal and Technical Proposal for the Project, including the Concessionaire's Proposal, submitted to the Authority and as accepted by the Authority.
12. **“Commercial Charges”** means the charges and all other sources of revenue or amounts of money by whatever name called that are payable by users from time to time to the Concessionaire/ Authority, as specified in Article 19.2 of the Concession Agreement.
13. **“Competent Authority”** or **“Government Instrumentality”** means any agency, authority, department, ministry, public or statutory person of the Government of Punjab or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the

Project having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession Agreement.

14. **“Concession”** means as defined in Article 3.1.
15. **“Compliance Certificate”** means as defined in Article 4.3.3.
16. **“Concessionaire”** shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals.
17. **“Concession Period”** means the period for which this Concession is granted, commencing from the Appointed Date, as mentioned in the RFP and Concession Agreement hereof.
18. **“Conditions Precedent”** means the conditions set out in Article 4 thereof.
19. **“Construction Documents”** means and includes all drawings, calculations, computer application software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature prepared in relation to the Project.
20. **“Construction Period”** means the period from the Appointed Date to the date of issue of Construction Completion Certificate for temporary construction at Project site – Gol Kothi, wherein the Project Facilities as part of the Refurbishment and Development of Project Site have been completed and made operational, as per Schedule – 2 and all other applicable provisions of this Concession Agreement.
21. **“Contractor”** means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other agreement or contract for construction, operation and/or maintenance of the Project Facilities or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;
22. **“Covered Area”** of a building shall be as defined in The Punjab Urban Planning and Development Building Rules – 2018.
23. **“Cost”** means all expenditure incurred (or to be incurred) by the Concessionaire, on the Project, including overheads and similar charges, but does not include profit.
24. **“Day”** means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 (three hundred and sixty-five) days.
25. **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
 - a. the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "principal") but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
 - b. all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any

penal interest or charges payable under the Financing Agreements to any Senior Lender, due to any reason including delayed principal / interest payments and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and

- c. any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

provided further that the debt due shall in no case exceed 70% (seventy percent) of the Total Project Cost.

26. **“Design Approval Committee”** means the committee as constituted by Authority for approving the design/ concept plan of the Project, consisting of officials as stipulated in Schedule – 16 of the Agreement.
27. **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified by the Authority to the Concessionaire, and any modification, extension or replacement thereof from time to time in force.
28. **“DPR”** means Detailed Project Report as per Article 5.11;
29. **“Drawings”** means all of the drawings, calculations and documents pertaining to the Project Facilities, and shall include ‘as built’ drawings of the Project Facilities;
30. **“Encumbrances”** mean 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances or encroachments on the Facility where applicable herein.
31. **“Escrow Account”** means an Account which the Concessionaire shall open and maintain with a bank in which all inflows and outflows of cash on account of capital & revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;
32. **“Escrow Agreement”** shall have the meaning set forth in Article 20.1;
33. **“Escrow Bank”** means as set forth in Article 20.1;
34. **“Equity”** means the sum expressed in Indian Rupees representing the equity share capital of the Concessionaire and shall include the funds advanced by any Consortium Member or by any of the shareholders of the Concessionaire for meeting the equity component of the Total Project Cost.

35. **“Independent Engineer(s)”** means a person with relevant expertise as detailed in Schedule – 11;
36. **“FAR”** means the Floor Area Ratio, as defined in The Punjab Urban Planning and Development Building Rules 2018.
37. **“Finance”** means the funds required to design, built, operate, maintain and manage the Project and its components.
38. **“Financial Close”** means the situation when all the financing agreements for the Project have been signed and all the required conditions contained in them have been met, enabling funds flow towards Project implementation.
39. **“Financial Model”** means 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;
40. **“Financial Year”** means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Appointed Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.
41. **“Financing Documents”** means the documents executed by the Concessionaire in respect of financing of the Project to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents.
42. **“Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence specified in the Article 23.1.
43. **“FSI Area”** of any building, expressed in square feet, means total Covered Area, across all floors of the building; and shall be taken as per Building Plan Approval of the said building. The FSI area excludes area towards basement and parking.
44. Further, **“Total FSI Area”** of the Project means a product of FAR and the land area of the Site, expressed in square feet.
It is further clarified that the aggregate FSI Area of all buildings planned, developed or to be developed on the Site shall in no case exceed the Total FSI Area.
45. **“Good Industry Practice”** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced developer or operator engaged in similar type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this

Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

46. **“Ground Coverage”**, expressed in percentage, means the ratio of maximum allowed built-up area on ground level to the total land area of the Site.
47. **“Lease Deed”** means the lease deed entered into between the Concessionaire and the Authority for the Site as per the format provided in the Schedules to this Concession Agreement.
48. **“Lease Rental”** means as defined in Article 19.5 of this Agreement.
49. **“Material Adverse Effect”** means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement, or (c) frustrates a material provisions of this Concession Agreement or any of the Project Agreements.
50. **“Maintenance Requirements”** shall mean the requirements as set out Schedule – 3 of this Concession Agreement.
51. **“Necessary Applicable Permits”** means Applicable Permits which are necessary to be procured by the Concessionaire for execution of the Project, as a Conditions Precedent, unless waived by the Authority; and shall include permits as mentioned in Schedule – 5 to this Agreement;
52. **“O&M”** means operations, maintenance and management of the Project Facilities.
53. **“O&M Expenses”** means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M of project site including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia 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 any 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. However, O&M Expenses shall not include any cost and expense related to O&M of Optional Project Facilities;
54. **“Operations Period”** or **“O&M Period”** is the period commencing from the COD and terminating at the Transfer Date.
55. **“Optional Development Facilities”** means the real estate development, including all the amenities and facilities required as basic and support infrastructure for such development, which the Concessionaire is allowed to develop on the Project Site, as described in greater detail in Schedule 3.
56. **“Party”** means any of the parties to this Concession Agreement.
57. **“Performance Security”** means a Bank Guarantee for an amount as defined in Article 9.1 of Concession Agreement; and shall be in the format as set out in RFP , from a scheduled bank approved by the Authority.

58. **“Person”** means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name.
59. **“Project”** means the project involving planning, set-up, design, construction, finance, operation and maintenance of the Project Facilities to be implemented on PPP basis, as per the terms and conditions of the RFP and this Concession Agreement and Schedules hereof and transfer of the same to the Authority at the end of the Concession Period or on prior termination of the Concession Agreement.
60. **“Project Assets”** means all physical and other assets relating to and forming part of the Site including:
- a. Rights over the Site in the form of lease, licence, Right of Way or otherwise;
 - b. Tangible assets such as civil works and equipment including foundations, embankments, pavements, interchanges, bridges, drainage works, electrical systems, communication systems, rest areas and administrative offices;
 - c. Project Facilities situated on the Site;
 - d. Buildings and immovable fixtures or structures forming part of Project;
 - e. All rights of the Concessionaire under the Project Agreements;
 - f. Financial assets, such as receivables, security deposits etc;
 - g. Insurance proceeds and
 - h. Clearances, Approvals and authorisations relating to or in respect of the Project
61. **“Project Agreements”** means, collectively, this Concession Agreement, the Financing Documents, hire purchase agreements, Implementation Agreements, sub-lease/ sub-license agreements and Operation & Maintenance Agreements, in each case as amended, supplemented or otherwise modified from time to time.
62. **“Project Facilities”** shall mean and include Facilities designed, developed and constructed as a part of the Project as described in Schedule – 3.
63. **“Project Insurance”** means the insurance taken out by or on behalf of the Concessionaire pursuant to the provisions of this Concession Agreement.
64. **“Project Revenue”** means all Commercial Charges, tariff, fees, deposits and amounts received by or paid to the Concessionaire from or with respect to the Project Facilities, for services provided and maintenance charges for the Project Facilities and other tariff and charges including maintenance charges for services provided to the users;
65. **“RFP”** means the Request for Proposal document issued by the Authority. The terms **“RFP”** and **“Request for Proposal”** are synonymous with **“Tender Documents”** and **“Bidding Documents”**.
66. **“Schedules”** mean the Schedules to this Concession Agreement.
67. **“Scheduled Completion Date”** means the date as ascribed in Article 12.4.

68. **“Senior Lender”** means the financial institutions, funds and banks who have advanced or agreed to advance term loan to the Concessionaire under any of the Financing Documents for meeting all or part of the Total Project Cost.
69. **“Specifications and Standards”** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Refurbishment and Development of Project Site, and any modifications thereof, or additions thereto, as included in the design and engineering for the Refurbishment and Development of Project Site submitted by the Concessionaire to, and expressly approved by the Authority.
70. **“Statutory Auditors”** means an independent, recognised and reputed firm of the chartered accountants duly licensed to practice in India acting as the Independent statutory auditors of the Concessionaire under the provisions of Companies Act, 1956 or 2013, including any statutory modification or re-enactment or replacement thereof, for the time being in force.
71. **“Subordinated Debt”** means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:
- a. the principal amount of debt provided by lenders to the Concessionaire for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
 - b. accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date; further, all penal interest or penalties for delayed principal repayments or any other defaults will not be included.
 - c. provided that if all or any part of the Subordinated Debt is convertible into equity at the option of the lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;
72. **“Successful Bidder”** or **“Selected Bidder”** means the shortlisted bidder after evaluation as per RFP, to whom Letter of Award is issued by PIDB, on behalf of the Authority.
73. **“Substitution Agreement”** means as defined in Article 27.3;
74. **“Tax”** means any tax, duty, levy, charge whatsoever charged, imposed or levied under Applicable Laws. Here, for this Project, the Concessionaire shall, at its own cost, pay all applicable existing and future taxes/ charges/ fees/ levies including the property tax, house tax, service tax, stamp duty, registration charges and any other charges payable/ leviable in respect of the said Project.
75. **“Temporary Works”** means all temporary works of every kind (other than Concessionaire's Equipment) required for the construction, operation and

maintenance of the Project, services, facilities and the remedying of any defects relating thereto.

76. **“Termination Date”** means the date on which this Concession Agreement terminates by efflux of time or by issuance of a Termination Notice.
77. **“Termination Notice”** means the communication issued in accordance with this Concession Agreement by a Party to the other Party for terminating this Concession Agreement.
78. **“Termination Payment”** means the amount payable by the Authority to the Concessionaire upon the termination of this Concession Agreement.
79. **“Third Party”** means any Person, real or judicial, or entity other than the Parties to this Concession Agreement.
80. **“Total Project Cost”** means the maximum total permitted capital investment undertaken the Operator, which shall be admitted in the Operator’s books of accounts for the purpose of estimation of Termination Payments; and shall mean the lower of the following:
 - a. Actual capital expenditure incurred by the Operator,;
 - b. Estimated Project Cost provided in the Bid Documentsprovided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement.
81. **“Transfer Date”** means the day immediately following the last day of the Concession Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of the Concession Agreement.
82. **“Users”** means any person or group of persons/ individuals/ families who uses the Project Facilities or any part thereof on payment of User Charges.
83. **“User Charges”** means the charges, levies, tariffs, prices, sub-lease fees, charges or all sources of revenue or amounts of money by whatever name called levied, demanded, collected, retained and appropriated by the Concessionaire from Users or under sub-lease or subcontracting arrangements.
84. **“Vesting Certificate”** shall have the meaning set forth in Article 26.4
85. **“Variation”** means a modification, improvement or change in the Works, services, and facilities etc. to be carried out by the Concessionaire.
86. **“Works”** or **“Construction Works”** means to set-up, design, build, finance, operate and maintain the Project as the context may require, and all the appurtenances thereof, any other temporary or urgent works required under this Concession Agreement.
87. **“WPI”** means the Wholesale Price Index for all commodities as published by the Ministry of Industry, Gol and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

- A. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such for modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- B. Reference to laws of Government of India or Indian Laws or state Laws or regulation having force of law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in state of Punjab;
- 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 and sub-headings are for convenience and reference only and shall not be used in and shall not affect, the construction or interpretation of this Agreement;
- 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. Reference to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly.
- G. References to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;
- H. Any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- I. Reference to an "**Accounting Year**" shall mean the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;
- J. Words importing Person or Parties shall include firms and corporations and any organization having legal capacity to sue and be sued in its name;
- K. Words importing the singular shall include the plural and vice-versa where the Concession requires;
- L. References to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in Kapurthala are generally open for business;
- M. Any reference to day shall mean a reference to a calendar day;

- N. Any reference to month shall mean a reference to a calendar month as per Gregorian Calendar;
- O. 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;
- P. The Schedules of this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- Q. Any reference at any time to any agreement, deed, instrument or document of any description shall be construed as reference to that agreement, deed, instrument or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- R. References to recitals, Articles, sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, subclauses and Schedules of or to this Agreement;
- S. References to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection of debtors;
- T. 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 hands of duly authorised representative of such party, as the case may be, in this behalf and not otherwise;
- U. Any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of next business day.
- V. The damages payable by either Party to the other as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.
- W. Time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Independent Engineer(s) shall be provided free of cost and in

three copies, and if the Authority and/or the Independent Engineer(s) is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

1.3 Measurements and Arithmetic Conventions

1.3.1 All measurements and calculations shall be in metric system and calculations done in 2 decimals places, with the third digit of 5 or above rounded up and below 5 belong down except in Fee calculation which shall be rounded off to nearest Indian Rupee Hundred (100).

