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 – III: Schedules to Concession Agreement

Date: 16 November 2021

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Schedule 1: Site of the Project (the "Site")

1.1 Introduction

1.1.1 The Gol Kothi was originally known as "**Kamra Kothi**". It was built by Raja Fateh Singh in the year 1833 A.D and was used as a residence by the Maharajas of Kapurthala. A marble tablet fixed on the entrance wall has engraved on it '**Their Highnesses Raja-i-Rajgan Fateh Singh**, **Nihal Singh, Randhir Singh** and **Kharak Singh** stayed in this house for many years and His Highness Maharaja Jagatjit Singh from the age of seven in 1879 A.D. to the age of eighteen. When Maharaja Jagatjit Singh shifted his residence from here, it became the 'Indian Guest House'. It was later used as the residence of Civil Surgeon till the 1960's. It was abandoned after it was perceived to be unsafe.

1.1.2 Agriculture is the main occupation of people of Kapurthala in the rural areas of the district. There are some industries in urban areas where workers are employed from nearby villages and towns. As per 2011 census, the Workforce Participation Rate in the Kapurthala District is 35%, which is slightly lower than Punjab state average of 36%. Kapurthala District Workforce Participation was 34.8% in 2001 which has decreased to 34% in 2011.

Kapurthala is home to several medium and large-scale industries. Some of these are –

1. Rail Coach Factory: A Govt. Of India enterprise and premier in manufacturing of rail coaches,
2. JCT Mills Phagwara (a sub-division of Kapurthala district): one of the most successful textile mills in India
3. SSK: one of India's oldest and biggest manufacturers of Electrical wiring accessories, founded in 1935
4. Oswal Agro (Sugar) Mills
5. Jagatjit Industries Limited (JIL): set up under the patronage of the Maharajah of Kapurthala in 1944, one of the largest alcoholic beverage breweries and manufacturers of dairy products in India,
6. Heavy Engineering and ancillary units are coming up in the city to cater to the needs of the Rail Coach Factory.
7. Agro processing industries have been in the city from the 1950s, mainly oil extraction from oil seeds like sunflower, mustard, cotton seed and rice bran.
8. Rice mills due to proximity to the surrounding fertile agricultural lands. Kapurthala is a prominent market in Punjab for both Basmati & non-Basmati paddy and rice.

1.1.3 With the increasing disposable incomes and improving standards of living, there is a need for quality recreational spaces for the residents of Kapurthala. Most existing restaurants and recreational centres do not offer modern-day facilities.

1.1.4 Hence, a Heritage Restaurant cum Recreation Centre is proposed at Gol

Kothi. The proposed adaptive use would serve residential neighbourhoods in the catchment of the site as well as other parts of the city. The adaptive use will also enhance protection and management of cultural tourism assets at Kapurthala and help generate revenue for the state. The district is part of the Sikh Heritage Trail.

1.2 Project Site

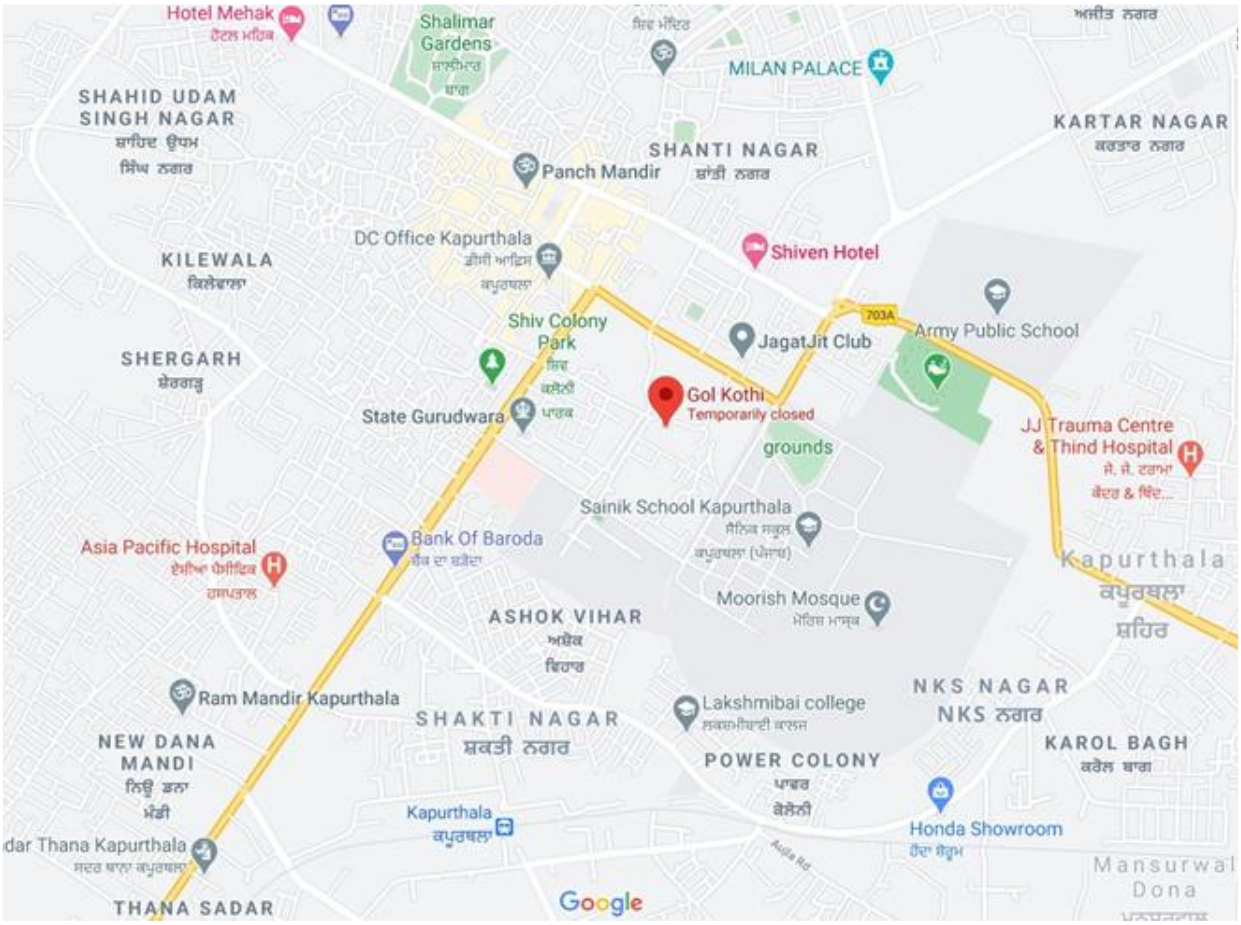
1.2.1 The site of the Project is spread across approximately 1 acre and is owned and renovated by PHTPB. The site is located within 1 km from the city centre and is close to residential catchment.

Figure 1: Gol Kothi (highlighted with a yellow dotted circle); Source: Google Earth

1.2.2 Salient features of the site are:

- Area use – Heritage Restaurant cum Recreation Centre
- Flat terrain with access from Kapurthala Road and Mall Road
- Free of all encumbrances
- Site Area – 3892 sq. metres (or 41893 sq. feet or 9 kanal 9 Marla)
- • Site Dimension details : 12.6 m long North-West edge, 45.5 m long South- East Edge, 79.6 m long South Edge
- Site Latitude & Longitude : 31° 22’ 35’’ N, 75° 23’ 13’’ E
- Open area ground coverage – Maximum 30% or 2000 sq. feet, whichever is less (temporary construction only)
- Height Restriction – As per AAI
- Other bye-laws as per Municipal Building Bye-Laws and PUDA Building Rules 2018.

