

Addendum to RFP document

Please Note: In case of any difference/ variation in the provisions of the RFP / Addendum(s) from the clarifications issued to the Pre-Bid Queries, the Provisions of the RFP/ Addendum(s) shall prevail. The Reply to Pre- bid queries shall in no way change the Provision of the RFP / Addendum(s)

S.No	Clause	RFP Provision	Changes
1.	Volume I, RFP, Page 6 of 98, Last date for online Bid submission,	16.08.2016 (on or before 1500 hrs)	16.08.2016 (on or before 1500 hrs)
2.	Volume I, RFP, Page 6 of 98, Submission of Hard copy of documents	19.08.2016 (on or before 1500 hrs)	17.08.2016 (on or before 1500 hrs)
3.	Volume I, RFP , Page 6 of 98, Opening of Technical Bid	19.08.2016 at 1530 hrs	17.08.2016 at 1530 hrs, PIDB office SCO – 33, 34. 35, Sector 34A, Chandigarh Presentation date will be announced at the time of Technical Bid opening.
4.	Volume I, RFP, Page 41 of 98, Clause 2.11.4 (i)	It is hereby clarified that the Annual Concession Fee quoted by the Bidder shall be sole parameter for evaluation of the Price Bids. Bidder quoting the Highest Annual Concession Fee shall be declared as Successful Bidder.	Deleted.
5.	Volume I, RFP, Clause 3.3.3, Page 47 of 98, Evaluation of Technical Bid	Eligibility Criteria Technical Capability Criteria - 45 Marks Financial Criteria 1. Turnover – 20 Marks 2. Net worth – 20 Marks Presentation – 15 Marks	Revised marking system to be as follows: Technical Capability Criteria - 40 Marks Financial Criteria 1. Turnover – 20 Marks 2. Net worth – 20 Marks Presentation – 20 Marks For details please refer Appendix - 1
6.	Volume I, RFP, Annexure A5, Page 81 of 98, Format For Joint Bidding Agreement (In case the Bidder being a Consortium)		To be executed on a Stamp Paper of Rs.100. (Indian Rupees One Hundred only)
7.	Volume I, RFP, Page 85 of 98, Annexure A6		To be executed on a Stamp Paper of Rs.500. (Indian Rupees Five Hundred only)

S.No	Clause	RFP Provision	Changes
	Format for Power of Attorney for the Bid Signatory		
8.	Volume I, RFP, Page 87 of 98, Power of Attorney for Lead Member of Consortium		To be executed on a Stamp Paper of Rs.1,000. (Indian Rupees One Thousand only)
9.	Volume II, Draft (Concession Agreement) CA, Page 42 of 212, Article 12.4 Scheduled Completion DateProvided however, the Concessionaire shall be liable to ensure the commissioning, of atleast 1 Entertainment Show, out of the stated Entertainment Shows (as under Mandatory Project Components mentioned at Schedule – B, S.No 2 (I)(i)(a)(to v)) to be commissioned within 30 (thirty) days from the Appointed Day.....	<p>The selected Concessionaire shall organize a Mega Event for minimum of 2 (two) hours for grand promotion on 1st Nov 2016 (Mega Event Date).</p> <p>Mega Event means that the Concessionaire has to organize a live show, wherein different artists will perform from the following categories:</p> <ul style="list-style-type: none"> • International “A” list Artist – 1 number • Bollywood “A” list Artist – 1 number • Reputed “A” list Punjabi Singers - 3 number ; and <p>In addition. the Concessionaire shall organise a Cultural Show depicting rich cultural heritage of Punjab</p> <p>The above numbers are minimum, the Concessionaire is free to increase the number of artists as per the requirement.</p> <p>However, the contents/ theme/ Artists etc for the Mega Event will be approved by the Authority. Any changes/suggestions made by the Authority has to be incorporated by the Concessionaire.</p> <p>The Concessionaire shall commence promotion of Mega Event at least 30 (thirty) days prior to the launch of scheduled Mega Event Date.</p> <p>However, for clarity purpose, all other conditions mentioned in the RFP & Draft CA, for Scheduled Completion Date of the Project will remain same.</p>
10.	Volume II, Page 65 of 212, Article 24, 24.1.1, Financial Close	The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 90 (ninety) days from the date of this Agreement.....	The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 60 (sixty) days from the date of this Agreement.....
11.	Volume II, Draft CA, Page 71 of 212,	Entry Ticket – Rs. 25 Maximum Escalation per year – Rs.5 per ticket	The amount of Entry Fee will be upto Rs. 25/- (Rupees twenty five) per person for the first year of Operations Period. The