1.4 Priority of Agreements, articles and schedules

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

- a. this Agreement; and
- b. all other agreements and documents forming part hereof or referred to herein;
- i.e. the agreement at (a) above shall prevail over the documents at (b) above.

1.4.2 In case of ambiguities or discrepancies within this Agreement, the following shall apply:

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

1.5 Priority of Documents

1.5.1 The documents forming this Concession Agreement 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 Concessionaire, and the priority of the documents shall be as follows:

- a. This signed Concession Agreement (including its Schedules), along-with any Addendums issued to the RFP document dated _____;
- b. Instructions to Bidders (ITB) (Section 1 of the RFP document dated _____), enclosed/ attached with this signed Concession Agreement; and
- c. All other documents enclosed / attached with this signed Concession Agreement.

Part II: The Concession

Article 2: Scope of the Project

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

2.1 Scope of the Project

2.1.1 The scope of the Project (the "**Scope of the Project**") shall mean and include, and as further elaborated in **Schedule – 2**, during the Concession Period:

- A. Temporary construction at the Project Site after approval of the design/ concept plan by the Design Approval Committee pursuant to the terms and conditions of the Concession Agreement and the Schedules hereof, in conformity with Applicable Laws including applicable building bye-laws and regulations of the State of Punjab.
- B. To develop, operate & maintain the Project on the Site as set forth in **Schedule – 1**, as per the Scope outlined in **Schedule – 2**, together with the provision of Project Facilities as specified in **Schedule – 3**, and in adherence to the Specifications and Standards as set forth in **Schedule – 4**.
- C. O&M of the project site in accordance with the provisions of this Concession Agreement and the Schedules hereof.
- D. Demand and collect Project Revenues etc. from the sub-lessees/ Users, as per the provisions of the Concession Agreement and the Schedules hereof.
- E. The use of standards and specifications for use of material, temporary construction technology and operations shall adhere to the national and international set of specifications and the best practices in the industry.
- F. Performance and fulfilment of all other obligations of the Concessionaire in accordance with the Concession Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Concession Agreement.

2.2 Project Facilities

2.2.1 The Concessionaire shall develop the Project comprising of the Project Facilities as described in detail in **Schedule – 3** ("**Project Facilities**")

2.2.2 All the Project Facilities shall be developed as per the minimum Specifications and Standards set-out for the purpose in the Schedule – 4.

2.2.3 While undertaking development of the Project, the Concessionaire shall adhere to latest amended National Building Code of India, other relevant IS Codes and practices, Development Control Regulations, FAR Limits, statutory requirements, laws of land, the principles of good industry practices and any other norms as applicable from time to time.

- 2.2.4 The Concessionaire shall be responsible for all the Applicable Permits and Approvals as may be required for the implementation of the Project. The Concessionaire is expected to ensure the timely renewal of such accreditation, clearances and approvals which should remain valid and subsisting throughout the Operation and Maintenance “O&M” Period. Failure to renew/ restore such accreditation, clearances and approvals or withdrawal thereof shall constitute Concessionaire Event of Default which may lead to termination in terms of this Concession Agreement.
- 2.2.5 The Concessionaire shall make the project site and facilities ready for operation and use, no later than the Scheduled Completion Date.

Article 3: Grant of Concession

3.1 The Concession (“**Concession**”)

- 3.1.1 Subject to and in accordance with the terms and conditions set forth in this Concession Agreement, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of **15 (fifteen)** years, commencing from the Appointed Date, including the exclusive right, license, authority and authorization during the subsistence of this Agreement, including extension thereof, to design, build, finance, operate, maintain and manage the Project during the Concession Period.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- a. Right of way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - b. design, finance and construct the Project Facilities;
 - c. manage, operate and maintain the Project Facilities and regulate the use thereof by third parties;
 - d. demand, collect and appropriate Project Revenues from guests and users, liable for payment of Commercial Charge, for using the Project Facilities or any part thereof and refuse entry of guests if the Commercial Charges due is not paid;
 - e. perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
 - f. bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
 - g. neither assign, transfer or sublet, or create any lien or Encumbrance on this Agreement, or on the Concession hereby granted, or on the whole or any part of the Project; nor transfer, or part with the possession of the Project Site thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement;
 - h. to enter into sub-contracts, joint development agreement, development management agreements, sub lease or any other kind of arrangements with regards to design, planning, construction, implementation or operations and maintenance of Optional Project Facilities during the term of the Agreement and in a way that does not contravene any of the underlying terms of the Concession under this Agreement.

3.2 Concession Period

- 3.2.1 The concession period for the Project shall commence from the Appointed Date and shall be for a period of **15 (fifteen)** years from such date (the “**Concession Period**”).
- 3.2.2 The Concessionaire shall be required to complete Construction / Refurbishment and Development of Project Site within a pre-defined period

from the Appointed Date (“**Construction Period**”).

3.2.3 For the avoidance of doubt, the Concession Period shall include the Construction Period.

3.2.4 It is hereby made clear that:

a. In the event of the Concession Period being extended beyond the said period, in accordance with the provisions of this Concession Agreement, the Concession Period shall include the period / aggregate period by which the Concession is so extended, and

b. In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination.

3.2.5 At the end of the Concession Period or early termination of this Concession Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Facilities, in good and operational condition, shall revert to the Authority without any obligation of Authority to pay or adjust any consideration or other payment to the Concessionaire. For more details, please refer **ARTICLE 25** of this Concession Agreement.

The Concessionaire shall be given the first right of refusal only after completion of concession period 15 + 5 years (If extended by 5 years) subject to following conditions:

1. The concessionaire must match the Highest ACF quoted By H1 Bidder in the re-bidding process after completion of Concession period of the current agreement.

2. The Concessionaire will have the first right to refusal only if the ACF quoted is within +/- 10% range of the Highest Quoted ACF in the bid process.

3. The Concessionaire has not violated any terms & conditions of this agreement and has not been blacklisted.

Article 4: Conditions Precedent

Save and except as expressly provided in ARTICLE 4, ARTICLE 5, ARTICLE 6, ARTICLE 7, ARTICLE 8, ARTICLE 18, ARTICLE 23, ARTICLE 25 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 (the "**Conditions Precedent**").

4.1 Conditions Precedent for the Authority

The Concessionaire may, at any time after the signing of this Agreement, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Article 4.1 within a period not exceeding **90 (ninety)** days from the date of the Notice, or such longer period not exceeding **180 days** from the date of the Notice, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- A. Provided the right of way of the Project Site, free from encumbrances, to the Concessionaire;
- B. Appointed an Independent Engineer, as per provisions of this Agreement (as per Schedule 11);

4.2 Conditions Precedent for Concessionaire

The Conditions Precedent, required to be satisfied by the Concessionaire within a period of **180 (one hundred and eighty)** days from the date of this Agreement, shall be deemed to have been fulfilled when the Concessionaire shall have:

- A. Applied for and procured necessary Applicable Permits, unconditionally or if subject to conditions then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Necessary Applicable Permits would be in full force and effect.
- B. Achieved Financial Close, executed Financing Agreements and delivered to the Authority, 3 (three) true copies of the Financing Agreements, Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- C. Executed and procured execution of the Escrow Agreement;
- D. Executed and procured execution of the Substitution Agreement and submitted copies of the same to the Authority;
- E. Delivered to the Authority from the Selected Bidder confirmation, in original, of the correctness of its representation and warranties set forth in sub-clauses of Article 7.1 of this Agreement;
- F. Delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- G. Prepared, submitted and received approval from the Authority of the Detailed Project Report (DPR) as per Article 5.11;

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Article 4.2. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.3 Obligations to satisfy Condition Precedents

- 4.3.1 Each Party hereto shall use all reasonable endeavours at its cost and expense to procure the satisfaction, in full, of its respective 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.
- 4.3.2 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.
- 4.3.3 Upon satisfaction of compliance with the Conditions Precedent, each Party shall forthwith issue a Compliance Certificate to the other Party ("**Compliance Certificate**"), pursuant to which the obligations of the Parties related to Conditions Precedent shall be deemed to be fulfilled.

4.4 Damages for delay

- 4.4.1 Damages for delay by the Authority: In the event that:
- i. the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.1 within the period specified in respect thereof, and
 - ii. the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure the Authority shall extend the Concession Period for a period, equivalent to the number of days of delay attributable to the Authority, subject to a maximum delay of 180 (one hundred and eighty) days, beyond which the Agreement shall be deemed to be terminated.
- 4.4.2 Damages for delay by the Concessionaire: In the event that:
- i. the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.2 within the period specified in that article, and
 - ii. the delay has not occurred as a result of failure of the Authority to fulfil its obligations under Article 4.1 or other breach of this Agreement by the Authority, or due to Force Majeure the Concessionaire shall pay to the Authority, Damages in an amount calculated at the rate of 1% (one per cent) of the Performance Security for each week's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equivalent to the amount of Performance Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of this **ARTICLE 4**, 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, no damages shall be due or payable by the Concessionaire under this Article 4.4 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in the Article 4.1.

4.5 Termination for delay by the Concessionaire

4.5.1 If the Concessionaire has not fulfilled any or all of the Conditions Precedent set forth in Article 4.2, within the period specified in respect thereof, and the level of Damages due and payable by the Concessionaire has reached the cap specified in Article 4.4, the Authority may terminate this Concession Agreement by serving a termination notice on the Concessionaire within thirty (30) Business Days of the cap specified in Article 4.4 being reached. This Concession Agreement will terminate on the day falling ten (10) Business Days after the date the Concessionaire receives the termination notice served by the Authority. Notwithstanding anything contained in this article, the Parties may mutually decide to extend the time period for the fulfilment of the Conditions Precedent.

4.5.2 Upon termination of this Concession Agreement pursuant to Article 4.5.1:

- The Concessionaire shall transfer all of its rights, title and interest in the Project Assets to the Authority.
- The Performance Security, in its entirety, shall be forfeited by the Authority.

4.6 Commencement of Concession Period

4.6.1 The date on which all the Conditions Precedent specified in Article 4.1 & Article 4.2 are satisfied or waived, as the case may be, and each Party has issued a Compliance Certificate to the other Party towards fulfilment of all Conditions Precedent required thereof, shall be the “**Appointed Date**” which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction of the Project.

Article 5: Obligations of the Concessionaire

5.1 General Obligations

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, up-gradation, temporary construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 Subject to the provisions of Articles 5.1.1, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.3 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - b. procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - c. perform and fulfil its obligations under the Financing Agreements;
 - d. 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;
 - e. ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - f. procure and comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement. It is explicitly clarified that the Concessionaire shall be expected to comply with all the Applicable Laws, including any modifications to such Applicable Laws, during the Concession Period, without the Authority being liable or accountable for such changes.
 - g. not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
 - h. ensure that all the facilities and amenities within the Project are operated and maintained in accordance with Good Industry Practice and Schedule – 10; and
 - i. transfer the Project to the Authority upon expiry or termination of this Agreement, in accordance with the provisions thereof;

- j. take all reasonable precautions for the prevention of accidents on or about the Site and the Project Facilities and provide all reasonable assistance and emergency medical aid to accident victims;
- k. make its own arrangements for quarrying, if necessary, and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits;
- l. be responsible for safety, soundness and durability of the Project Facilities including all structures forming part thereof and their compliance with the Specifications and Standards.