1.2.3 The following map shows the location of Site in Kapurthala:


Hotel Mehak
Shalimar Gardens
MILAN PALACE
SHAHID UDAM SINGH NAGAR
KARTAR NAGAR
SHANTI NAGAR
Panch Mandir
DC Office Kapurthala
Shiven Hotel
KILEWALA
Shiv Colony Park
JagatJit Club
Army Public School
SHERGARH
Gol Kothi
Temporarily closed
State Gurudwara
grounds
JJ Trauma Centre & Thind Hospital
Sainik School Kapurthala
Asia Pacific Hospital
Bank Of Baroda
Kapurthala
Moorish Mosque
ASHOK VIHAR
Ram Mandir Kapurthala
Lakshmibai college
NKS NAGAR
SHAKTI NAGAR
NEW DANA MANDI
POWER COLONY
KAROL BAGH
Kapurthala
Honda Showroom
Mansurwal Dona
THANA SADAR
Google

Schedule 2: General Scope of Work

2.1 Scope of work of the Concessionaire is as follows:

The Concessionaire shall undertake all the activities pertaining to and incidental to Development, Operation & Maintenance of Gol Kothi, Kapurthala as Heritage Restaurant cum Recreation Center.

2.1.1 The works to be undertaken by the Authority:

i. Conservation/Restoration of Heritage Structure.
ii. Lime plaster, Stucco work & artwork as per original. Restoration & repair of wooden jaffery.
iii. Flooring of basement, Ground Floor, 1st floor and outer courtyard.
iv. Parking for vehicles by providing interlocking pavers.
v. Landscaping of open area by grassing of lawns.
vi. Boundary wall with M.S Grill.
vii. Water supply for kitchen & toilets with water tanks on roof for storage of water.
viii. Laying of sewer pipe up to municipal sewer.
ix. Rainwater harvesting system in the campus.
x. Provision of toilets in the Heritage structure for ladies & gents. However, all the toilet fittings & fixture shall be provided by the Concessionaire at its own cost.
xi. Electrical wiring with all required switches, sockets & Distribution Boards. However, all the light fixtures & fans etc. shall be provided by the Concessionaire at its own cost.
xii. Copper refrigerant piping for split type A.C. units. However, the split type A.C. units shall be provided & installed by the Concessionaire at its own cost.
xiii. Parking and Public Toilets shall be completed in all respects by the Authority
xiv. Peripheral road, campus lighting and landscaping shall be completed in all respects by the Authority

2.1.2 Works to be undertaken by the Concessionaire are elaborated below:

i. All electrical fixtures (lights, fans, chandeliers, switches, etc.), furniture, TVs, AV Systems, IT and Communication, computers, counters and desks, linen, curtains, upholstery, decorative items, etc. shall be undertaken by the Concessionaire.
ii. Fire systems shall be installed by the Concessionaire.
iii. All equipment and appliances in Kitchen and BOH Area shall be provided by the Concessionaire.
iv. STP, WTP and Hydro Pneumatic Systems shall be undertaken by the Concessionaire.
v. Power back-up including DG Set, its associated Panels and wiring etc. shall be installed by the Concessionaire.

vi. IT infrastructure, CCTV cameras, server room, PA systems, computers and peripherals, printers, OFC connectivity, SMATV systems, etc. shall all be done by the Concessionaire.

vii. All decorative items, paintings and artifacts shall be provided by the Concessionaire.

Note: Furniture and furnishing items including equipment, machinery shall be in the scope of the Concessionaire.

2.1.3 Besides the above upgradation works, the Concessionaire shall have the following Development, Operations and Maintenance Obligations as listed in Clause 2.5 of RFP.

2.1.4 Procurement of all required permits/clearances

The Concessionaire shall take all necessary/ clearances, permits required for design, construction, finance, operation and maintenance of the Project in Kapurthala such that all such conditions are satisfied in full and all such Clearances, Permits etc. to execute the Project are in full force and effect.

2.1.5 Prepare and get approved a O&M Plan

The Concessionaire shall prepare a O&M Plan to detail out the facilities envisaged by the Concessionaire, details of capital expenditure to be incurred on each facility, designs of the Refurbishment, Development, Operation and Maintenance of Project Site etc.

2.1.6 Set up the Facility

The Concessionaire shall design and develop/construct, on the Project Site, within the stipulate 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 Appointed Date. Pursuant to the completion of the construction, the Concessionaire shall operate, maintain and manage the Project Facilities during the Concession Period. The Authority shall approve the overall design of all the Project Facilities. The Concessionaire is expected to provide best-in-class facilities and adhere to minimum requirements as stipulated in the Schedules of the RFP.

2.1.7 Sub-License/ Subcontract

The Concessionaire shall have the right to sub-contract / sub - license project Facilities for the Concession Period in accordance with the provisions of the Concession Agreement. The Concessionaire shall obtain prior approval of the Authority for a format of the standard Sub-License Agreement before its execution with any sub-licensee. In case, any deviation in this format of standard Sub-License Agreement is required, the Concessionaire shall again obtain prior approval of the Authority before entering into an agreement with the sub-licensee.

2.1.8 Operate and manage entire facility

2.1.9 Provide manpower to manage entire facility

The Concessionaire shall hire the adequate manpower required for operation and maintenance of requisite facilities. The Concessionaire shall be required to submit a detailed project development plan in which he will provide the need of the adequate manpower required for the project. The manpower should be both skilled and unskilled and would have experience in working and maintaining the kind of facilities.

2.1.10 Maintenance of all facilities provided in the Project
The Concessionaire shall ensure that the Project Facilities are properly managed and maintained during the Concession Period.

2.1.11 Managing Operational Expenses
The Concessionaire is required to undertake and manage all kinds of operational expenses like consumables, salaries, water, electricity, repair and maintenance, etc. of the facilities during the Concession Period.

2.1.12 Repair and Maintenance
The Concessionaire is required to undertake the repair and maintenance work of all the Project Facilities and bear all the cost related to the same.

2.1.13 Create and Maintain a Website
The Concessionaire shall be required to create, maintain and manage a website for the Project detailing out location, facilities present within, calendar of events, availability of rooms/halls etc. The Concessionaire would also be required to update the website every 3 months.

2.1.14 Levy of Charges and Collection of Revenue
The Concessionaire shall have the right to levy and collect revenues, as generated, pursuant to the operationalisation of the Project, as per the provisions laid down in the Concession Agreement.

2.1.15 During the Concession Period, the Concessionaire shall be required to extend cordial relations to the annual audits conducted by the Independent Engineer appointed by the Authority and to other consultants as and when appointed by the Authority.

2.1.16 At the end of the Concession Period, by efflux of time or premature termination for any reason whatsoever, all rights given under the Concession Agreement shall cease to have effect and the Project Site & the entire Project, thereof shall transfer back to the Authority as per the provisions of the Concession Agreement (Section II of the RFP document). All the immovable assets attached to the Project/Project Site shall revert to PHTPB without any obligation on PHTPB to pay or adjust any consideration or other payment to the Concessionaire.

2.1.17 The Concessionaire shall fulfil all other obligations in accordance with the provisions of this 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 and its Schedules thereof.

It is clarified herewith that in addition to the above-stated “Scope of Work”,

the Concessionaire shall be required to carry out any incidental works and services as required and to comply with all the provisions of the Concession Agreement, the Schedules to the Concession Agreement and as per the requirements of applicable byelaws/ norms etc., while completing the development of the Project.

Schedule 3: Project Facilities

3.1 Project Facilities

The project would be refurbished/developed, operated and maintained as an exclusive Heritage Restaurant cum Recreation Center (**"Heritage Restaurant cum Recreation Centre"**) and shall be planned, designed and developed in accordance with the Development Control regulations as applicable on the Project Site. The Project Facilities ("Project Facilities") shall mean and include the followings:

A. Refurbishment/ Development, Operation and Maintenance of Gol Kothi: These shall comprise of project facilities to be mandatorily refurbished/developed, operated and maintained as a part of the Project.
B. Optional Project Facilities: These shall comprise of various real estate / commercial developments along with supporting basic physical infrastructure / utilities, considered ancillary and incidental to the Project Facilities as elaborated in greater details below.