S.No	Clause	RFP Provision	Changes
	Article 27 User Fee		<p>Concessionaire has a right to increase only Entry Fee subject to a maximum of 20% per year. The Entry Fee amount is exclusive of any applicable taxes/duties/levies etc.</p> <p>E.g: If Ticket Price - Rs. 100 Tax - Rs. 15 Total Ticket Price - Rs. 115</p> <p>However, for clarity purpose, all other conditions mentioned in the RFP & Draft CA, for User Fee will remain same.</p>
12.	Volume II, Draft CA, Page 72 of 212 Article 27 User Fee	The Concessionaire, during the Concession Period, shall for 1 day in each week of the month, to be decided and fixed in mutual consultation with the Authority, shall allow free entry to the public to the Project Site (Free Access Day).....	<p>There will not be any Free Access Day.</p> <p>However, for clarity purpose, all other conditions mentioned in the RFP & Draft CA, for User Fee will remain same.</p>
13.	Volume II, Draft CA, Page 79 of 212 Article 32, Insurance	Insurance	<p>Insurance of Museums/ Artifacts will be responsibility of the Authority and rest of the Project will be of the Concessionaire.</p> <p>The Concessionaire will also be responsible for insurance of rest of the Project, manpower and third party.</p> <p>However, for clarity purpose, all other conditions mentioned in the RFP & Draft CA, for Insurance will remain same.</p>
14.	Volume II, Page 111 of 212 Article 43, Article 43.3 - Property Tax	All property taxes on the Project Site shall be payable by the Concessionaire; and any such taxes payable by the Concessionaire under Applicable Laws for use of the Project Site shall not be reimbursed or payable by the Authority.	<p>At present there is no Property Tax on historical and heritage buildings as notified by the State Government.</p> <p>Gobindgarh Fort is a State Protected monument due to which there is no property tax imposed on it.</p> <p>For clarity purpose, if in future for any reason, Property Tax is imposed on Gobindgarh Fort, then in that case it will be paid by the Authority.</p> <p>However, the Authority will charge and recover the Property Tax amount from the Project by increasing the Ticket price. That increased amount will be used entirely by the authority for payment of property tax.</p> <p>Increased Ticket Price as imposed by the</p>

S.No	Clause	RFP Provision	Changes
			Authority to recover the Property Tax will be transferred by Concessionaire to Authority as per the mechanism devised by the Authority.
15.	Volume II, Draft CA, Page 141 of 212, Schedule B, 2, I, i, e Development of Project,	Security of the Project Site.	The Authority shall be responsible for Security of Authority's Area including Artefacts etc. However, the Concessionaire shall be responsible for Security of entire Fort, including entry to the Authority's Area.
16.	Volume II, Draft CA, Page 141 of 212, Schedule B, 2, I, i, f, Development of ProjectIn addition, the Concessionaire shall provide Free of Cost Electricity to Contractors/ Labor/ PHTPB office.	The Concessionaire shall provide Electricity to on site Contractors through sub meter. The charges of electricity shall be borne by the contractor. However, no separate sub meter will be provided for Authority's Area. The electricity charges for Authority's Area shall be borne by the Concessionaire.
17.	Volume II, Draft CA, Page 168 of 212, Schedule D.1, S.No.5 Housekeeping – Authority Area	Trash removal	Collection/ Pick up/ Removal/ dispersal of Garbage from Project Site is the responsibility of the Concessionaire In addition, no storage of Garbage is allowed within the Project Site.
18.	Volume II, Page 132 of 212, Draft CA, Taxes	"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;	"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income; For clarity purpose, only Property Tax will be paid by the Authority, all other taxes, cess, levies, duties etc shall be payable by Concessionaire.

**Appendix – 1
(Clause – 3.3.3 - Evaluation of Technical Bid)**

The scoring criteria to be used for evaluation of Technical Bid shall be as follows:

Total Marks allotted is 100 out of which 40 marks would be for Technical Eligibility, 40 marks would be for Financial Eligibility and the rest 20 marks will be for presentation before the Evaluation Committee

(a) Scoring for Technical Eligibility

Category 1 – Amusement Park/ Theme Park Company (Maximum Marks - 40)

The marking of the Bidder shall be as follows:

S.No	No of Projects [minimum Project Cost of INR 25 crores each]	Total Marks
1.	1	30
2.	2 or more than 2	40

Or

Category 2 – Laser Show Company (Maximum Marks - 40)