5.2 Specific Obligations

5.2.1 The Concessionaire shall, before commencement of construction / refurbishment of the Project:

- i. Have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project and to deal with the Independent Engineer and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- ii. Undertake, do and perform all such acts, deeds and things as may be necessary or required to achieve Project completion under and in accordance with this Agreement.

5.2.2 The Concessionaire shall, at all times, afford access to the Project Site, to the authorised representatives of the Authority, the Independent Engineer and officer of any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

5.2.3 The Concessionaire shall be responsible for ensuring that any existing utility on, under or above the Project Site is kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent diversions.

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

5.2.5 The Concessionaire shall not create any third-party rights on the Project Site. However, the Concessionaire shall be entitled to create a charge on the following in favour of Senior Lenders for the purpose of securing its borrowings for the Project: i) Project Facilities and ii) its rights, benefits and interest in the Concession Agreement and lease deed.

5.3 Deleted

5.4 Obligations relating to Project Agreements

5.4.1 It is expressly agreed that the Concessionaire shall, at all times, be

responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement shall excuse the Concessionaire from its obligations or liability hereunder.

- 5.4.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, with regards to Construction, Refurbishment, Development, Operation and Maintenance, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within fifteen (15) days of the receipt of such drafts. In the event no comments are provided within 15 (fifteen) days of receipt of drafts by the Authority, it shall be deemed as approved by the Authority and the Concessionaire may execute the said agreement/s. Within seven (7) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever. Further, the Concessionaire shall not be required to take Authority's explicit approval with respect to Project Agreements executed for Optional Project Facilities. However, it shall submit a copy of such executed Project Agreements for the Authority's record within 7 (seven) days of such execution. Notwithstanding anything to the contrary as mentioned in this Article 5.3.2, the liability of compliance of all Project Agreements with the terms of this Agreement, shall solely rest with the Concessionaire.
- 5.4.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.4.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding **90 (ninety)** days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The

Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

- 5.4.5 The Concessionaire may undertake development of Project by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/ capability; but in either case, the Concessionaire shall remain solely responsible to meet the obligations under this Agreement.

5.5 Obligations relating to Change in Ownership

- 5.5.1 The Concessionaire shall not undertake or permit any Change in Ownership in the Concessionaire, except with the prior written approval of the Authority.

- 5.5.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- a. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 25% (twenty five per cent) of the total Equity of the Concessionaire; or
- b. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person, either by himself or together with any person or persons acting in concert with him shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement. For the purposes of this Article 5.5.2:
 - a) the expression "**acquirer**", "**control**" and "**person acting in concert**" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

- b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control directly or indirectly, of the Board of Directors of the Concessionaire.

5.5.3 Subject to Article 5.5.1 and Article 5.5.2, a Change in Ownership of the Concessionaire is deemed not to have occurred upon a transfer of any ownership interest in the Concessionaire by the Initial Shareholders, provided that:

- a. Each of the Consortium members of the Selected Bidder, whose experience has been evaluated for Technical Capacity and / or Financial Capacity evaluation at the time of selection of the Selected Bidder, shall hold at least **26% (twenty six percent)** of the total Equity till a period of **5 (five)** years following COD; and
- b. Lead Consortium member (of the Selected Bidder) shall hold at least **51% (fifty one percent)** of the total Equity till COD; and at least **26% (twenty six percent)** thereafter till the **5th anniversary of the COD**, and provided that the experience of this member has been evaluated for Technical Capacity and / or Financial Capacity evaluation at the time of selection of the Selected Bidder.
- c. Single entity / all Consortium members [of the Selected Bidder], shall collectively hold at least **51% (fifty one percent)** of the total Equity till 5th anniversary of the COD.

5.5.4 Concessionaire shall inform the Authority about any change in equity shareholding of the Concessionaire within 15 days of such change taking place.

5.6 Employment of foreign nationals

5.6.1 The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its

contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.7 Employment of trained personnel

5.7.1 The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.8 Sole purpose of the Concessionaire

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

5.9 Naming and Branding of the Project

5.9.1 The Concessionaire shall have the sole right to brand and / or name the Project or any part thereof. However, the Concessionaire shall be required to obtain prior approval from the Authority, which approval the Authority shall not withhold or deny unreasonably, before naming of the Heritage Restaurant cum Recreation Centre

5.10 Facilities for differently-abled and elderly persons

5.10.1 The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Project Facilities.

5.11 Detailed Project Report (DPR)

5.11.1 The Concessionaire shall, within 90 days of date of signing of the Agreement, prepare and submit, for review, comments and approval from the Authority and the Independent Engineer(s), a Detailed Project Report (“DPR”) for the Project. The DPR may include, but not be limited to, the following:

- a) Zoning and allocation of areas for different usages in the Project Site;
- b) Layout Plan for the Project showing both Refurbishment and Development of Project Site including Optional Project Facilities;
- c) Detailed drawings, designs and specifications for Refurbishment and Development of Project Site, showing:
 - i. Building details - Floor plans, elevation, room sizes, uses etc.
 - ii. Specifications
 - iii. 3D elevations
- d) Indicative phasing for development of various Project Facilities;
- e) Circulation and traffic plan;
- f) Planning and lay-out of the infrastructure required for the Site, including:
 - i. Water supply network;
 - ii. Waste management and sewerage system (including treatment plant, sewage network);
 - iii. Road network;

- iv. Drainage network and
 - v. Power distribution network and sub-station
 - vi. Details of parking (open / covered / under-ground) for serving various Project Facilities
- g) Details of all the facilities and services to be provided in the Project
 - h) Total project cost for development of Refurbishment and Development of Project Site
 - i) PERT chart / Gantt Chart for Project implementation
 - j) Indication of various Applicable Permits / approvals / clearances required for the Project
 - k) Indication of support required from the Authority

In addition to the above, the Concessionaire may be required to provide any further information as may be reasonably required by the Authority and/or the Independent Engineer(s).

- 5.11.2 On receipt of the DPR, the Independent Engineer and the Authority shall review the DPR submitted by the Concessionaire and provide its comments/ observations and suggestions on the same within 15 (fifteen) days from the date of the receipt of such DPR.
- 5.11.3 In the event that the Authority has observed that the DPR is not in conformity with the scope of the Project, the Concessionaire shall promptly and without any undue delay revise and resubmit the DPR or satisfy the Authority with regards to its compliance, within 21 days of receipt of comments from the Authority.
- 5.11.4 On receipt of the revised DPR from the Concessionaire, the Authority shall approve or give comments on the revised DPR within 15 days of such receipt. The Concessionaire shall not change the final DPR reviewed and approved by the Authority under this Agreement, without submitting such revised DPR for the review of the Authority.
- 5.11.5 Notwithstanding anything to the contrary contained in this Section 5.11, however, the Concessionaire shall have the sole right to determine design, specifications and development phasing for Optional Project Facilities, subject to compliance with Applicable Regulations.
- 5.11.6 It is clarified that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on the DPR shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority and/or Independent Engineer(s) be liable for the same in any manner whatsoever.
- 5.11.7 The Concessionaire shall not be entitled to any extension of time for developing the Project or any other relief on account of delay caused due to providing any clarification or in resubmitting the DPR.
- 5.11.8 Notwithstanding the review by the Authority, the Concessionaire shall be solely responsible for any defect and/or deficiency relating to the Project or

any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.

- 5.11.9 The Concessionaire shall in no way represent to any Person that, as a result of any review by the Authority and/or the Independent Engineer(s), the Authority have accepted responsibility for the technical or soundness of any work relating to the Project or part thereof carried out by the Concessionaire, and the Concessionaire shall, in accordance with the provisions of this Authority, be solely responsible for the technical feasibility, operational capability and reliability of the Project or any part thereof.

Article 6: Obligations of the Authority

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

- a. Handover or cause to be handed over, the right of way of the Project Site, free from any Encumbrance, within 15 (fifteen) days from the date of this Agreement or within any such extended period of time as mutual agreed between the Parties, in no case exceeding 45 (forty-five) days;
- b. execute a Lease Deed, in accordance with **Schedule – 17** of this Agreement, relating to the Project Site in favour of the Concessionaire within 30 (thirty) days of intimation by way a written communication by the Concessionaire regarding the fixing of the **Appointed Date**;
- c. Upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance on best efforts basis to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operations of the Project;
- d. Upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- e. Procure that no barriers are erected or placed on or around the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
- f. Bear and be responsible for all costs, expense or charges incurred in making available the Project Site in accordance with Article 4.1. Further, the Authority shall hold the Concessionaire harmless from all costs, expenses or charges incurred in relocating, rehabilitating or resettling Persons in connection with making available the possession of the Project Site free from all Encumbrances to the Concessionaire;
- g. Neither do nor omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- h. Support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- i. Upon written request from the Concessionaire and subject to the provisions of article 5.6, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.
- j. Grant specific rights to the Concessionaire to confer substitution rights to the lenders during the period of Concession granted under this Agreement subject to the provisions of this Agreement, provided further that the Authority shall have the absolute freedom and authority to cancel such rights granted as per relevant provisions of this Agreement.

- k. Assist the Concessionaire in procuring Police assistance for regulation of movement of any person on the Project site, removal of trespassers and for security of the material, labour and machinery.

Article 7: Representations and Warranties

7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and Laws of India;
- b. It has full power and authority to execute, deliver and perform its obligations under this Concession and to carry out the transactions contemplated hereby;
- c. It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Concession Agreement;
- d. It has the financial standing and capacity to undertake the Project;
- e. This Concession Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. It is subject to laws of India with respect to this Concession Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- g. The information furnished in the Bid / Proposal and as updated on or before the date of this agreement is true and accurate in all respects as on the date of this agreement.
- h. The execution, delivery and performance of this Concession Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- i. There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Concession or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Concession Agreement;
- j. It shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of **Article - 5.5**; and that the {Selected Bidder}, (single entity) together with {its / their} Associates, hold not less than 51% (fifty one per cent) of its issued and paid-up Equity as on the date of this Agreement till 5th anniversary of the COD; and that such single entity or lead member of the Initial Consortium, whose technical and financial capacity was evaluated for the purposes of qualification and short-listing in response to the Request for Proposal, shall hold at least 51% (fifty one percent) of the total Equity till COD, and at least 26% (twenty six percent) thereafter till 5th anniversary of the COD;

- and that the Concessionaire shall inform the Authority about any change in equity shareholding of the SPV within 15 days of such change taking place;
- k. The Concessionaire has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Competent Authority which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Concession Agreement;
 - l. {the Selected Bidder} 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 Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
 - m. The Concessionaire has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Concession Agreement;
 - n. No order has been made and no resolution has been passed for the winding up of the Concessionaire or for a provisional liquidator to be appointed in respect of the Concessionaire and no petition has been presented and no meeting has been convened for the purpose of winding up the Concessionaire. No receiver has been appointed in respect of the Concessionaire or all or any of its assets. The Concessionaire is not insolvent or unable to pay its debts as they fall due.
 - o. The aggregate equity share-holding of the Consortium Partners and their Associates (in case of a Consortium) or equity share holding of the Associates (in case of individual bidder) in the issued and paid up equity share capital of the Concessionaire are in accordance with the requirements stipulated in **Article – 5**;
 - p. Each Consortium Member was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Concessionaire entering into this Concession and has agreed to and unconditionally accepted the terms and conditions set forth in this Concession Agreement;
 - q. All rights and interests of the Concessionaire in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims, and encumbrances without any further act or deed on the part of the Concessionaire or the Authority and that none of Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Concession Agreement;
 - r. No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority, or to any Competent

Authority in relation to clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

- s. The Concessionaire warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of commission or otherwise for securing the Concession or entering into this Concession Agreement or for influencing or attempting to influence any officer or employee of the Authority.
- t. Subject to receipt by the Concessionaire from the Authority of the Termination Payment and any other amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Assets shall pass to and vest in the Authority on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or The Authority;
- u. It shall not novate the Concession Agreement and any rights and obligation arising therefrom to any party without any written approval from the Authority.