3.2 Refurbishment, Development, Operation and Maintenance of Project site

The Concessionaire shall be required to refurbish/develop the following project facilities on the Project Site during the Construction Period.

i. Gol Kothi built-up area [project site]: Lounge / restaurant(s) and bar with minimum aggregate capacity of 75 pax
ii. Parking (on-premise)
iii. Ancillary / Support activities complementing (i) & (ii) as stated above.

The Project Facilities as part of the Refurbishment, Development, Operation and Maintenance of Project site are described in greater details as below:

- Sufficient circulation area for visitors
- Suitable provisions for differently abled are to be provided across the entire facility (lifts, ramps, entrances, seating and washrooms).
- Adequate fire safety measures
- Adequate signages
- Round the clock security at various entry and exit gates to the Site including CCTV monitoring, barricades, boom barrier etc.
- Provision of drinking water supply
- Solid waste disposal system
- Back-up power system for emergency
- Street lighting across the Site
- Landscaping and tree plantation in open areas

3.3 Optional Project Facilities

The Concessionaire shall be allowed to develop (strictly temporary construction) various accommodation/lodging/sports /health wellness/ recreational facilities in the open area of the Project Site (upto a maximum of 30% of open area or 2000

sq. ft, whichever is less) apart from the Refurbishment of the Gol Kothi, subject to the available FAR and subject to the prevalent norms and regulations. These real estate facilities are intended to be ancillary or incidental to the development of the Project and may include:

a. Cultural/ Entertainment / Recreational spaces
b. Sports-related facilities
c. Health & Wellness facilities
d. Food & Beverages Facilities
e. Accommodation / Lodging / Bed & Breakfast

3.4 Restricted Activities:

The following uses shall be restricted for development on the Project Site:

- Industrial development and any related ancillaries

The Concessionaire shall be required to complete construction of the Optional Project Facilities on or before completion of 02 (two) years from the Appointed Date.

c

Schedule 4: Specifications and Standards

The Project and the Project Facilities to be designed, developed and constructed as a part of the Project shall conform to the regulations, provisions, principles and guidelines as laid down hereunder:

a. The applicable regulations of the PUDA Building Rules 2018.
b. Regulations and approvals under the Environmental Protection Act, 1986
c. Latest amended National Building Code of India, other relevant IS Codes and practices, Development Control Rules, FSI Limits, statutory requirements, laws of land, the principles of good industry practices and any other norms as applicable from time to time
d. The Project shall be developed, constructed and commissioned by the Scheduled Completion Date.

General industry practices / standards / requirements will need to be adhered to for the design, development, construction, operation and maintenance of the Project. In addition to the above, the specific configuration, norms and standards to be followed for each of the specific facilities are as given below. The Concessionaire would be required to adhere to these as the minimum configuration, norms and standards and shall be free to conform to and provide these or better configuration, norms and standards.

4.1 Specifications & Standards for Refurbishment/ Construction

Various indoor and outdoor sporting facilities to be developed in accordance with the norms and standards prescribed for such sports facilities by the respective sports authorities / federations.

- All construction shall be temporary and strictly as per the provisions made in IS specifications and standards, PWD specifications etc.
- Adequate surface drainage arrangement shall be made so that surface water does not enter into the Gol Kothi premises.
- Premium quality building material, sanitary fixtures, electrical fixtures, proper health standards etc. shall be used.
- Concessionaire shall make provision for separate and clean rest room for men and women in the facility at appropriate location easily accessible to all the Users including disable persons.
- The Concessionaire shall make a provision of administrative office for his use during Concession Period.
- The facility should provide sufficient number of exit / entry doors for normal / emergency evacuation.
- Separate doors shall be provided for service and user entry
- Special provision for users with disability
- Adequate fire safety measures
- Adequate signage
- Provision for First aid treatment
- Round the clock security

- Public announcement system
- CCTV system

4.2 Parking

- Separate parking for 2-wheelers, 4-wheelers
- Adequate provision as per guidelines of local bye-laws
- The minimum bay dimensions per car space shall be made as per Town Planning norms any other Local Building Bye laws for basement parking and above ground parking facilities.
- All parking spaces shall be paved to withstand vehicle loads and forces due to frequent acceleration and deceleration of vehicles. Parking bays/lots shall have proper cross slope and drainage. They shall be marked with paint as per Indian Standards to demarcate parking and circulation space.

4.3 Infrastructure / Utilities

The aforementioned elements shall be supported with adequate infrastructure facilities. The Concessionaire must provide for basic infrastructure facilities as required for the proposed Project Facilities and for use during various events held at the site. The bulk infra should include water supply network, sewage network, solid waste disposal facility, electrical substation, electrical network, streetlights, roads, boundary wall, gate etc. A dedicated services area shall be provided for the utilities.

Minimum guidelines for development of infrastructure are given below:

- **Electricity**
  The concessionaire shall be responsible for provision of continuous electrical supply to the entire infrastructure developed on the Project Site by creating a suitable sub-station. Suitable power network needs to be designed with a dedicated sub-station for the Recreation Centre and plug-n-play power lines for serving both outdoor and indoor spaces. Suitable back-up power arrangements need to be made for emergency power.

- **Water Supply**
  Both ground water and municipal water sources need to be evaluated. The water supply network should be designed to provide tap-off points at across the project site. Underground reservoirs and over-head tanks may be designed to ensure seamless water supply to the facilities.

- **Streetlights**
  Streetlights should be provided on both sides on the entrance road. The internal roads should have streetlights on at least one side.

- **Solid Waste Management**
  Suitable waste management plan should be prepared and followed by the Concessionaire to ensure proper segregation of waste and disposal as per Good Industry Practices. Adequate manpower and equipment shall be provided for the Concessionaire.

- **Sewerage and Strom Water Drainage**
  Provision of adequate covered drainage and sewage facilities to ensure zero waste discharges.
- **Fire Protection System**
  - Fire Sprinkler system
  - Hose reels
  - Extinguishers
  - Manual Call points
- **Security**
  - CCTV cameras
  - Entrance Boom Barriers
  - Security Guards
- **Landscaping**
  Rest of the area, not covered by Project Facilities, shall be landscaped to provide circulation space and leisure spaces for the visitors. This space can also be utilized for holding temporary events, F&B facilities and entertainment activities during large events.

4.4 Support Facilities

Appropriate provisions in line with the national standards like NBC, BIS, recognized International Standards and the Good Industry Practices shall have to be made by the Concessionaire based on detailed architectural & structural designs.

4.5 Signage

The Concessionaire shall provide signage so as to facilitate necessary information to the visitors regarding amenities and their location. The signage shall be provided across categories including information signages, directional signages, way-finding signages, point-of-sale signages etc.

Schedule 5: Applicable Permits

5.1 Necessary Applicable Permits

The Concessionaire shall obtain, as required under the Applicable Laws, the following Necessary Applicable Permits, as Conditions Precedent, on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with the Agreement:

a. Environmental Clearance – MoEF / State Environmental Impact Assessment Authority / other central or state body, as applicable
b. No Objection Certificate (NOC) / Clearance – State Pollution Control Board

5.2 Other Applicable Permits

The Concessionaire shall obtain, as required under the Applicable Laws, the following other Applicable Permits, as necessary for implementation of the Project:

a. Pre-construction approvals
   - No objection certificate – Airport Authority of India (AAI)
   - Layout Plan Approval /Building Plan Approval /Development Proposal Approval
   - Fire Opinion / NOC-Fire
   - Electricity approval
   - NOC / Permission -Police Department
   - Any other approval from any Competent Authority
b. Stage-wise Commencement Certificate (During construction approval – for each stage), if applicable
c. Post construction approval
   - NOC – Fire
   - NOC – Lift
   - NOC / Permission - Police Department
   - Building Use Permission / Building Completion Certificate
   - Water Connection
   - Drainage approval
   - Occupancy Certificate
d. Any other approvals or NOCs or permits or clearances required under Applicable Laws.