The marking of the Bidder shall be as follows:

S.No	No of Projects [with a minimum Project Cost of INR 3 crores each]	Total Marks
1.	1	20
2.	2	30
3.	3 or more than 3	40

Or

Category 3 – Digital Animation Company (Maximum Marks - 40)

The marking of the Bidder shall be as follows:

S.No	No of Projects [with a minimum show duration of 20 minutes each]	Total Marks
1.	5	20
2.	6-7	30
3.	More than 7	40

Or

Category 4 – Entertainment Company (Maximum Marks - 40)

The marking of the Bidder shall be as follows:

S.No	No of Projects [Having provided a minimum 50 artists to the theme park]	Total Marks
1.	1	20
2.	2	30
3.	3 or more than 3	40

(b) Scoring for Financial Eligibility

1. Turnover (Maximum Marks – 20)

The marking of the Bidder shall be as follows:

S.No	Average Annual Turnover in the past 3 years	Total Marks
1.	10 - 12 crores	10
2.	12 – 15 crores	15
3.	More than 15 crores	20

2. Net Worth (Maximum Marks – 20)

S.No	Networth	Total Marks
1.	9 - 11 crores	10
2.	11 - 14 crores	15
3.	More than 14 crores	20

(c) Scoring for presentation before the Evaluation Committee* (Maximum Marks – 20)

The marking shall be as follows:

S.No	Contents	Total Marks
1.	Understanding of Concept including maintenance plan and any alterations to the heritage structure	4
2.	Uniqueness of Concept	4
3.	Quality & Content of Entertainment Shows	7
4.	Quality of PPT	5

The Bidders will be assigned a score termed as Technical Score (TS) based on summation of their individual marking on all the above mentioned parameters. 70% of TS of Bidders shall be carried forward for final evaluation.

**Evaluation Committee - A committee to be formed for marking of the Presentation*

Annexure A2

Format for
CHECKLIST OF SUBMISSIONS

Annexure	Enclosures to the Technical & Price Bid	Status (Submitted/Not Submitted)	Comments, if any*
A1	Covering Letter		
A3	Bid Security (Bank Guarantee/Demand Draft)		
A4	Letter of Undertaking		
A5	Jt Bidding Agreement (In Case The Bidder Being A Consortium)		
A6	Power of Attorney for the Bid Signatory		
A6	Power of Attorney for Lead Member		
B1	General Information		
B2	Financial Data - Networth		
B2.1	Financial Data - Turnover		
	Audited Financial Statements/ Annual Reports		
B3	Technical Capability Criteria		
B4	Letter of Undertaking for Technical Bid		
C1	Price Bid and Letter		
	Draft of Presentation		
	MoU's with Technological Partners		

* In case a particular item is not required to be submitted, the Bidder may write NA in the Comments column

Annexure B2
FORMAT FOR FINANCIAL SUMMARY DATA

1. Net-worth related data

All figures in Currency millions

Description	As on 31.03.2016
<i>Net-worth</i>	

Note:

1. The Bidder {(in case of a single Bidder) or one of the Consortium member (in case of Consortium)} should full fill the aforesaid Financial Network criteria
2. The Bidder /Consortium shall submit Audited Balance Sheets/ Annual Reports for the Lead Member.

SIGNATURE _____
NAME _____
DESIGNATION _____
COMPANY SEAL _____
COMPANY _____
DATE _____

Annexure B2.1
FORMAT FOR FINANCIAL SUMMARY DATA

1. Turnover related data

All figures in Currency millions

Description	2013-2014	2014-2015	2015-2016
<i>Turnover</i>			

Note:

1. The Bidder {(in case of a single Bidder) or Lead Member of the Consortium member (in case of Consortium)} should full fill the aforesaid Financial Turnover Criteria.

2. The Bidder /Consortium shall submit Audited Balance Sheets/ Annual Reports for the Lead Member.

SIGNATURE _____

NAME _____

DESIGNATION _____

COMPANY SEAL

COMPANY _____

DATE _____

Annexure B3
Format For
TECHNICAL CAPABILITY CRITERIA

S #	Name of Project	Name of Client	Location	Type of Experience i.e. Category 1/ 2/3/4	Details of Project as per RFP requirement	Value ¹ in INR	Time duration	Experience as single entity or as Lead Member of Consortium	Completion Date
1									
2									
3									
4									

Signature _____

Name _____

Designation _____

Company _____

Date _____

Notes:

1. The claimed experience shall be supported by documentary evidence i.e. completion certificates, commissioning certificates duly attested by a Chartered Accountant etc.
2. The Bidder {(in case of a single Bidder) or Lead Member of the Consortium member (in case of Consortium)} should full fill the aforesaid Technical Capability Criteria.