7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- a. The Authority has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;
- b. The Authority have taken all necessary action to authorize the execution, delivery and performance of this Concession Agreement;
- c. This Concession Agreement constitutes a legal, valid and binding obligation enforceable against the Authority in accordance with the terms hereof;
- d. The Authority is subject to laws of India with respect to this Concession and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Concession Agreement;
- e. The Concessionaire shall have complete, lawful and uninterrupted Site Possession of the Project by way of Lease in accordance with this Concession Agreement;
- f. All information provided by the Authority in the RFP document in connection with the Project is to the best of its knowledge and true and accurate in all material respects; and
- g. The Authority has the financial standing and capacity to perform its obligations under the Concession Agreement.

7.3 Disclosure

- 7.3.1 In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect

nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

Article 8: Disclaimer

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions and all information provided by the Authority or obtained, procured or gathered otherwise and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and / or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 8.1.4 shall not prejudice the disclaimer of the Authority contained in Article 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III: Development and Operations

Article 9: Performance Security

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the due and faithful performance of its obligations hereunder during the Concession Period, provide to the Authority, on or before the date set for signing the Concession Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to 5 % of the cumulative ACF for the concession period in the form set forth in RFP (the "**Performance Security**"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 The Performance Security shall remain valid for a period of 3 (three) years.
- 9.1.3 At least 90 (ninety) days prior to expiry of the first Performance Security, as per Article 9.1.1 above, the Concessionaire shall revise and submit a fresh Performance Security, in the form of an irrevocable and unconditional bank guarantee for a sum equivalent to 5 % of the cumulative ACF for the concession period. This performance security will be applicable at every renewal (90 days prior to expiry of valid performance security in force) of performance security on compounding basis. The Concessionaire shall be obligated to keep the Performance Security revalidated, renewed, extended and continuously in force and effect up to a period of six months beyond the Transfer Date. The Performance Security shall be renewed / revalidated at least 90 (ninety) days prior to its expiry, each time for a period of not less than 3 (three) years.

9.2 Appropriation of Performance Security

- 9.2.1 Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security, as the case may be, as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article – 25.

9.3 Release of Performance Security

- 9.3.1 The Performance Security shall remain in force and effect upto a period of six months beyond the Transfer Date and shall cease to be in force and effect only when the Authority shall have issued the Vesting Certificate to the Concessionaire.

Article 10: Project

10.1 The Site

- 10.1.1 The site of the Project shall comprise the real estate described in Schedule 1 and in respect of which the Site shall be provided and granted by the Authority to the Concessionaire on Lease under and in accordance with this Agreement (the "**Site**").
- 10.1.2 The ownership of the Site shall always remain vested with the Authority.

10.2 Lease and Access

- 10.2.1 The Authority hereby grants to the Concessionaire, access to the Site for carrying out any surveys and investigations that the Concessionaire may deem necessary prior to Appointed Date, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby agrees to grant to the Concessionaire, lease hold rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in **Schedule – 1** hereto, on an "**as is where is**" basis, free of any Encumbrances, to develop, operate and maintain the said premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3 Within 30 (thirty) days of intimation by way of a written communication by the Concessionaire regarding fixing of the Appointed Date, in accordance with the provisions of this Agreement, the Authority shall execute the lease deed with the Concessionaire. The stamp duty and registration charges in respect of the lease deed including the costs, charges and expenses shall be borne and paid wholly and exclusively by the Concessionaire.
- 10.2.4 It is expressly agreed that the lease granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the lease, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-lessees, the lease in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 The Concessionaire shall, neither, assign, transfer, create any charge or Encumbrance; nor shall the Concessionaire create or permit creation of any third-party rights whatsoever, on the whole or any part of the Site, except as specified in **Article 10.2.7** below.

- 10.2.6 The ownership of the Project Facilities including buildings, structures, infrastructure, utilities, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Concessionaire at the Site, pursuant to this Agreement, shall, until expiry of this Agreement or transfer to the Authority on the Termination, be with the Concessionaire. However, such ownership of assets shall not confer any rights in the Project Site upon the Concessionaire, save as that of a lease, as provided for in this Agreement.
- 10.2.7 The Concessionaire shall be entitled to create a charge on its rights, title and interest in the Project Facilities referred to in **Article 10.2.6** and on its rights, benefits, entitlements, including Project Revenue, pursuant to the Concession Agreement, in favour of Senior Lenders for securing financial assistance. Provided that any such charge shall not be effective before the Financial Close and shall not continue for a period exceeding the Concession Period. Provided further that in the event of termination of this Agreement, the said charge shall stand extinguished upon payment of compensation by the Authority to the Concessionaire / Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement.

10.3 Procurement of the Site

- 10.3.1 Pursuant to the notice specified in **Article 4.1**, the Authority's Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Site to which vacant access has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of **Article 10.2.2**, be deemed to constitute a valid lease to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid Lease with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2 On and after signing the memorandum referred to in **Article 10.3.1**, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

- 10.3.3 The Authority shall make best efforts to procure and grant, within 30 (thirty) days, and in any event no later than 90 (ninety) days from the signing of this Agreement, the right of way to the Site to the Concessionaire in respect of all land included in the Appendix.

10.4 Site to be free from Encumbrances

- 10.4.1 The Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement.

10.5 Protection of Site from Encroachments

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

10.6 Access to Authority

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

10.7 Geological and Archaeological finds

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

Article 11: Utilities

11.1 Existing Utilities and Roads

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

11.2 Shifting of Obstructing Utilities

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

11.3 New Utilities and Roads

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

Article 12: Refurbishment / Temporary Construction on Project Site

12.1 Obligations Prior to Commencement of Refurbishment / Temporary Construction

Prior to commencement of Construction Works and/or Refurbishment and Development of Project Site, the Concessionaire shall:

- a. submit to the Authority and the Independent Engineer(s) its detailed design, construction methodology, quality assurance procedures and the engineering, procurement and construction time schedule for completion of the Refurbishment and Development of Project Site in accordance with the DPR, as mentioned in **Article 5.11**;
- b. appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- 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, the Applicable Laws and Applicable Permits; and
- d. make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Drawings

In respect of the Concessionaire's obligations with respect to the Drawings of the Refurbishment and Development of Project Site, the following shall apply:

- a. The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the DPR, three copies each of all Drawings to the Authority for review;
- b. By submitting the Drawings for review to the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
- c. Within **45 (forty five) days** of the receipt of the Drawings, the Authority, itself or through an Independent Engineer, shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Authority or the Independent Engineer(s) on the Drawings submitted pursuant hereto beyond the said **45 (forty five) days** period and may begin or continue Construction Works at its own discretion and risk;
- d. If the aforesaid observations of the Authority / Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The

Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;

- e. No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner; and
- f. Within **60 (sixty) days** of the Scheduled Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in **2 (two) hard copies** and in digital form in a CD/ DVD/ USB or in such other medium as may be acceptable to the Authority, reflecting the Refurbishment and Development of Project Site as actually designed, engineered and constructed, including the buildings and structures forming part thereof.

12.3 Maintenance during Construction Period

- 12.3.1 During the Refurbishment and Construction Period, the Concessionaire shall maintain, at its cost, the existing Site so that its worthiness is at no time materially inferior as compared to its condition **7 (seven) days** prior to the date of handover of Site to the Concessionaire. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project.

12.4 Completion of Refurbishment and Development of Project Site

- 12.4.1 On or after Appointed Date, the Concessionaire shall undertake refurbishment and/or temporary construction on Project site, as specified in **Schedule – 3**, and in conformity with the Specifications and Standards set forth in Schedule 4. The Concessionaire agrees and undertakes that Refurbishment and Development of Project Site shall be completed within the Construction Period.
- 12.4.2 The Concessionaire shall carry out the Temporary Construction / Refurbishment and Development of Project Site on or before the 180th day from the Appointed Date (“**Scheduled Completion Date**”). Withstanding **Article 14.3**, the Concessionaire shall, by written notice, inform the Authority and the Independent Engineer(s) about completion of such construction Works, as the case may be.
- 12.4.3 The “**Construction Period**” shall be a period of maximum **06 (six) months** equivalent to a period of **180 days** for items as per Clause 3.2 of Schedule 3 of this agreement and a period of maximum **24 (twenty-four) months** for items as per Clause 3.3 of Schedule 3 of this agreement, as the case may be, starting from the Appointed Date, wherein the Concessionaire shall be required to comply with the following obligations:
 - a. Take all necessary / Applicable Permits etc. which are required for construction and commencing the operations and maintenance of the Refurbishment and Development of Project Site, so that all such conditions have been satisfied in full, and all such Applicable Permits, etc. are in full force and effect.

- b. Prepare, submit and get approval for the DPR which includes encompassing activities like facility planning & construction, details of required personal, equipment, furniture & fixtures and consumables (before the Appointed Date).
- c. Prepare and submit a note on Commercial charges to be levied on the Refurbishment and Development of Project Site.
- d. Prepare and get approved the Maintenance Manual.
- e. Recruit and maintain the required staff for management, operation and maintenance of the Project.
- f. Procure and install equipment, machinery, furniture & fixtures and other consumables in accordance with the DPR as approved by the Authority.
- g. Keep the Project site ready for operations and occupation.
- h. Procure full insurance cover for the Project and provide the necessary information on the same to the Authority.
- i. Concessionaire shall procure Occupation Certificate for the Project site before the COD.

12.4.4 In the event that Scheduled Completion Date is not achieved for any reason, other than Force Majeure or reasons attributable to the Authority or any Competent Authority, the Concessionaire shall, subject to **Article 12.5** below, pay to the Authority damages for delay beyond the Scheduled Completion Date at the rate of 0.05% of the Performance Security per day, for every day of delay until Construction Completion is achieved. Provided that nothing contained in this sub-clause shall be deemed or construed to authorize any delay by the Concessionaire in achieving the Scheduled Completion Date.

12.5 Termination due to Failure to Complete Project Facilities

12.5.1 In the event that Construction/Refurbishment and Development of Project Site is not completed and/or Construction Compliance Certificate not issued within a period of **180 (one hundred and eighty) days** for items as per Clause 3.2 of Schedule 3 of this agreement and **24 (twenty four) months** for items as per Clause 3.3 of Schedule 3 of this agreement, as the case may be, from the Scheduled Completion Date, for reasons other than Force Majeure or default by the Concession Authority, the Authority may in its discretion terminate this Agreement.

12.6 Construction of Optional Project Facilities

12.6.1 The Concessionaire shall undertake and complete the construction of Optional Project Facilities anytime, as desired, before the completion of **02 years** from the Appointed Date.

12.6.2 The Concessionaire shall follow the same due process as per Article 12.4 for construction of optional project facilities and be obliged to seek or await any observations, of the Authority or the Independent Engineer(s), within reasonable period, on the designs and drawings related to Optional Project Facilities, however, the Concessionaire shall be responsible for meeting the requirements and norms laid down by the competent authorities regarding construction, upgradation, refurbishment, operation & maintenance of the

Project Facilities, if any. Nothing contained in this **Article 12.6**, shall relieve the Concessionaire of its obligations of adherence to Good Industry Practices or its liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.

12.7 Drawings of Optional Project Facilities

- 12.7.1 The Concessionaire shall submit, with reasonable promptness, **2 (two) hard copies** and in digital form in a CD/ DVD/ USB or in such other medium as may be acceptable to the Authority of all detailed as-built designs and drawings of Optional Project Facilities for Authority's records, within **30 days of completion** of construction of such Optional Project Facilities.

Article 13: Monitoring of Construction

13.1 Quarterly Progress Reports

- 13.1.1 During the Construction Period, the Concessionaire shall, no later than **7 (seven) days** after the close of every quarter, furnish to the Authority and the Independent Engineer(s) a quarterly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer(s).