Schedule 6: Performance Security

Bank Guarantee No.: Dated: _____

Issuer of Bank Guarantee:

(Name of the Bank)_____

_____

(Hereinafter referred to as the "Bank")

Beneficiary of Bank Guarantee:

_____

_____

Details of the Bank of the Beneficiary

Bank: <>

Branch: <>

IFSC Code: <>

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Concession Agreement (hereinafter referred to as the **"Concession"**) to be executed amongst the PHTPB [hereinafter referred to as the **"Authority"**] and _____ (name of the Selected Bidder) [hereinafter referred to as the **"Concessionaire"**] for the Development, Operation and Maintenance of Heritage Restaurant cum Recreation Center at Gol Kothi, Kapurthala (hereinafter referred to as the **"Project"**), provided however, such context of the Bank Guarantee or reference to the Concession in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. **"Performance Security"** shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and the Authority and is not dependent upon the execution or performance of any Contract/Agreement amongst the Authority and the Selected Bidder/Concessionaire.

As per the terms of Concession Agreement, the Concessionaire is required to furnish to **THE AUTHORITY**, an unconditional and irrevocable bank guarantee for an amount of Rs. …… (Rupees …… Lakhs only) as security for due and punctual performance / discharge of its obligations under the Concession Agreement for the Concession Period.

Operative part of the Bank Guarantee:

1. At the request of the Concessionaire, we _____, _____ (name and address of the bank), hereinafter referred to as the

"Bank"), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Bidder, upto a total sum of Rs. ____ Lakhs (Rupees _____ Lakhs Only), such sum being payable by us to the Authority immediately upon receipt of first written demand from the Authority.

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

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian INR ____ Lakhs (Rupees _____ Lakhs Only).

2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ to _____.
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Authority serves upon us a written claim or demand on or before _____.

_____

Authorized Signatory for Bank

Schedule 7: Drawings

7.1 Drawings

In compliance of the obligations set forth in Article 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Engineer(s), free of cost, all Drawings related to the Project.

The Project Drawings, as defined in the Concession Agreement, shall consist:

i. Working drawings of all components / elements of Refurbishment and Development of Project Site as determined by the Independent Engineer(s) / Authority; and
ii. As-built drawings for the Project Facilities components / elements as determined by the Independent Engineer(s) / Authority. As-built drawings for Refurbishment and Development of Project Site shall be duly certified by the Independent Engineer(s).

7.2 Additional Drawings

If the Independent Engineer(s) determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in this schedule, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer(s), as if such drawings formed part of this **Schedule 7**.

Schedule 8: Tests

8.1 Schedule for Tests

i. The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Refurbishment and Development of Project Site, notify the Independent Engineer(s) and the Authority of its intent to subject the Refurbishment and Development of Project Site to Tests, and no later than **7 (seven) days** prior to the actual date of Tests, furnish to the Independent Engineer(s) and the Authority detailed inventory and particulars of all works and equipment forming part of the Project.

ii. The Concessionaire shall notify the Independent Engineer(s) of its readiness to subject the Refurbishment and Development of Project Site to Tests at any time after **7 (seven) days** from the date of such notice, and upon receipt of such notice, the Independent Engineer(s) shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer(s) shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with **Article 17.3** and this **Schedule 8**.

8.2 Tests

i. **Visual and physical Test:** The Independent Engineer(s) shall conduct a visual and physical check of work of Refurbishment and Development of Project Site to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

ii. **Other Tests:** The Independent Engineer(s) may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Refurbishment and Development of Project Site with Specifications and Standards.

iii. **Environmental audit:** The Independent Engineer(s) shall carry out a check to determine conformity of the Refurbishment and Development of Project Site with the environmental requirements set forth in Applicable Laws and Applicable Permits.

iv. **Safety review:** Safety audit of the Refurbishment and Development of Project Site shall have been undertaken by the Independent Engineer(s), and on the basis of such audit, the Independent Engineer(s) shall determine conformity of the Project with the relevant provisions relating to the aspects of safely under the prevalent law governing the Project in accordance with the provisions of this Agreement.

8.3 Agency for conducting Tests

All tests set forth in this Schedule 8 shall be conducted by the Independent Engineer(s) or such other agency or person as it may specify in consultation with the Authority.

8.4 Completion / Provisional Certificate

Upon successful completion of Tests, the Independent Engineer(s) shall issue the Construction Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of **Article 14**.

Schedule 9: Construction Completion Certificate

1. I, ……..(Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated …….(the **" Agreement"**), for Development, Operation and Maintenance of Heritage Restaurant cum Recreation Center at Gol Kothi, Kapurthala, through …….(Name of Concessionaire), hereby certify that the Tests specified in **Article 14** and **Schedule 8** of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the ……..day of ……..20…..

SIGNED, SEALED AND DELIVERED

For and on behalf of INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

Format for Provisional Certificate

1. I, ……..(Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated …….(the **" Agreement"**), for Development, Operation and Maintenance of Heritage Restaurant cum Recreation Center at Gol Kothi, Kapurthala, through …….(Name of Concessionaire), hereby certify that the Tests specified in **Article 14** and **Schedule 8** of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of Project have been completed in accordance with **Clause 14.3.2.**
3. This certificate is issued upon the request of the Concessionaire and **valid** for period as mentioned in **Clause 14.3.3.**
4. The Project is hereby declared **provisionally fit for entry** into commercial operation on this the ……..day of ……..20…..

SIGNED, SEALED AND DELIVERED

For and on behalf of INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

Schedule 10: Maintenance Requirement

10.1 Maintenance Requirements

The Concessionaire shall, at all times, operate and maintain the Project site in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operations Period, conform to the maintenance requirements set forth in this Schedule 10 (the **"Maintenance Requirements"**).

10.2 Repair/ rectification of defects and deficiencies

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of defects and deficiencies to Project Assets in accordance with Good Industry Practice.

10.3 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule 10, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified in the Maintenance Program, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer(s) and conveyed to the Concessionaire and the Authority with reasons thereof.

10.4 Emergency repairs/ restoration

Notwithstanding anything to the contrary contained in this Schedule 10, if any defect, deficiency or deterioration in the Refurbishment and Development of Project Site poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such risk or danger.

10.5 Divestment Requirement

All defects and deficiencies specified in this Schedule 10 shall be repaired and rectified by the Concessionaire so that the Refurbishment, Development, Operation and Maintenance of Project site conforms to the Maintenance requirements on the Transfer Date.

10.6 Maintenance Works and Performance Standards

The Concessionaire shall ensure:

- Maintaining site environment so as to cause minimum disturbance to the environment.
- Ensure that the facilities are operational and rectification of the defects and deficiencies within the minimum time.
- Ensure that the fixed parameters provided in this RFP are abided by at any time during the Concession Period.

The Concessionaire shall perform routine and periodic maintenance activities for the Project Facilities to meet the specific performance standards as given below:

Description	Required Level of Performance	Key Performance Indicators
Power Supply, Electrical Installations, Electrical Equipment	▪ Standby power arrangements shall be made for Recreation Centre ▪ No loose open, uninsulated wiring should be left in any of the areas. ▪ Switch boards, Electrical meters shall be enclosed in boxes and accessible to only authorised persons.	▪ Standby power supply by DG sets shall be ready to be operated and should be available on 24X7 (hr) basis. ▪ Any disruption in power supply shall be rectified in 4 (four) hours.
Natural and Mechanical Ventilation and Illumination	▪ Shall meet the required illumination level as specified in the IS Code and NBC. ▪ Shall meet the required ventilation level as specified in the IS code and NBC.	▪ Any disruption to mechanical ventilation, if provided, shall be rectified within 24 hours. ▪ HVAC System parts including skylights ventilators, shafts etc. shall be cleaned once every week. ▪ Air conditioning to work across all common areas between 10:00 am till 10:00 pm.
Common Areas	▪ Routine maintenance of all common areas.	▪ Annual maintenance of all common area accessories like fans, A/C, lights, façade, fixtures, paintings etc. ▪ Replacement of minor fixtures like light bulbs, fans etc. at routine interval. ▪ At least twice a day housekeeping / cleaning of common areas

Description	Required Level of Performance	Key Performance Indicators
		▪ Cleaning of washrooms every 2 hrs. ▪ Signboards should be marked across all common areas. ▪ Min. 95% of toilets and urinals to be functional at any given time. ▪ Drinking water chambers to be provided at least 4 places
Boundary Wall	▪ Routine of maintenance and upkeep boundary wall.	▪ Any damage/ breach to the boundary wall shall be rectified within three (3) days after their detection.
Internal Roads	▪ Routine of maintenance and upkeep internal infrastructure	▪ Any damage/ breach to the internal road shall be rectified within 15 (fifteen) days after their detection. ▪ Routine repairs every year and premix carpet every fourth year. In case the pavement is of ridged type, no periodic renewal would be required except cleaning & filling of joints
Landscaping	Routine maintenance of landscape.	▪ Prevent water-logging and take immediate action to clear any such incident. ▪ Regular planation and replantation in the landscaped area to maintain aesthetic beauty of the area.
Dustbins / Garbage Management	▪ Dustbins should be placed at various places across the recreation centre and should be kept clean and functional	▪ The dustbin shall be emptied after every six hours or earlier if it is full or if creates foul smell.