¹ In case conversion from any other currency, please mention the conversion rate used

Schedule – Q
(Volume II – Draft Concession Agreement)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the *** day of *** 2016.
AMONGST

- 1 [**** **LIMITED**], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at **** (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 ****[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);
- 3 ****[name and particulars of the Escrow Bank] and having its registered office at ****(hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 **Governor of the State of Punjab**, acting through the **Punjab Heritage and Tourism Promotion Board**, having its Head Office 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 the Development, Design, Finance, Installation, Marketing, Operation and Maintenance of Virtual Reality Shows and Operation & Maintenance of Gobindgarh Fort, Amritsar on PPP Mode,
- (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 IT IS HEREBY AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“**Appointed Date**” means the Appointed date as defined under the Concession Agreement.

“**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 Clause 6.1;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

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

1.2 Interpretation

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders’ Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders’ Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the

Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 The Concessionaire shall, prior to the Appointed Date open and establish the Escrow Account with the **** (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

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

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

2.4 Escrow Bank's fee

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

2.5 Rights of the parties

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

2.6 Substitution of the Concessionaire

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

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

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

- (a) all funds constituting the Financial Package;
- (b) all Fee and any other revenues from or in respect of the Project / Project Facilities, sub letting or licensing or franchisee arrangement in respect of the built up space or open space (as the case may be), revenue / fees collected from entertainment activities, revenue earned from any other activity facilities or services undertaken/performed by the Concessionaire at the Project Site; and
- (c) all proceeds received pursuant to any insurance claim.

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

3.2 Deposits by 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 under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.3 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

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

- (a) all taxes due and payable by the Concessionaire;
- (b) all payments relating to construction of the Project / Project Facilities, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (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) Annual Concession Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire,;
- (h) debt service in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

The Concessionaire shall not in any manner modify the order of payment specified in Article 4.1.1, except with the prior written approval of the Authority.

4.2 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Annual Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 39 of the Concession Agreement;

- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-Article (j) of this Article 4.2.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 38 of the Concession Agreement.

4.3 Application of insufficient funds

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

4.4 Application of insurance proceeds

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

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 36 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

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

5.3 Communications and notices

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

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which 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.

5.4 No set off

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

5.5 Regulatory approvals

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

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire ("**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.

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

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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

7.2 Substitution of Escrow Bank

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

7.3 Closure of Escrow Account

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

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfill any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfill its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the

event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The seat of such arbitration shall be Chandigarh and the language of arbitration shall be English.

10.1.3 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

11.3 Priority of agreements

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

11.4 Alteration of terms

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

11.5 Waiver

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

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

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

11.6 No third party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

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

11.8 Severability

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

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in

writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (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 shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

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

11.12 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.

11.13 Original Document

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

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

1. Signed for and on behalf of
Concessionaire

2. Signed for and on behalf of
Lenders' Representative

Signature:

Signature:

Name:
Designation:

Name:
Designation:

3. Signed for and on behalf of
Authority

4. Signed for and on behalf of Escrow Bank

Signature:

Signature:

Name:
Designation:

Name:
Designation:

Additional queries

1. The Concessionaire would have an option to approach the Authority, after the expiry of 2 (two) years from COD, with a plan for changing the scope of Reuse Plan (including any additional/ substitute Project Facilities) so as to ensure a better utilization of the Project Area and Project Facilities therein. Provided however, the Authority shall have a complete and unequivocal discretion to accept or reject any or all of the changes proposed by the Concessionaire in the previously approved Reuse Plan or grants its approval with or without such terms, conditions, limitations and restrictions as the Authority may in its sole and absolute discretion, decide while granting its approval to such requests of the Concessionaire.
2. The Bidder has to enter into MoU with relevant technology partners. The same is to be provided as proofs while submission of Bids. The Bidder shall be liable to execute the Project with the technology partners proposed during submission of Bid. Any substitution for technology partners have to be brought in notice of Authority and approved by the Authority. Further, in case of substitution, the Technology Partner proposed shall have similar or better credentials. The Authority may in its sole and absolute discretion, decide while granting its approval to such requests of the Concessionaire.
3. Commencing from the Appointed Date, the Annual Lease Rent shall be payable as a one time payment of **Rs. 15/- (Rupees Fifteen only)** in advance, for the entire duration of the Concession Period.