13.2 Inspection

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

13.3 Tests

- 13.3.1 For determining that the Temporary Construction / Refurbishment and Development of Project Site conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may, be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The costs incurred on such tests, and to the extent certified by the Independent Engineer(s) as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.
- 13.3.2 the event that results of any tests conducted under this **Article 13.3** establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the

Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this **Article 13.3** shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this **Article 13.3** shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays During Implementation

- a. The Concessionaire may apply for an extension in Construction Period if it is reasonably sure and anticipates that it shall be delayed in achieving the Scheduled Completion Date, by any of the following causes:
 - i. A Change in Scope;
 - ii. A Force Majeure Event;
 - iii. A cause of delay giving an explicit and express entitlement to extension of time under any Articles in this Concession Agreement, unless the Concessionaire has not complied with such Article;
 - iv. Any delay, impediment or prevention by the Authority;
 - v. Any delay caused by action taken by Competent Authorities.

Provided that the Concessionaire shall at all times use its best endeavours to minimize any delay in the performance of its obligations under this Concession Agreement, whatever may be the cause of such delay.

- b. If the Concessionaire intends to apply for an extension of the Construction Period, the Concessionaire shall give notice to the Authority of such intention as soon as possible and in any case within **28 (twenty-eight) days** of the start of the event giving rise to any such delay, together with any other notice required by this Concession Agreement and relevant to such cause. Any such notice shall state the extent of the actual and anticipated delay and its anticipated effect on the Scheduled Completion Date, and shall specify the steps the Concessionaire proposes to take to minimize such delay. The Concessionaire shall keep such records as may be necessary to substantiate any application, at a location acceptable to the Authority and such other records as may reasonably be requested by Authority. The Concessionaire shall provide and permit Authority to inspect all such records.
- c. Within 28 (twenty-eight) days of the first day of such delay (or such other period as may be agreed by Authority), the Concessionaire shall submit full supporting details of its application. Except that, if the Concessionaire cannot submit all relevant details within such period because the cause of delay continued for a period exceeding **7 (seven) days**, the Concessionaire shall submit interim details at intervals of not more than **28 (twenty-eight) days** (from the first day of such delay) and full and final supporting details of its application within **21 (twenty-one) days** of the last day of delay.

- d. Provided that the Concessionaire has complied with this **Article 13.4**, the Authority shall proceed in accordance with **Article 25.1** to determine either prospectively or retrospectively such adjustment as may be due, taking into account all relevant circumstances. The Authority shall notify the Concessionaire accordingly. When determining each extension of time, Authority shall review its previous determinations and may revise, but shall not decrease, the extension, and provided that the extension of time is not a consequence of any negligence, default or breach of Concession Agreement by the Concessionaire or those for whom it is responsible.
- e. However, the Concessionaire shall not be entitled to an extension of the Scheduled Completion Date, to the extent that the delay in respect of which the extension of time is requested is attributable to any negligence, default or breach of this Concession Agreement
- f. by the Concessionaire or those for whom it is responsible, as determined by the Authority or Independent Engineer(s).

13.5 Suspension of Unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in the reasonable opinion of the Authority such work threatens the safety of the users.
- 13.5.2 The Concessionaire shall, pursuant to the notice under **Article 13.5.1**, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this **Article 13.5** shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of **Article 13.5.2**, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

Article 14: Construction Completion Certificate

14.1 Tests and Construction Completion Certificate

14.1.1 At least **30 (thirty) days** prior to the likely completion of **temporary construction** works related to Refurbishment and/or Development of Project Site, the Concessionaire shall notify, in writing, the Authority and the Independent Engineer(s) of its intent to subject the Project Facilities to necessary Tests. The Independent Engineer(s) shall, within **28 (twenty eight) days** of such notice, require the Concessionaire to carry out or cause to be carried out such necessary checks and tests, as the Independent Engineer(s) may deem appropriate in accordance with the Good Industry Practice and the nature of such Project Facility including its intended use, to determine conformation of the Project Facilities to the Specifications and Standard as per this Agreement. The date and time of each such test shall be determined by the Independent Engineer(s) in consultation with the Concessionaire. If it is reasonably anticipated or determined by the Independent Engineer(s) during the course of any such tests that such Project Facility or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each such test, the Independent Engineer(s) shall provide copies of all such test data and results thereof to the Concessionaire with copy to the Authority. Costs of all such tests shall be borne by the Concessionaire.

14.1.2 Upon the Independent Engineer(s) determining that the Refurbishment and Development of Project Site conform to the Specifications and Standards and have been completed in accordance with the provisions of this Agreement, it shall forthwith issue to the Concessionaire and the Authority a Construction Completion Certificate (the "**Construction Completion Certificate**"), as per Schedule 9.

14.1.3 The Construction Completion Certificate shall be given by the Authority within **28 (twenty-eight) days** after:

- a. The Concessionaire has remedied any defects in the works carried out;
- b. The Concessionaire has completed and tested all the Works, as specified by the Authority / external Independent Engineer(s) appointed by the Authority;
- c. The Works are in conformity with the provisions laid down in the Concession Agreement and its Schedules.

14.2 Rectification

14.2.1 If the Concessionaire is obliged to carry out adjustments, repairs, replacements or modifications after completion of construction to maintain the historical and cultural uniqueness of the site, the Authority shall permit the Concessionaire to carry out all such adjustments, repairs, replacements or modifications as may be necessary. If the adjustment, repair, replacement or modification cannot be made without stopping the operations, then such request shall only be granted if the Concessionaire's request is reasonable under all the circumstances, having regard to the Authority's obligations to

keep the operation of the Project open during all hours of the day. The Authority shall, based on written request by the Concessionaire, grant suitable rectification time period, within which the Concessionaire needs to complete the necessary works and during which period the Concessionaire shall not be considered in breach of the Agreement.

14.3 Provisional Certificate

- 14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially (the "**Provisional Certificate**") if the Tests as per **Article – 14** are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items (including items mentioned in Clause 3.2 & Clause 3.3 of Schedule 3 of this agreement) signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**"); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.
- 14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this **Article 14.3** may, upon request of the Concessionaire to this effect, be issued for operating part of the Refurbishment and Development of Project Site, if at least 85% (eighty five per cent) of Project Cost estimated towards the Refurbishment and Development of Project Site have been incurred and relevant Works completed as per Clause 3.2 of Schedule 3 of this agreement. Upon issue of such Provisional Certificate, the provisions of **Article – 15** shall apply to such completed part.
- 14.3.3 All items in the Punch List shall be completed by the Concessionaire within **90 (ninety) days** for items as per Clause 3.2 of Schedule 3 of this agreement and **18 (eighteen) months** for items as per Clause 3.3 of Schedule 3 of this agreement, as the case may be, of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay at the same rate specified in **Article 12.4.4** and or in case of delay beyond a specified period, terminate the Agreement as per **Article 12.5**. Upon completion of all Punch List items, the Independent Engineer shall issue the Construction Completion Certificate.

Article 15: Commencement of Operations

15.1 Commercial Operation Date

15.1.1 The Refurbishment and Development of Project Site shall be deemed to be complete when the Construction Completion Certificate is issued under the **Article – 14**, and accordingly, the commercial operations date shall be the date when Provisional Certificate or Construction Completion Certificate, as the case may be, is issued (“**COD**”). The Project shall enter into commercial operation on COD or on issue of Provisional Certificate, whereupon the Concessionaire shall be entitled to demand and collect Commercial charges in accordance with the provisions of **Article – 19.6**.

15.1.2 Subject to the provisions of the **Article – 12.4**, the Concessionaire hereby agrees and undertakes that it shall achieve COD on or before the Scheduled Completion Date. If COD does not occur on the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority for each day of the delay computed in accordance with the provisions of this Agreement mentioned in **Article – 12.4**.

15.2 Termination due to delay

15.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Construction Compliance Certificate is not issued, for any reason whatsoever, within a period of **180 (one hundred and eighty) days** for items as per Clause 3.2 of Schedule 3 of this agreement and **24 (twenty four) months** for items as per Clause 3.3 of Schedule 3 of this agreement, as the case may be, 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 may terminate the Concession Agreement.

15.2.2 Upon Termination, as in **Article – 15.2.1**, the Authority shall be entitled to encash the subsisting Performance Security and appropriate the proceeds as Damages; provided, however, if COD has not occurred solely as a result of the Authority being in default of any of its obligations under **Article - 6**, it shall, upon Termination, return the subsisting Performance Security.

Article 16: Operation and Maintenance

16.1 O&M obligations of the Concessionaire

16.1.1 During the Concession Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement by itself, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire shall include:

- a. Ensuring optimal operations and maintenance of the Project Facilities, in accordance with the Specifications and Standards prescribed herein, throughout the Concession Period, either by performing the operation and maintenance itself or by making effective and diligent arrangements for due performance of the operation and maintenance obligations by third party(s);
- b. The Concessionaire shall be required to take care of the operational expenses arising out of the Project.
- c. The Concessionaire shall have the right to sub-lease / sub-license part of the Project for the O&M Period, in accordance with the provisions of the Concession Agreement. All such sub-leases / licenses shall be terminable within the Concession Period and/or shall be coterminous with the termination of this Agreement.
- d. The Concessionaire shall obtain prior approval of the Authority for a format of the standard sub-Lease / sub-license agreement before its execution with any sublessee / sub-license. In case, any deviation in this format of standard sub-License / sublease deed is required, the Concessionaire shall again obtain prior approval from the Authority before entering into an agreement with the sub-licensee / sublessee.
- e. The Concessionaire is expected to invest in furnishing and making the facility operational. It would provide best-in-class facilities and adhere to minimum requirements as stipulated in **Schedule – 3** and **Schedule – 4**.
- f. The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.
- g. The Concessionaire shall comply with all the Safety requirements as prescribed under any statute, regulation, bye laws and under good industry practice as applicable for such kind of projects;
- h. Carry out periodic preventive maintenance and periodic renovation of the Project Facilities;
- i. Undertaking routine maintenance including prompt repairs of potholes, cracks, joints, structures, buildings, replacement of lights, pavement

lighting, road signs, electricity lines, telephone lines, water facilities, sewage system and other public amenities on the Site;

- j. Undertaking major maintenance such as resurfacing of roads, pavements, repairs to structures and buildings including repairs and refurbishment of other infrastructure and Project Facilities;
- k. Maintaining a public relations unit to interface with and attend to suggestions from the users, government agencies, media and other agencies.
- l. The Concessionaire shall, upon expiry of the term, surrender the equipment and property of the Authority in a good condition and at book value, free from any lien, encumbrances, repair or any other sort of wear & tear.

16.1.2 The Concessionaire shall enter into O&M Contract with an Operating Partner, if the Selected Bidder had relied upon / used credentials of such external Operating Partner for fulfilment of Technical Capacity in its Proposal submitted towards the Request for Proposal. Provided that the Concessionaire shall necessarily enter into the O&M Contract with such Operating partner on or before COD. Further provided that the operations and maintenance Project site and its facilities shall necessarily be undertaken, for a period until **2 (two) years** from the COD, by the Operating Partner, who fulfils the Technical Capacity as per the Request for Proposal, failing which the Concessionaire shall be liable to pay damages equivalent to Additional Performance Guarantee. A copy of the O&M Contract shall be provided to the Authority and the same shall not be amended, substituted or revoked without the prior written consent of the Authority. After the expiry of the Operator Lock-in Period, the Concessionaire shall be free to select and appoint another entity for O&M at his sole discretion.

16.1.3 The details of Scope of Work and the obligations of Concessionaire during Operations Period have been given in the Schedules to this Agreement.

16.2 Maintenance Requirements

16.2.1 The period commencing from the date immediately succeeding the COD, and upto the expiry of this Agreement (whether by efflux of time or by Termination under the provisions of this Agreement), shall be considered as “**O&M Period**” or “**Operations Period**”. The Concessionaire shall procure that at all times during the Concession Period the Project conforms to the maintenance requirements set forth in **Schedule – 10**.