Description	Required Level of Performance	Key Performance Indicators
Signages and information boards	▪ Should be visible, legible and functional	▪ Signages should be cleaned at least twice a week. ▪ Replacement of damaged signages within 5 days of detection.
Seats and interiors of restaurant	▪ Seats, walls, curtains, center tables, chairs etc. within restaurant should be kept clean and functional.	▪ Any damaged seat, curtains, table etc. shall be replaced within 7 (seven) days of detection. Maximum 5% of seats may be damaged at any time.
IT / PA system / telecommunication Infrastructure	▪ To be properly updated and maintained.	▪ Less than 10% downtime of IT infrastructure across any month. ▪ Any downtime or error should be repaired within 3 hrs.
Staircases, elevators, escalators etc.	▪ To be kept clean and functional	▪ The staircases, lifts and escalators shall be cleaned at least twice a day. Damaged handrails, raisers or treads shall be repaired within three days after detection.
Plumbing	▪ To be kept operational and leak-free.	▪ Any damages or leaks to be repaired within 4 hrs. ▪ Water Tank shall be cleaned and disinfected every month (by usage of approved chemicals) to ensure that no inorganic sedimentation takes place.

Description	Required Level of Performance	Key Performance Indicators
Fire Fighting	▪ System to functional at all times.	▪ Any damage to firefighting Equipment shall be rectified within 2 days of detection. Fire extinguishers shall be replaced before the end of its expiry date. ▪ The water tank meant for fire fighting purpose shall remain flooded with water to its capacity at all the time.
Furniture and carpentry works	▪ To be replaced, repainted, repaired when necessary	▪ Repainting of furniture and functionality check / repair to be conducted at least once a year.
Building Facade	▪ To be kept clean.	▪ All internal and external glasses to be cleaned once a day. ▪ External and internal walls should be painted at least once every 4 years.
Front Desk	▪ To be kept clean and functional	▪ At least 1 receptionist / information officers to be positioned at all times. ▪ At least 100 brochures and hand-outs about the Recreation Centre to be available for sharing with guests.
Website	▪ Website of recreation centre with salient details to be available at all times.	▪ Less than 5% downtime during any month. ▪ Any downtime to be repaired within 4 hours.
Sports courts	▪ To be kept clean and functional	▪ All nets to be replaced every 4 years. ▪ In case of damage, replacement to be done within 15 days of reporting.

Description	Required Level of Performance	Key Performance Indicators
		▪ Floor to be cleaned once every day.

10.7 Operations Requirement

The Concessionaire shall keep the Project Facilities operational as below:

- Restaurant - At least 12 hrs a day throughout the year
- Optional Project Facilities - At least 06 hrs a day throughout the year
- Parking – 24 hours a day through the year
- Information System – 24 hours a day through the year
- Security – 24 hours a day through the year
- Diesel Generator – 24 hours (back-up) a day through the year

Schedule 11: Independent Engineer(s)

11.1 Appointment of Independent Engineer(s)

a. The Authority shall appoint Independent Engineer(s) (the **"Independent Engineer(s)"**). The Independent Engineer(s) shall mean any financial, technical, legal, statutory auditor, operations & maintenance or any other Independent Engineer as deemed appropriate by the Authority for the Project.

b. The Independent Engineer shall either be an experienced individual or be a panel of engineers nominated by GoP supported by independent quality control & monitoring experts or be a reputed firm of engineers having adequate experience in similar projects, who shall monitor the Project for the purposes of determining and ensuring compliance with Technical Requirements, the Performance Standards and its costs.

c. The procedure for the selection and appointment of the Independent Engineer shall be finalized by the Authority in consultation with the Concessionaire.

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

e. The Authority shall ensure that the experienced individual / panel of engineers / reputed firm appointed as Independent Engineer signs a deed of adherence to this Concession Agreement, thereby binding itself mutatis mutandis to the terms of this Concession Agreement.

11.2 Fee and expenses

The nature and quantum of duties and services to be performed by the Independent Engineer during the Concession Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Concession Period shall be shared equally between the Concessionaire and the Authority.

11.3 Duties and Functions

The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference in **Schedule 12**. The Independent Engineer shall submit regular periodic reports to the Authority in respect of its duties and functions set forth in **Schedule 12**.

11.4 Termination of Appointment

a. The Authority shall appoint the Independent Engineer of a period of 3 years, or such other tenure as the Authority may decide, and again for a period of subsequent 3 years or such other tenure as the Authority may decide, after which fresh selection of Independent Engineer(s) shall be undertaken as per this Schedule, if required.

b. If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of

the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the change of Independent Engineer is considered appropriate, the Authority shall appoint forthwith another Independent Engineer.

11.5 Dispute Resolution

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

Schedule 12: Terms of Reference for Independent Engineer(s)

12.1 Role and functions of the Independent Engineer

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

a. Review of the O&M Plan including a review of the Drawings and Documents forming a part of the O&M Plan; and other drawings and documents

b. review, inspection and monitoring of Construction Works;

c. conducting tests on completion of construction and issuing Construction Completion/ Provisional Certificate;

d. review, inspection and monitoring of O&M and Management Obligations;

e. review, inspection and monitoring of Divestment Requirements

f. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;

g. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

h. assisting the Parties in resolution of disputes; and

i. undertaking all other duties and functions in accordance with the Agreement.

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

12.2 Construction Period

i. In respect of the Drawings, Documents, O&M Plan and Safety Report received by the Independent Engineer(s) for its review and comments during the Construction Period, the provisions of this Schedule shall apply, mutatis mutandis.

ii. The Independent Engineer(s) shall review the quarterly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

iii. The scope of work defined in this section shall be specific to Refurbishment and Development of Project Site, as per the Concession Agreement. The role of Independent Engineers with respect to Optional Project Facilities (temporary construction) shall be limited to assurance of Good Industry Practices.

iv. The Independent Engineer(s) shall inspect the Construction Works related to Refurbishment and Development of Project Site once every month, before the 20th (twentieth) day of the month, and make out a report of such inspection (the “Inspection Report”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity

of Construction Works with the O&M Plan, Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer(s) shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer(s) shall

v. send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

vi. The Independent Engineer(s) may inspect the Project more than once in a month if any lapses, defects or deficiencies require such inspections.

vii. For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer(s) shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer(s) in accordance with Good Industry Practice for quality assurance. The Independent Engineer(s) shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

viii. The sample size of the tests, to be specified by the Independent Engineer(s) shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in Quality Control manuals; provided that the Independent Engineer(s) may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.

ix. The timing of tests, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer(s) in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

x. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer(s) shall require the Concessionaire to carry out, or cause to be carried out, tests or determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Schedule 12 shall apply to such tests.

xi. In the event that the Concessionaire fails to achieve Scheduled Completion Date, the Independent Engineer(s) shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer(s) shall determine that completion of the Refurbishment and Development of Project Site is not feasible within the time specified in the agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days, the steps proposed to be taken to expedite progress, and the period

within which the Scheduled Completion Date shall be achieved. Upon receipt of a report from the Concessionaire forthwith, the Independent Engineer(s) shall review the same and send its comments to the Authority and the Concessionaire forthwith.

xii. If at any time during the Construction Period, the Independent Engineer(s) determines that the Concessionaire has not made adequate arrangements for the safety of workers and users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the users, it shall

xiii. make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

xiv. In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and users, it may, by notice in writing, require the Independent Engineer(s) to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer(s) shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.

xv. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer(s) shall determine extension of Scheduled Completion Date, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.

xvi. The Independent Engineer(s) shall carry out or cause to be carried out, all the Tests specified in Schedule 8 and issue a Completion Certificate or Provisional Certificate as the case may be. For carrying out its functions under this Paragraph and all matters incidental thereto, the Independent Engineer(s) shall act under and in accordance with the provisions of **ARTICLE 14**.

xvii. Upon reference from the Authority, the Independent Engineer(s) shall make a fair and reasonable assessment of the costs of providing information, works and services and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.

xviii. The Independent Engineer(s) shall aid and advise the Concessionaire in preparing the Maintenance Manual and Maintenance Programme.

12.3 Operation & Maintenance

i. In respect of the Drawings, Documents and Safety Report received by the Independent Engineer(s) for its review and comments during the Operations Period, the provisions of this paragraph shall apply, mutatis mutandis.

ii. The Independent Engineer(s) shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.

iii. The Independent Engineer(s) shall review the quarterly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

iv. The Independent Engineer(s) shall inspect the Project at least once every quarter, preferably after receipt of the quarterly status report from the Concessionaire, but before the 20th (twentieth) day of the first month of the quarter in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer(s) shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the project site. The Independent Engineer(s) shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

v. The Independent Engineer(s) may inspect the Project more than once in a quarter, if any lapses, defects or deficiencies require such inspections.

vi. The Independent Engineer(s) shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

vii. In the event that the Concessionaire notifies the Independent Engineer(s) of any modifications that it proposes to make to the Project, the Independent Engineer(s) shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

12.4 Termination

i. At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer(s) shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the Divestment Requirements set forth in Article 26.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance.

ii. The Independent Engineer(s) shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer(s), it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

12.5 Determination of costs and time

i. The Independent Engineer(s) shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

ii. The Independent Engineer(s) shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

12.6 Assistance in Dispute resolution

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

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

12.7 Other duties and functions

i. The Independent Engineer(s) shall perform all other duties and functions specified in the Agreement.

12.8 Miscellaneous

i. The Independent Engineer(s) shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

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

iii. The Independent Engineer(s) shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer(s), whereupon the Independent Engineer(s) shall send one of the copies to the Authority along with its comments thereon.

iv. The Independent Engineer(s) shall retain at least one copy each of all Drawings and Documents received by it and keep them in its safe custody.

v. Upon completion of its assignment hereunder, the Independent Engineer(s) shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

vi. Wherever no period has been specified for delivery of services by the Independent Engineer(s), the Independent Engineer(s) shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

Schedule 13: Vesting Certificate

1. PHTPB (the **"Authority"**) refers to the Concession Agreement dated …… (the **"Agreement"**) entered into between the Authority and …… (the **"Concessionaire"**) for Development, Operation and Maintenance of Heritage Restaurant cum Recreation Center at Gol Kothi, Kapurthala (the **"Project"**).
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in **Article 26** of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this ……day of ……, 20….. at…….

AGREED, ACCEPTED AND SIGNED	SIGNED, SEALED AND DELIVERED
For and on behalf of CONCESSIONAIRE by:	For and on behalf of AUTHORITY by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)
In the presence of:	
1.	2.

Schedule 14: Substitution Agreement

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

AMONGST

1. PHTPB, having its principal offices at Chandigarh (hereinafter referred to as the **"Authority"** which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. ……Limited a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....., (hereinafter referred to as the **"Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. ……..(name and particulars of Lenders' Representative) and having its registered office at ....., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

A. The Authority has entered into a Concession Agreement dated..... with the Concessionaire (the **"Concession Agreement"**) for Development, Operation and Maintenance of Heritage Restaurant cum Recreation Center at Gol Kothi, Kapurthala (the **"Project"**), and a copy of which is annexed hereto and marked as Annex A to form part of this Agreement.
B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
C. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

14.1 Definitions and Interpretation

14.1.1 Definitions

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

"Agreement" means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

"Financial Default" means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

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

"Nominated Company" means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

"Notice of Financial Default" shall have the meaning ascribed thereto in Article 18.2; and

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

14.1.2 Interpretation

i. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Lenders.
ii. References to Articles are, unless stated otherwise, references to Articles of this Agreement.
iii. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
iv. The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

14.2 Assignment

i. Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

14.3 14.3 Substitution of the Concessionaire

i. Rights of Substitution

Pursuant to the rights, title and interest assigned under Article 14.2, the Lenders' Representative shall be entitled to substitute the Concessionaire by a

Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders'

Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior

Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

ii. Substitution upon occurrence of Financial Default

Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the **"Notice of Financial Default"**) along with particulars thereof and send a copy to the Authority for its information and record. A Notice of Financial Default under this article shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lender’s Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

iii. Substitution upon occurrence of Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Article 14.3, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

iv. Procedure for substitution

The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Article 14.3, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for /pre-qualify/ short-listing the bidders for award of the concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

a. accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;

b. endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
c. enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Article 14.3 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

v. Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

14.4 Project Agreements

Substitution of Nominated Company in Project Agreement

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

14.5 Termination of Concession Agreement

i. Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of ARTICLE 25 of the Concession Agreement.

ii. Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

iii. Realization of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

14.6 Duration of the Agreement

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

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

14.7 Indemnity

i. General Indemnity

The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third

party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

ii. Notice and Contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 14.7 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

14.8 Dispute Resolution

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

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

14.9 Miscellaneous Provisions

i. Governing law and jurisdiction

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

ii. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by

reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

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

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

iii. Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

iv. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

v. Waiver

Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

II. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

III. shall not affect the validity or enforceability of this Agreement in any manner.

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

vi. No third-party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

vii. Survival

Termination of this Agreement:

a. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

c. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

viii. Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 14.8 of this Agreement or otherwise.

ix. Successors and assigns

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

x. Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

xi. Language

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

xii. Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

xiii. Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ……..day of ……, 20….. hereunto affixed in the presence of ……., Director, who has signed these presents in token thereof and …….., Company Secretary / Authorized Officer who has countersigned the same in token thereof in the presence of[$]:	SIGNED, SEALED AND DELIVERED For and on behalf of AUTHORITY by:
(Signature) (Name) (Designation (Address) (Fax No.) (e-mail address)	(Signature) (Name) (Designation (Address) (Fax No.) (e-mail address)
SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative:	
(Signature) (Name) (Designation (Address) (Fax No.) (e-mail address)	
In the presence of: 1.	2.

Schedule 15: Escrow Agreement

THIS ESCROW AGREEMENT is entered into on this the …… day of ……. 20**. AMONGST …….Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ……. (hereinafter referred to as the **"Concessionaire"** which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes); ……(name and particulars of Lenders' Representative) and having its registered office at …… acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the **"Lenders' Representative"** which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);……..(name and particulars of the Escrow Bank) and having its registered office at……..(hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and<……..> and having its principal offices at ……. (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

A. The Authority has entered into a Concession Agreement dated …… with the Concessionaire (the **"Concession Agreement"**) for Development, Operation and Maintenance of Heritage Restaurant cum Recreation Center at Gol Kothi, Kapurthala, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

15.1 Definitions

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

"Agreement" means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

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

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall

commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"Escrow Default" shall have the meaning ascribed thereto in Article 15.24 of this Escrow Agreement;

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

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

"Payment Date" means, in relation to any payment specified in Article 15.14, the date(s) specified for such payment; and

"Sub-Accounts" means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Article 15.14 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

15.2 Interpretation

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

15.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

15.2.3 References to Articles are, unless stated otherwise, references to Articles of this Agreement.

15.2.4 The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

15.3 Escrow Bank to act as trustee

15.3.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

15.3.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and

applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of or as third-party beneficiaries under this Agreement.