16.3 Maintenance Manual

16.3.1 On or before COD, the Concessionaire shall, in consultation with the Independent Engineer(s), evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project Site in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer(s). The Maintenance Manual shall be revised and updated once every **3 (three) years** and the provisions of this Article – 16.3 shall apply, mutatis mutandis, to such revision.

- 16.3.2 Without prejudice to the provision of **Article - 16.3.1**, the Maintenance Manual shall, in particular, include provisions for Operation and Maintenance of project site and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project site and its facilities, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

16.4 Maintenance Programme

- 16.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Concession Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer(s), its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:
- a. preventive maintenance schedule;
 - b. arrangements and procedures for carrying out urgent repairs and regular wear & tear of the equipment installed by the Concessionaire;
 - c. criteria to be adopted for deciding maintenance needs;
 - d. intervals and procedures for carrying out inspection of all elements of the Project;
 - e. intervals at which the Concessionaire shall carry out periodic maintenance;
 - f. arrangements and procedures for carrying out safety related measures; and
 - g. Intervals for major maintenance works and the scope thereof.
- 16.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer(s) shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.
- 16.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in **Articles – 16.4.1 and 16.4.2** shall apply mutatis mutandis to such modifications.

16.5 Damages for breach of maintenance obligations

- 16.5.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at 0.5% (zero point five per cent) of the Performance Security.

16.6 Restoration of loss or damage to Project

- 16.6.1 Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever other than Force Majeure

Event, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

16.7 Modifications

16.7.1 The Concessionaire shall not carry out any material modifications to the Project site save and except where such modifications are necessary for the operate in conformity with the Specifications and Standards, Maintenance Requirements and Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer(s) 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 that the Independent Engineer(s) may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

16.8 Excuse from performance of obligations

16.8.1 The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Development, Operation and Maintenance of the project site is not available on account of any of the following for the duration thereof: a) an event of Force Majeure;

- a. measures taken to ensure the safe use of the Development, Operation and Maintenance of the project site except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- b. 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 Development, Operation and Maintenance of the project site.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Development, Operation and Maintenance of the project site open, provided they can be operated safely.

16.9 Advertising on the Site

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

16.10 Operations and Maintenance of Optional Project Facilities

16.10.1 The Parties expressly agree that the provisions of **Articles 16.3, 16.4, 16.5, 16.7** shall not apply to Optional Project Facilities; provided, however, that the Concessionaire agrees and undertakes to maintain these Project Facilities at all times in accordance with Good Industry Practice and Applicable Laws.

16.11 Safety Requirements

- 16.11.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of users of the Project Facilities and other persons present at the Project Site. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements (“**Safety Requirements**”).
- 16.11.2 All costs and expenses arising out of or relating to safety requirements shall be borne by the Concessionaire.

Article 17: Monitoring of Operation and Maintenance

17.1 Quarterly status reports

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

17.2 Inspection

17.2.1 The Independent Engineer(s) shall inspect the Project Facilities at least once a month during the construction period and at least once a quarter during the O&M Period. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

17.3 Tests

17.3.1 For determining that the Project Facilities conform to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire.

17.4 Remedial measures

17.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in **Article – 17.3** and furnish a report in respect thereof to the Independent Engineer(s) and the Authority within **15 (fifteen) days** of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than **15 (fifteen) days**, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

17.4.2 The Independent Engineer(s) shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this **Article – 17.4** shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the

Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of **Article – 16.5**.

Part IV: Financial Covenants

Article 18: Financial Close

18.1 Financial Close

18.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve the Financial Close within 180 (one hundred and eighty) days from the date of this Agreement, or any extended period as per provisions of **Article 4.4.2**.

18.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2(two) days prior to Financial Close, 3 (three) true copies of the Financial Package (the “**Financial Package**”) and the Financial Model, duly attested by a Director or authorized representative of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders.

18.2 Termination due to failure to achieve Financial Close

18.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to **Article 23**, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Article 18.1, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual Agreement of the Parties. For the avoidance of doubt, it is agreed that in the event that the Parties hereto have, by mutual consent, determined the Financial Close, the provisions of this Article 18.2.1 shall not apply.

18.2.2 Upon termination under **Article 18.2.1**, the termination payments shall be as defined in **Article 4.5**.

Article 19: Project Revenue and Project Consideration

A. Project revenue

19.1 Collection and appropriation of Commercial Charges

- 19.1.1 The Concessionaire shall be entitled to levy, collect, retain and appropriate various user charges (“**Commercial Charges**”), from the users and visitors after COD or after issue of Provisional Certificate, as the case may be, until the expiry of the Concession Period or early termination thereof, in accordance with the provisions of this Agreement (“**Project Revenues**”).
- 19.1.2 The Concessionaire shall at all times be bound by the terms and conditions of this Agreement and shall not create any Encumbrance on the Development, Operation and Maintenance of the project site or any part thereof during the Concession Period.
- 19.1.3 The Concessionaire shall be allowed to enter into sub-lease / sub-license / branding agreements for various Project Facilities. The Concessionaire shall be free to collect advances, deposits and any other fee pertaining to such sub-lease / sub-license. However, it must be noted that such sub-lease / sub-license agreements should be terminable within the Concession Period and/or be co-terminus with the termination of the Concession Agreement.

19.2 Commercial Charges

- 19.2.1 The Commercial Charges that may be levied by the Concessionaire, and which shall constitute Project Revenue during any period, may be as follows:
- a. Income from restaurant / bar**
The Concessionaire shall be permitted to charge for the services utilized in the restaurant and bar.
 - b. Income from user charges (gymnasium, spa, sports activities etc.)**
The facilities of gymnasium, spa, wellness, indoor/outdoor sports activities, lodging and boarding, etc may be made available on chargeable basis. The Concessionaire shall be free to define and collect user charges, however, such user charges should be reasonable and at par with prevailing market rates.
 - c. Income from kiosks and other leasable areas**
The Concessionaire shall be free to sub-lease / sub-license kiosks / built-up area to third parties.
 - d. Other revenues**
Other revenues may include advertisement, franchisee, operations of other Optional Project Facilities etc.
- 19.2.2 The Concessionaire shall be allowed to fix, levy and demand payment of Commercial Charges, at his own discretion, from users of Optional Project Facilities;

B. Project Consideration

19.3 Project Consideration

- 19.3.1 The Project Consideration (“Project Consideration”) shall comprise of the

following payments by the Concessionaire to the Authority:

- a. Lease Rental, as **per Article 19.5** below;
- b. Annual Concession Fee, as per **Article 19.6** below;

19.4 Deleted

19.5 Lease Rental

- 19.5.1 In consideration of the lease of the Site and the rights appurtenant thereto in favor of the Concessionaire, the Concessionaire shall, during the Concession Period, in terms of this Agreement and the Lease Deed, make payments to the Authority by way of annual lease rentals (the "**Lease Rentals**") starting at a concessional rate of Rs. 1.00 (Rupees one only) per annum.
- 19.5.2 The first Lease Rental shall be due and payable simultaneous to signing of the Lease Deed. For the purpose of this **Article 19.5.2, 'First Year'** for payment of Lease Rental shall be the period starting from the date of signing of the Lease Deed, till the end of the Accounting Year i.e. on following 31st March. Similarly, '**Last Year**' shall be the Accounting Year ending on Transfer Date. The amount of Lease Rental payable in the '**First Year**' and the '**Last Year**' shall be estimated pro-rata to number of months in that Accounting Year.
- 19.5.3 The Lease Rentals, for subsequent years after the '**First Year**', shall be paid in advance at the start of every Accounting Year, by the 10th day of the first month of each Accounting Year of the Concession Period in accordance with the terms of the Lease Deed.

19.6 Annual Concession Fee (ACF)

- 19.6.1 In consideration of the grant of the Concession, the Concessionaire agrees to pay to the Authority, in accordance with the provisions hereof, an annual concession fee, equivalent to Rs., as quoted by the Selected Bidder in its financial proposal dated [●], in the form and manner provided herein. ("**Annual Concession Fee**" or "**ACF**"). The ACF amount quoted by the Successful / Selected Bidder shall be escalated at 10% after every 3 (three) years on a compounded basis.
- 19.6.2 The Concessionaire shall not be required to pay the ACF from the period commencing from Appointed Date till the COD ("**Moratorium Period**"). The ACF shall be payable each year starting from COD till the expiry / termination of the Agreement.
- 19.6.3 The first ACF shall be due and payable on or before the COD. The ACF for every subsequent year shall be payable on or before the anniversary of the COD and shall be escalated at 10% after every 3 (three) years over the ACF paid in the previous year.

19.7 Damages for Delay in Payment of Project Consideration

- 19.7.1 In case of delay by the Concessionaire to make the payment of the Project Consideration on or before the respective due date, it shall be liable to pay interest on the delayed payments calculated at the rate of 18% (eighteen percent) per annum for each day of the delay, subject to a maximum delay of **60 days (sixty days)** beyond the due date, as applicable, after which the

Authority shall be entitled to terminate this Agreement.

Article 20: Escrow Account

20.1 Escrow Account

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

20.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in **Schedule 15**.

20.2 Deposits into Escrow Account

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

- a. all Project Revenues and any other revenues from or in respect of the Project, including the proceeds of any rentals, advances, deposits, fee or charges etc.
- b. All funds pursuant to the Financing Agreements.

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

20.3 Withdrawals during Concession Period

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

- a. all Taxes due and payable by the Concessionaire for and in respect of the Project;
- b. all payments relating to construction/ refurbishment/ development of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- c. O&M Expenses, subject to ceiling, if any, set forth in the Financing Agreements, in accordance with the Applicable Laws, Applicable Permits and Good Industry Practices;
- d. O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- e. Project Consideration due and payable to the Authority; less the fee waived or not collected in terms of this Agreement.
- f. monthly proportionate provision of Debt Service including but not limited to interest and principal repayment due in an Accounting Year;

- g. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- h. any reserve requirement set forth in the Financing Agreements; and
- i. balance, if any, in accordance with the instructions of the Concessionaire.

20.3.2 The Concessionaire shall not in any manner modify the order of payment specified in **Article 20.3.1** above except with the prior written approval of the Authority.

20.4 Withdrawals upon Termination

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

- a. all Taxes due and payable by the Concessionaire for and in respect of the Project;
- b. 90% (ninety per cent) of the Debt Due including subordinate debt;
- c. outstanding Project Consideration as per Article 20.3.1 (d);
- d. retention and payments relating to the liability for defects and deficiencies;
- e. outstanding Debt Service including the balance of Debt Due;
- f. outstanding Subordinated Debt;
- g. Incurred or accrued O&M Expenses;
- h. all payments and damages certified by the Authority as due and payable to it by the Concessionaire;
- i. any other payments required to be made under this Agreement; and
- j. balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriation shall be made under sub-clause (j) of this **Article 20.4.1** until a Vesting Certificate has been issued by the Authority.

20.4.2 The provisions of this **Article 20** and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in article 20.4.1 has been discharged.

Article 21: Insurance

21.1 Insurance during Concession Period

21.1.1 The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice to cover third party claims and Non Political Event (the “**Insurance Cover**”). The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured.

21.2 Insurance Cover

21.2.1 Without prejudice to the provisions contained in **Article 21.1**, the Concessionaire shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

- a. Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- b. Comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- c. The Concessionaire’s general liability arising out of the Concession;
- d. Liability to third parties for goods or property damage;
- e. Workmen’s compensation insurance;
- f. Such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period; and
- g. Any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (f) above.

21.3 Notice to the Authority

21.3.1 Not later than **45 (forty five) days** prior to commencement of the Concession Period, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this **Article 21**. Within **30 (thirty) days** of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution procedure, as per **Article 30**, shall apply.

21.4 Evidence of Insurance Cover

21.4.1 All insurances obtained by the Concessionaire in accordance with this **Article 21** shall be maintained with insurers on terms consistent with Good Industry Practice. Within **15 (fifteen) days** of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be

cancelled, modified, or allowed to expire or lapse until the expiration of at least **45 (forty five) days** after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

21.5 Remedy for Failure to Insure

21.5.1 If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

21.6 Waiver of Subrogation

21.6.1 All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this **Article 21** 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.