15.4 Acceptance of Escrow Bank

15.4.1 The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

15.5 Establishment and operation of Escrow Account

15.5.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account and a separate subaccount viz the Construction Period Fee Escrow sub-account with the ********** (name of Branch) Branch of the Escrow Bank. The Escrow Account and the sub-account shall be denominated in Rupees.

15.5.2 The Escrow Bank shall maintain the Escrow Account and the sub-account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

15.5.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account and the sub-account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

15.6 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire in respect of Escrow account and sub-account. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Article 15.14.

15.7 Rights of the parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

15.8 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

15.9 Deposits by the Concessionaire

15.9.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

a. all funds received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
b. all Fee levied and collected by the Concessionaire;
c. any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
d. all proceeds received pursuant to any insurance claims.

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

15.10 Deposits by the Authority

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

a. any other monies disbursed by the Authority to the Concessionaire;
b. all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
c. Termination Payments: Provided that, notwithstanding the provisions of Article 15.14, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

15.11 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

15.12 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due

to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

15.13 Deposits during Construction Period

The Authority shall, at the time of opening of the Escrow Account give irrevocable instructions by way of the Escrow Agreement, to the Escrow Bank instructing, inter alia, that all Commercial Charges in respect of the Project until the COD shall be transferred to a separate Account viz. Construction Period Fee Escrow sub-account and shall be dealt with as per Article 15.14.

15.14 Withdrawals during Concession Period

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

a. all Taxes due and payable by the Concessionaire for and in respect of the Project;
b. all payments relating to construction 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.

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

15.14.3 Not later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations; provided that such amounts may be subsequently modified, with prior written approval of the Lenders'

Representative, if fresh information received during the course of the year makes such modification necessary.

15.15 Withdrawals upon Termination

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

a. all Taxes due and payable by the Concessionaire for and in respect of the Project;
b. 90% (ninety per cent) of the Debt Due including subordinate debt;
c. outstanding Project Consideration;
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 the disbursements specified in Sub-clause (j) of this Article 15.15 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

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

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

15.16 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Articles 15.14 and 15.15, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

15.17 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

15.18 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

15.19 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

15.20 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

15.21 Communications and notices

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

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

15.22 No set off

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

15.23 Regulatory Approvals

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

15.24 Escrow Default

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

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

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

15.25 Duration of the Escrow Agreement

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

15.26 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

15.27 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Article 15.15, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

15.28 Supplementary Escrow Agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Article 15.14 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

15.29 General Indemnity

15.29.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

15.29.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the

performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

15.29.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

15.30 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 15.29 or in respect of which it is entitled to reimbursement (the **"Indemnified Party"**), it shall notify the other Party responsible for indemnifying such claim hereunder (the **"Indemnifying Party"**) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

15.31 Dispute Resolution

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

15.31.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Ludhiana / Chandigarh and the language of arbitration shall be English.

15.32 Governing law and jurisdiction

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

15.33 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
d. consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

15.34 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

15.35 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

15.36 Waiver

15.36.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

15.37 No third-party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

15.38 Survival

15.38.1 Termination of this Agreement:

a. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

15.38.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

15.39 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 15.31 & 15.32 of this Agreement or otherwise.

15.40 Successors and assigns

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

15.41 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

15.42 Language

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

15.43 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

15.44 Original Document

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

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

Schedule 16: Design Approval Committee

For the approval of the design and development of Gol Kothi temporary structures and interior sections of the existing built-up area at site, the Authority shall constitute a Committee with following members:

a. Administrative Secretary, Tourism & Cultural Affairs - Chairman
b. Director, Tourism & Cultural Affairs
c. Deputy Commissioner, Kapurthala
d. Independent Engineer appointed by Punjab Heritage & Tourism Promotion Board.
e. Superintendent Engineer, Pb. PWD (B&R)
f. Any other members as nominated by Department of Tourism.

The members of the Committee shall be responsible for approving the design submitted by the Concessionaire and give suggestions for the same. The constituting members of the committee may change at the discretion of the **"Authority"**.

Schedule 17: Draft Lease Deed

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

1. Department of Cultural Affairs, Archives, Archaeology & Museums, Government of Punjab, acting through PHTPB, an authority represented by its _____ and having its principal office at _____ (hereinafter referred to as **"Authority"** or the **"Lessor"** which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) and represented herein by _ _____of the **FIRST PART**; and
2. _____,a company incorporated under the Companies Act, 2013 and having its registered office at_____ (hereinafter referred to as the "Lessee" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) represented herein through Mr._____, the Authorised Signatory, as authorised vide Board Resolution dated _____ of the **OTHER PART;**

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

WHEREAS

A. The Lessor and the Lessee have entered into a Concession Agreement dated -------- (the **"Concession Agreement"**) pursuant to which the Lessor has, among others, granted to the Lessee, the right to develop the Project Site, in accordance with the terms and conditions set forth therein.
B. The Lessor is in the prime ownership of the Project Site (the **"Project Site"**) and now desires to lease the Project Site to the Lessee and the Lessee desires to take on lease from the Lessor, the Land for the purpose of implementation of the development of the Project Site.

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

17.1 Definitions and Interpretation

17.1.1 Definitions

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

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

"Encumbrance" means any encumbrance such as easement, right of way, license, mortgage, charge, lien, hypothecation, pre-emptive right or security

interest whether or not registered and howsoever arising, including by statue or common law;

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

"Lease Rent" shall mean an amount of INR 1.00 per year payable by the Lessee on yearly basis to the Authority in accordance with the terms of this Agreement and Lease Deed.

"Project Site" shall have the meaning set forth in Schedule 1 to the Concession Agreement;

17.1.2 Interpretations

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

a. the terms of this Lease Deed should be read in consonance with and not in derogation with the terms of Concession Agreement;
b. the rules of interpretation in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Lease Deed; and
c. the words and expressions beginning with capital letters and defined in this Lease Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Lease Deed and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

17.2 Grant of lease and possession

i. The provisions of this Lease Deed shall take effect and become binding on the Parties on the date first above written (**"Effective Date"**).
ii. In consideration of the Lease Rent, the Lessor grants on lease to the Lessee and the Lessee agrees to accept the lease from the Lessor, free from Encumbrances and/or encroachments, the Project Site measuring ……., described in Schedule 1 to the Concession Agreement, hereto together with all and singular rights, liberties, privileges, easements, benefits, rights of way, paths, passages whatsoever in or appurtenant to the Project Site or any part thereof, and to hold, use and enjoy the Project Site and/or any part thereof, in accordance with the provisions of this Lease Deed.
iii. Subject to the prior express written approval of the Lessor, the Parties agree that the Lessee may sub-lease / sub-license any portion of the Project Facilities, developed on the Project Site to third parties engaged in activities connected with or in relation to the development or operations of Project Site. The sub-lease / sub-license shall not in any manner absolve the Lessee of its obligations under the Lease Deed. Any sub-lease /

sublicense, executed under this Lease Deed shall be co-terminable with the Lease Deed. The Lessor shall not be liable in any manner whatsoever in respected such sub-leases.

17.3 Lease Rent

i. Upon execution of the Lease Deed and in consideration of the Lessor leasing the Project Site to the Lessee and granting the rights, privileges and benefits set forth in this Lease Deed, the Lessee shall pay annual lease rent of INR 1.00 per year. The Lease Rent shall be payable in advance every year. The Lessee will also have the option for payment of one-time Lease Rent for the Project Site as per the rules of the Lessor.

ii. The Annual Lease Rent for the Project Site shall become payable from the date of execution of the Lease Deed. The first of such payment shall be made on the date of execution of the Lease Deed and subsequent payments shall be paid on every anniversary of the date of execution of Lease Deed thereof till expiry or early termination of the Lease Period.

iii. Lease Rental shall be payable by means of a cheque/demand draft drawn in favour of “Chief Executive Officer, PHTPB” payable at Chandigarh or at such other place as may be notified by the Lessor.

iv. If the Lessee fails to pay the Lease Rent as aforesaid, the default interest @ 18% shall be charged on the amounts due and payable towards the Annual Lease Rent beginning from the due date of Annual Lease Rent.

v. The Annual Lease Rent shall be paid by the Concessionaire till the expiry of the Lease Period.

17.4 Use of Project Site

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

17.5 Determination of Lease Deed

i. This Lease Deed may be determined earlier by mutual agreement between the Parties in writing.

ii. In the event that the Concession Agreement is terminated, then this Lease Deed shall be determined by the Lessor by giving a 90 (ninety) day notice to the Lessee and upon such termination, the Lessor shall be at full liberty to deal with the Project Site in such manner as it deems fit in its sole discretion.

iii. The Lessor shall have the right to determine this Lease Deed on occurrence of any one or more default(s) by the Lessee as enlisted hereunder:

   a. filing of a voluntary bankruptcy petition by the Lessee;
   b. institution of winding up proceedings against Lessee and such proceedings not being stayed or discharged by a competent court within 180 (one hundred and eighty) days;

c. appointment of a receiver of Lessees assets or any general assignment for the benefit of Lessee's creditors and such appointment or assignment is not stayed by a competent court within 180 (one hundred and eighty) days;
d. failure of the Lessee to make payments to the Lessor in accordance with the provisions hereof, where such failure continues for a period of 30 (thirty) days after a written notice from the Lessor;
e. failure by Lessee to perform any of the covenants, conditions, or obligations mentioned under this Lease Deed where the failure continues for a period of 60 (sixty) days after notice from the Lessor;
f. transfer or assignment of this Lease Deed or creation of any Encumbrance on the Project Site without securing prior written approval of the Lessor;
g. use of the Project Site for any purpose other than the purposes stated in this Lease Deed and such breach is not remedied within a period of 60 (sixty) days after a notice from the Lessor in this behalf; and

iv. Upon determination under sub-points i, ii, iii above, the Lessor shall have the following additional rights:
   a. the recovery of any unpaid Lease Rent due and payable at the time of termination;
   b. the recovery of any damages, costs, fees and expenses incurred by the Lessor as a result of the breach of the Lease Deed by the Lessee; and
   c. any other right or remedy, legal or equitable, that the Lessor is entitled to under Applicable Laws.

v. The Lessee shall have the right to determine this Lease Deed on account of the occurrence of any of the following events:
   a. any material breach of the terms and conditions of the Lease Deed by the Lessor, which material breach is not remedied by the Lessor within 90 (ninety) days of receipt of notice regarding such breach; or
   b. any interference with the peaceful possession of the Project Site by the Lessor due to which the Lessee is not able to carry on its business for a continuous period of 60 (sixty) days or more, which interference is not rectified by the Lessor within a period of 60 (sixty) days from the date on which the Lessee notifies the same to the Lessor.

17.6 Lessor's obligations and covenants

The Lessor hereby agrees and warrants that:

a. subject to the terms of the Lease Deed, the Lessee shall be entitled to hold, use and enjoy the Project Site and every part thereof during the Lease Period, without any interruption by the Lessor;
b. the Lessee shall, during the Lease Period, enjoy free ingress and egress to and from the Project Site without any hindrance;

c. subject to timely payment of the Lease Rent and performance of the covenants and conditions of the Lease Deed, the Lessee shall peacefully hold and enjoy the Project Site during the Term of the Lease Deed;
d. upon execution of the Lease Deed and subject to the terms thereof, the Lessor shall deliver, or cause to be delivered, to the Lessee vacant access and right of way of the Project Site. The Lessor shall, at its cost and expense clear any Encumbrances, including occupation, if any, by third parties prior to delivery of vacant possession of the Project Site to the Lessee;
e. the Lessor shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Project Site during the Lease Period. For avoidance of doubt, any taxes, cess, levies with respect to utilization or developments on the Project Site shall be borne by the Lessee;
f. upon execution of the Lease Deed, the Lessor shall provide the Lessee with any consent(s) or no objection(s) of the Lessor in obtaining power, water, telephone and such other facilities that the Lessee may require, to use and enjoy the Project Site effectively for the purposes stated in this Lease Deed. Such consents or no objection(s) shall be provided by the Lessor within a reasonable time; and
g. The Parties hereby agree that the Lessee shall not mortgage, transfer, assign or otherwise encumber the Project Site, except as permitted under the Concession Agreement.

17.7 Lessee's obligations and covenants

Lessee hereby covenants, agrees and represents that:

a. upon execution of this Lease Deed and subject to the terms thereof, the Lessee shall accept the Project Site on the condition it is handed over and undertakes to use the same only for the purposes as enlisted in this Lease Deed;
b. this Lease Deed has been duly authorized, executed, and delivered by the Lessor after fulfilling all legal formalities and constitutes its legal, valid and binding obligation;
c. during the Term of the Lease Deed, the Lessee shall pay the Lease Rent in accordance with terms and conditions set out in this Lease Deed and shall observe and fulfill each of its obligations and covenants set forth herein;
d. during the Term of the Lease Deed, the Lessee shall undertake the development of the Project Site, and other works which in the reasonable opinion of the Lessee would be required for and in relation to the development of Project Site, and obtain necessary approvals/clearances from the appropriate authorities for the same;
e. at its own cost and expense, the Lessee shall obtain all utilities such as water, electricity from the appropriate authorities;
f. it shall obtain and keep current all Applicable Permits that may be required under the Applicable Laws;

g. it shall pay all taxes, service tax, cesses, assessments and levies in respect of the Project Site, which are leviable at any time during the Term of the Lease Deed;
h. it shall not create any lien, charge or Encumbrance on the Project Site, except as permitted in the Concession Agreement, without prior approval of the Lessor;
i. it shall, indemnify the Lessor in respect of any charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Lessee of water, electricity, telephone, communication and other facilities and in relation to any and all third party claims made with respect to the Project Site;
j. it shall (i) keep and maintain the Project Site and the buildings and structures thereon in good and habitable condition at all times, and (ii) shall ensure that the Project Site shall be free from encroachments at all times and to the extent that there occur any encroachments on the Project Site, it shall make diligent efforts to remove such encroachments from the Project Site, as soon as practicable; and
k. it shall take all necessary care to keep the premises neat and clean and in sanitary conditions.

17.8 Regulatory approvals for construction

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

17.9 Inspection by the Lessor

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

17.10 Stamp duty and registration charges

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

17.11 Indemnities and limitation of liability

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

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

17.12 Assignment

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

17.13 Handover of the Project Site

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

17.14 Force Majeure

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

17.15 Dispute Resolution

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

17.16 Governing Law

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

17.17 General Provisions

1. Entire Agreement

   This Lease Deed together with Concession Agreement constitutes the entire agreement between the Parties with respect to the subject matter and the transaction envisaged in this Lease Deed, but shall be subject to the provisions of the Concession Agreement at all times.

2. Waiver

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

      i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Lease Deed;

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

      iii. shall not affect the validity or enforceability of this Lease Deed in any manner.

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

17.18 Severability

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

17.19 Specific Performance

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

17.20 Expenses

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

17.21 Notices

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

a. in the case of the Lessee, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Lessee may from time to time designate by notice to the Lessor; provided that notices or other communications to be given to an address outside Amritsar 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 Lessee may from time to time designate by notice to the Lessor;
b. in the case of the Lessor, be given by facsimile or e-mail and by letter delivered by hand and be addressed to Chief Administrator, ADA with a copy delivered to the Lessor's Representative or such other person as the Lessor may from time to time designate by notice to the Lessee; provided that if the Lessee does not have an office in Amritsar, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
c. any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of ADA by:

(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of …….. by:

(Signature)

(Name)

(Designation)

In the presence of:

1.

2.