21.7 Concessionaire's Waiver

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

21.8 Application of Insurance Proceeds

21.8.1 The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account. The Concessionaire shall apply all proceeds from insurance 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.

21.9 Compliance with conditions of insurance policies

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

Article 22: Accounts and Audit

22.1 Audited accounts

- 22.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Project Revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within **90 (ninety) days** of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 22.1.2 The Concessionaire shall, within **30 (thirty) days** of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 22.1.3 Along with the copies of the Audited Accounts and the Auditors Report thereon as per **Article 22.1.1**, the Concessionaire shall provide segregated Profit and Loss Accounts for the operations of various Project Facilities, duly audited by the statutory auditors.
- 22.1.4 On or before the 31st May of each year, the Concessionaire shall provide to the Authority, for the preceding account year, a statement duly audited by its statutory auditors, giving any such information as the Authority may reasonably require, including a summarizing information on:
- a. the occupancy of the Project Facilities
 - b. User Fee charged and received and other revenues derived from the Project / Site / Project Facilities,
 - c. annual gross revenue earned from the Project / Site / Project Facilities, and
 - d. such other information as the Authority may reasonably require.

22.2 Certification of Claims by Statutory Auditors

- 22.2.1 Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. In the event of there being any difference or dispute in respect thereof, such Dispute shall be resolved

by recourse to the Dispute Resolution procedure. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

22.3 Set Off

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

Part V: Force Majeure and Termination

Article 23: Force Majeure

23.1 Force Majeure

23.1.1 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 23.2, 23.3, 23.4** 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.

23.2 Non-Political Event

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

- a. Acts of God, epidemic, extremely adverse weather conditions, lightening, earthquake, landslide, cyclone, flood, volcanic eruption, chemical, radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b. any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permits (ii) on account of breach of any Applicable Law or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- c. the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection;
- d. strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees / representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Site 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, as set forth in **Article 23.3**.
- e. any other event or circumstance of a nature analogous to the foregoing.

23.3 Indirect Political Event

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

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

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

23.4 Political Event

- 23.4.1 A Political Event shall mean one or more of the following acts or events by or on account of any Authority Instrumentality:
- a. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
 - b. unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no objection certificate, exemption, consent, approval or permit;
 - c. any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
 - d. any event or circumstance of a nature analogous to any of the foregoing.

23.5 Duty to report Force Majeure Event

- 23.5.1 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 23** with evidence in support thereof;
- b. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- c. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d. any other information relevant to the Affected Party's claim.

23.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than **7 (seven) days** after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

23.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by **Article 23.5.1**, and such other information as the other Party may reasonably request the Affected Party to provide.

23.6 Effect of Force Majeure before the Appointed Date

23.6.1 Upon occurrence of any Force Majeure Event prior to the issuance of the Appointed Date, the following shall apply:

- a. The Appointed Date shall be extended by the period for which such Force Majeure event shall subsist; and
- b. The Parties shall bear their respective costs arising out of such Force Majeure Event.

23.7 Effect of Force Majeure after Appointed Date

23.7.1 Upon occurrence of any Force Majeure Event after the Appointed Date, the following shall apply:

- a. Where the Force Majeure Event occurs before the COD, the Concession Period and the Scheduled Completion Date shall be extended by the period for which such Force Majeure Event shall subsist;
- b. after COD, whereupon the Concessionaire is unable to collect Project Revenues despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the collection thereof during the subsistence of such Force Majeure Event, the Authority shall consider the impact of any such Force Majeure Event and provide appropriate remedies in accordance with the provisions of Applicable Laws.

23.8 Allocation of costs during the subsistence of Force Majeure

23.8.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date,

the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.

23.8.2 Upon occurrence of a Force Majeure Event after Appointed Date, the cost arising out of such event shall be allocated as follows:

- a. When the Force Majeure Event is 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 cost arising out of any such Force Majeure Event;
- b. Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover admitted and paid for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs, as duly certified by the Statutory Auditors, exceed such Insurance Cover admitted and paid, one half of such excess shall be reimbursed by the Authority to the Concessionaire within **120 (one hundred and twenty) days** from the date of receipt of Concessionaire's claim therefore;
- c. Upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

23.8.3 For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works for the Development, Operation and Maintenance of the project site on account of inflation and all other costs attributable directly to the Force Majeure Event, but shall not include loss of Project Revenue or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent it is relevant.

23.8.4 Save and except as expressly provided in this **Article 23**, 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 existing of any Force majeure Event or exercise of any right pursuant hereto.

23.9 Termination Notice for Force Majeure Event

23.9.1 If the Force Majeure Event subsists for a period of **180 (one hundred eighty) days** or more within a continuous period of **365 (three hundred sixty five) days**, either Party may in its sole 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 28**, and upon issue of such Termination Notice, the Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith, provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant **15 (fifteen) days'** time to make a representation, and may after the expiry of such **15 (fifteen) days** period, whether or not in receipt of such representation, in its sole discretion issue the Terminal Notice.

23.10 Termination Payment for Force Majeure Event

Upon termination of this Agreement due to a Force Majeure Event, Termination Payment shall be made to the Concessionaire by the Authority in accordance with the following:

- 23.10.1 If Termination is on account of a Non-Political Event and Indirect Political Event, the Authority shall pay to the Concessionaire an amount equal to **90% (ninety percent)** of the Debt Due, less Insurance Cover admitted and paid. Provided that such Termination Payment shall in no case exceed 70% of the Total Project Cost excluding optional project facilities.
- 23.10.2 If Termination is on account of a Political Event, the Authority shall pay to the Concessionaire:
- a. 100% of Debt Due, provided that such amount shall in no case exceed 70% of Total Project Cost excluding optional project facilities;
 - b. Plus: 100% of Adjusted Equity;
 - c. Less: Insurance Cover, provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of the Debt Due.
- 23.10.3 The Termination Payments pursuant to this Article 23.10, shall become due and payable to the Concessionaire by the Authority upon actual or constructive transfer of the Project Assets by the Concessionaire to the Authority free from all Encumbrances, charges and liens whatsoever, unless expressly directed by the Authority otherwise.

23.11 Dispute Resolution

- 23.11.1 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 as under **Article 30**, provided however that the burden of proof as to the occurrence or existence of such Force Majeure event shall be upon Party claiming relief and/or excuse on the account of such Force Majeure Event.

23.12 Excuse from Performance of Obligations

- 23.12.1 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.

23.13 Relief for Unforeseen Events

- 23.13.1 Upon occurrence and continuance of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (“**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within **15 (fifteen) days** of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred and is continuing, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this **Article 23.13**.
- 23.13.2 Upon determination of the occurrence and continuation of an Unforeseen Event, the Parties shall make a reference to the Punjab Infrastructure Regulatory Authority for adjudication as per provisions of Article 30. The Punjab Infrastructure Regulatory Authority shall to conduct preliminary proceedings to satisfy itself that:
- a. an Unforeseen Event has occurred;
 - b. the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
 - c. the Unforeseen Event or its effects have not been caused by any Party by any act or omission on its part, and if the Punjab Infrastructure Regulatory Authority is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this **Article 23.13**.
- 23.13.3 Upon completion of the adjudication proceedings referred to in this **Clause 23.13**, the **Punjab Infrastructure Regulatory Authority** (the “**PIRA**”) may, by a reasoned order, make recommendations and setting out the terms of reference, which shall be:
- a. based on a fair and transparent justification;
 - b. no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
 - c. of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
 - d. quantified and restricted in terms of relief or remedy.
- 23.13.4 Within **15 (fifteen) days** of receiving the order and terms of reference referred to in Clause 23.13.2, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement, by way of entering into a Memorandum of Understanding (MoU) setting forth the agreement reached hereunder. The terms of such MoU shall have force and effect as if they form part of this Agreement and would deem to have modified the concerned terms of this Agreement, if any.

Article 24: Compensation for Breach of Agreement

24.1 Compensation for default

24.1.1 Subject to the provisions of **Article 24.3**, In the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within **30 (thirty) days** of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this **Article 24.1**, 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. In such cases where the costs suffered or incurred by the Authority are not quantifiable or determinable, the Concessionaire shall be liable to pay Damages equivalent to **0.5% (zero point five percent)** of Performance Security for each day till such breach or default is cured.

24.1.2 Subject to the provisions of **Article 24.3**, In the event of the Authority being in material default or breach of this Agreement at any time after COD, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default or breach within **30 (thirty) days** of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, and all other costs directly attributable to such material default or breach but shall not include loss of Project Revenues, debt repayment obligations or other consequential losses.

24.2 Compensation to be in addition

24.2.1 Compensation payable under this **Article 24** shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

24.3 Mitigation of costs and damage

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

Article 25: Termination

25.1 Termination for Concessionaire Default

- 25.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of **90 (ninety) days**, the Concessionaire shall be deemed to be in default of this Agreement (the "**Concessionaire Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:
- a. the Performance Security has been encashed and appropriated in accordance with **Article 9** and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of **30 (thirty) days**;
 - b. the Concessionaire abandons or manifests intention to abandon the operation of the Project without the prior written consent of the Authority;
 - c. the Concessionaire fails to undertake or complete the construction of the Development, Operation and Maintenance of the project site in accordance with **Article 12**;
 - d. the Concessionaire fails to achieve COD in accordance with **Article 15**;
 - e. the Concessionaire has failed to pay any payment to the Authority within the period specified in this Agreement;
 - f. an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of **15 (fifteen) days**;
 - g. a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
 - h. the Concessionaire creates any Encumbrance in breach of this Agreement;
 - i. the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
 - j. a Change in Ownership has occurred in breach of the provisions of **Article 5.5**;
 - k. If the Concessionaire is declared as a wilful defaulter by any of the Scheduled Banks in India;
 - l. If the Concessionaire is declared unfit/ineligible to continue as a "**going concern**" or undertake the responsibilities as per this Agreement under an Indian Law;
 - m. there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

- n. the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- o. the Concessionaire has been, or is in the process of being liquidated, dissolved, wound up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- p. a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at COD; and
 - iii. each of the Project Agreements remains in full force and effect;
- q. any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- r. the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- s. the Concessionaire has failed to fulfil any obligation, for which failure, Termination has been specified in this Agreement; or
- t. the Concessionaire commits a default in complying with any other provision of this Agreement if such default cause a Material Adverse Effect on the Authority.
- u. The Concessionaire novates and /or assigns the agreement to any third party without any prior approval from the Authority

25.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default,

the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant **30 (thirty) days** to the Concessionaire 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.

- 25.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in **Article 25.1.2** to inform the Lenders' Representative and grant **15 (fifteen) days** to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding **180 (one hundred and eighty) days** from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

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

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

25.2 Termination for Authority Default

- 25.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of **90 (ninety) days** or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:
- a. the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
 - b. the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;

- 25.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the

Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant **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.

25.3 Termination Payment

- 25.3.1 Upon Termination on account of a Concessionaire Default any time after COD during the Concession Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- a. 90% of Debt Due, provided that such amount shall in no case exceed 70% of Total Project Cost excluding optional project facilities;
 - b. **Less:** Insurance Cover, provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of the Debt Due.
- 25.3.2 Upon Termination on account of Concessionaire Default during the Construction Period before COD, no Termination Payment shall be due and payable.
- 25.3.3 Upon Termination on account of an Authority Default after Appointed Date, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- a. 100% of Debt Due, provided that such amount shall in no case exceed 70% of Total Project Cost excluding optional project facilities;
 - b. **Plus:** 100% of Adjusted Equity;
 - c. **Less:** Insurance Cover, provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of the Debt Due.
- 25.3.4 It is clarified that in the event of Termination on account of an Authority Default, 100% of subsisting Performance Security shall be returned to the Concessionaire. However, in case of Concessionaire Default, the 100% of subsisting Performance Security shall be forfeited.
- 25.3.5 Termination Payment shall become due and payable to the Concessionaire within **15 (fifteen) days** of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay pro-rata interest at a rate equal to SBI one-year Bank Lending [MCLR] Rate on the amount of Termination Payment remaining unpaid. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- 25.3.6 The Concessionaire expressly agrees that Termination Payment under this **Article 25** shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire shall not have any further right or

claim under any law, treaty, convention, contract or otherwise.

- 25.3.7 Consequence of Termination: Irrespective of the reason for Termination, the Concessionaire shall transfer all movable and immovable assets to the Authority upon the Transfer Date.

25.4 Other Rights and Obligations of the Authority

- 25.4.1 Upon Termination for any reason whatsoever, the Authority shall:

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

25.5 Suspension upon Concessionaire Default

- 25.5.1 Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect revenues, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of Notice of Breach by the Authority to the Concessionaire 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 Lenders' Representative, the Authority may extend the aforesaid period by a further period not exceeding 90 (ninety) days.

25.6 Authority to act on behalf of Concessionaire

- 25.6.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Project 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.
- 25.6.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire, and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby leases, licenses and sub-leases, 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 Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

25.7 Revocation of Suspension

- 25.7.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding **60 (sixty) days** from the date of Suspension, it may revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 25.7.2 Upon the Concessionaire having cured the Concessionaire Default within the Cure Period, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

25.8 Survival of Rights

- 25.8.1 Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

Article 26: Divestment of Rights and Interest

26.1 Divestment Requirements

26.1.1 Upon Expiry or Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- a. notify to the Authority forthwith the particulars of all Project Assets;
- b. deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances;
- c. cure all Project Assets, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements;
- d. deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its operation and maintenance, including all programmes and manuals pertaining thereto, as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the operation and maintenance of the
- e. Project and shall be assigned to the Authority free of any encumbrance;
- f. transfer and / or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- g. execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, 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
- h. comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

26.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

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

26.2 Inspection and cure

- 26.2.1 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 Independent Engineer(s) shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements.

26.3 Cooperation and assistance on transfer of Project

- 26.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the users, other members of the public or the lawful occupiers of any part of the Site.
- 26.3.2 The Parties shall provide to each other, **9 (nine) months** prior to the Transfer Date in the event of Expiry by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of **6 (six) months** after the Transfer Date.
- 26.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the movable plant and machinery used in connection with the Project and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution procedure shall apply.

26.4 Vesting Certificate

- 26.4.1 The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in **Schedule 13** (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

26.5 Divestment Costs etc.

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

In the event of any dispute relating to matters covered by and under this **Article 26**, the Dispute Resolution procedure shall apply.

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Part VI: Other Provisions

Article 27: Assignment and Charges

27.1 Restrictions on assignment and charges

- 27.1.1 Subject to **Articles 27.2** and **27.3**, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 27.1.2 Subject to the provisions of **Article 27.2**, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party.

27.2 Permitted assignment and charges

- 27.2.1 The restraints set forth in **Articles 27.1** shall not apply to:
- a. liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
 - b. sub-license or sub-lease of Project Facilities;
 - c. Mortgage/ pledges of rights, benefits, entitlements (including the Project Revenues) of the Concessionaire pursuant to the Concession Agreement and the Lease, as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project; and
 - d. liens or encumbrances required by any Applicable Law.

27.3 Substitution Agreement

- 27.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule 14.
- 27.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of **120 (one hundred and twenty) days** to the Concessionaire for curing such breach.

27.4 Assignment by the Authority

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

Article 28: Liability and Indemnity

28.1 General indemnity

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

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

28.2 Indemnity by the Concessionaire

28.2.1 Without limiting the generality of **Article 28.1**, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a. failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- b. payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- c. non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

28.2.2 Without limiting the generality of the provisions of this **Article 28**, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority

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

28.3 Notice and contest of claims

28.3.1 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 28** (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.

28.4 Defence of claims

28.4.1 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 28**, 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.

28.4.2 If the Indemnifying Party has exercised its rights under **Article 28.3**, 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).

28.4.3 If the Indemnifying Party exercises its rights under **Article 28.3**, 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; or
- b. the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- c. the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the 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 defences 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:

28.4.4 Provided that if **Sub-clauses (b), (c) or (d)** of this **Article 28.4.3** shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

28.5 No consequential claims

28.5.1 Notwithstanding anything to the contrary contained in this **Article 28**, 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 except as expressly provided in this Agreement.

28.6 Survival on Termination

28.6.1 The provisions of this **Article 28** shall survive Termination.

Article 29: Rights and Title Over the Site

29.1 Lease rights

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

29.2 Access Rights of the Authority and Others

29.2.1 The Concessionaire shall allow free access to the Site at all times for the authorized representatives of the Authority and the Independent Engineer(s), to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

29.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility.

29.3 Property Taxes

29.3.1 As per Section 97 (2) of the Punjab Municipal Corporation Act, 1976, the Concessionaire shall bear all property taxes, house taxes, municipal taxes, etc. as levied by relevant authorities. Any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

29.4 Restriction on Sub-Licensing for Operations

29.4.1 The Concessionaire shall not sub-lease or sub-let the whole or part of the Site, save and except as may be expressly set forth in this Agreement. All agreements or arrangements with the sub-licensees / sub-lessees shall specifically have stipulation of a covenant that the sublicenses / sub-leases shall be co-terminus with the termination of this agreement.

Article 30: Dispute Resolution

30.1 Dispute Resolution

- 30.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably.
- 30.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

30.2 Adjudication

- 30.2.1 In event the parties are unable to resolve the Dispute through Direct Discussion, the parties shall submit the Dispute for adjudication by the **Punjab Infrastructure Regulatory Authority** constituted under the **Punjab Infrastructure (Development and Regulation) Act, 2002**.
- 30.2.2 The Punjab Infrastructure Regulatory Authority shall make a reasoned award (the “**Award**”). Any Award made by Punjab Infrastructure Regulatory Authority pursuant to this **Article 30** shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 30.2.3 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets, wherever situated.
- 30.2.4 However, in the event Punjab Infrastructure Regulatory Authority has not been constituted at the time of dispute, the parties may appoint the Arbitral Tribunal by nominating one arbitrator each. The nominated Arbitrators shall collectively appoint the third Arbitrator, who shall be Presiding Officer. The Arbitral Tribunal shall conduct the Arbitration as per the Arbitration and Conciliation Act 1996 as amended. The place of Arbitration shall be Chandigarh. the language of Arbitration shall be English. The Courts in Chandigarh shall have the jurisdiction.
- 30.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any adjudication proceedings hereunder.

30.3 Costs associated with Dispute Resolution

- 30.3.1 The cost incurred on adjudication including inter alia the cost of Regulatory Authority proceedings shall be borne by the Parties in equal proportions.
- 30.3.2 Each Party shall bear its own legal fees incurred as a result on any Dispute under this **Article 30**.

30.4 Performance during Dispute

- 30.4.1 Performance of this Concession Agreement shall continue during the settlement of any Dispute under this **Article 30**. The provisions for dispute

settlement shall be binding upon the successors; assigns and any trustee or receive of either the Authority or the Concessionaire.

Article 31: Disclosure

31.1 Disclosure of Specified Documents

31.1.1 The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the project location and Concessionaire's Project Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

31.2 Disclosure of Documents relating to safety

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

31.3 Withholding of documents

31.3.1 Notwithstanding the provisions of **Articles 31.1 and 31.2**, the Authority shall be entitled to direct the Concessionaire, 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 31.1 and 31.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

Article 32: Miscellaneous

32.1 Governing law and Jurisdiction

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

32.2 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).

32.3 Depreciation and Interest

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

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

32.4 Delayed Payments

- 32.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within **30 (thirty) days** of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay, unless otherwise specified, calculated at a rate equal to 3% (three per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

32.5 Waiver

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

- a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- c. shall not affect the validity or enforceability of this Agreement in any manner.

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

32.6 Liability for Review of Documents and Drawings

32.6.1 Except to the extent expressly provided in this Agreement:

- a. no review, comment or approval by the Authority or the Independent Engineer(s) of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- b. the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

32.7 Exclusion of implied warranties etc.

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

32.8 Survival

32.8.1 Termination shall:

- a. not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising

out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

32.9 Entire Agreement

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

32.10 Severability

32.10.1 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 the Dispute Resolution Procedure set forth under this Agreement or otherwise.

32.11 No Partnership

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

32.12 Third Parties

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

32.13 Successors and Assigns

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

32.14 Notices

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

- a. in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified in Sub-Clause (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 Concessionaire may from time to time designate by notice to the Authority.

{Name:

Designation:

Address:

Fax No.:

E-mail ID:};

- 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 Concessionaire; provided that if the Concessionaire 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.:

E-mail ID:};

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.

32.15 Language

- 32.15.1 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.

32.16 Counterparts

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

Article 33: Transfer of Project

- 33.1.1 On the Transfer Date, the Concessionaire shall, transfer and assign to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Appointed Date of all the Concessionaire's right, title and interest in and to the Works, movable and immovable assets. However, all the movable assets brought in by Concessionaire shall be the property of the Concessionaire and shall be transferred to him after the end on the Concession Period. The Concessionaire shall also deliver to the Authority or its nominated agency on such date such operating and maintenance manuals, plans, reports, accounts and other information as may reasonably be required by the Authority or its nominated agency to enable it to continue the operation of the Project either directly or by its nominated agency. The personnel of the Concessionaire shall continue to be the employees of the Concessionaire and the transfer of all the immovable assets shall not in any manner affect their status as employees of the Concessionaire and they shall have no claim to any type of employment or compensation from the Authority or its nominated agency.
- 33.1.2 The Concessionaire shall to the extent possible assign to the Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies on immovable assets. The Concessionaire shall ensure that any rights, which are to be so assigned, are capable of assignment and the counterpart to the Concessionaire has approved such assignment under the terms and conditions of the relevant contract.
- 33.1.3 The Concessionaire shall, to the extent possible at the time of transfer, assign to the Authority or its nominated agency all contracts, supply contracts and all other contracts relating to the Project entered into by the Concessionaire and subsisting at the time of transfer except any contracts with employees.
- 33.1.4 **6 (six) months** prior to the Transfer Date, the Authority shall be entitled to appoint any consulting Independent Engineer(s) to assess the condition of the Project. Such consulting Independent Engineer(s) shall be entitled to have free access to inspect the Project, provided that such inspection is reasonable and is carried out with minimum disruption to normal operation of the Project.
- 33.1.5 Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Project, unless such loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Concession Agreement.
- 33.1.6 The Concessionaire shall provide fair and just compensation to its employees as required under the Laws or under this Concession Agreement and shall indemnify the Authority against any claims from any such employees for their loss of office, redundancy, loss of employment or otherwise. The Authority shall accept absolutely no liability on account of any matter pertaining to the Concessionaire's employees, staff, labor etc.

- 33.1.7 The Authority shall be responsible for the legal costs and expenses, including stamp duties, taxes, legal fees and expenses, incurred in connection with the Transfer of the Project to it by the Concessionaire.
- 33.1.8 On the Transfer Date, the Concessionaire shall hand over the Project with all the movable and immovable assets to the Authority or its nominated agency at zero cost.
- 33.1.9 From the Transfer Date, the rights of the Concessionaire under this Concession Agreement shall terminate vis-à-vis the Authority and the Authority or its nominated agency shall take over the Project and the operation and maintenance and any other rights arising out of this Concession Agreement which either expressly or implicitly survive termination of this Concession Agreement; provided, however, that the Concessionaire may continue with any other business operations arising other than in connection with this Concession Agreement and; provided further that the Concessionaire shall no longer act in its capacity as Concessionaire in relation or pursuant to this Concession Agreement.

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

SIGNED SEALED AND DELIVERED

For and on behalf of the Authority By:

Seal & Signature

Name:

Designation:

For and on behalf of the Concessionaire By:

Seal & Signature

Name:

Designation:

For and on behalf of the Selected Bidder By:

Seal & Signature

Name:

Designation:

In the Presence of

Witness 1;

Signature

Name:

Designation:

Witness 2;

Signature

Name:

Designation: