

**Development of International Convention & Exhibition Centre,
Star Category Hotel and Allied Facilities at
Kapuluppada,
Visakhapatnam, Andhra Pradesh
on
Design, Build, Finance, Operate, and Transfer (DBFOT) basis.**

VOLUME -II

Draft Concession Agreement

July, 2026



Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC)

APIIC Towers, Plot No. 1, IT Park, Mangalagiri, Guntur - 522503

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This **Concession Agreement** is entered into on -----, 2026

BY AND BETWEEN

Andhra Pradesh Industrial Infrastructure Corporation, represented by _____
and having its principal office at: _____ (hereinafter referred to as the or “**Authority**”
which expression, unless repugnant to the context or otherwise, shall include its successors and
permitted assigns) of **One Part**;

ANDs

[●], a **company** incorporated under the provisions of the Companies Act 2013, represented herein
through [●], the authorized signatory, as authorized vide board resolution dated [●] and having
registered address office at [●] (hereinafter referred to as “**Concessionaire**” which expression, unless
repugnant to the context or otherwise, shall include its successors and permitted assigns) of the **Other
Part**.

(The Authority and Concessionaire are individually referred to as a “**Party**” and collectively as
“**Parties**”).

WHEREAS:

- A. With the objective of promoting Andhra Pradesh as a most preferred venue for Meetings, Incentives, Conventions & Exhibitions (MICE), the Authority has envisaged to develop world class infrastructure in the State and has decided to develop Mandatory Facilities such as an international convention centre of seating capacity not less than 5000 seats along with a separate air-conditioned exhibition hall of not less than 1 lakh sqft floor area, 4-Star or above category hotel of not less than 250 keys and Allied Facilities (the “**Project**”) on the land situated at Kapuluppada, Visakhapatnam and owned by Government of Andhra Pradesh .
- B. The Authority has resolved to undertake the Project with a private sector partner on design, build, finance, operate and transfer (the “**DBFOT**”) basis on the land situated at Kapuluppada, Visakhapatnam in accordance with the terms and conditions of this Agreement.
- C. The Authority had prescribed the technical and commercial terms & conditions, and accordingly invited Bids from interested bidders as per “**Request for Proposal**” or “**RFP**” dated *[insert date]* for award of Concession, and for undertaking this Project.
- D. Subsequently, _____ submitted its bid and was selected by Authority as the “**Selected Bidder**” vide the Letter of Award *[insert number and date of the “LOA”]* requiring inter alia, the execution of this Concession Agreement within [60] days of the date of issuance thereof.
- E. The Selected Bidder has, in accordance with the RFP and the LOA, promoted and incorporated the Concessionaire as a private limited company under the provisions of the Companies Act, 2013 and holds 100% of the paid-up and subscribed equity share capital of the Concessionaire, and the Selected Bidder has, by its letter *[insert no. and date]* requested Authority to accept the Concessionaire as the entity, which shall undertake and perform the obligations and enjoy the rights as specified herein.

- F. By its letter [*insert number and date*], the Concessionaire has also joined in the said request of Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of Selected Bidder including the obligation to enter into this Concession Agreement pursuant to the LOA.
- G. The Authority has agreed to the said request of the Selected Bidder and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on DBFOT basis. The Authority acknowledges that as on this day before the signing of this Agreement, the Concessionaire/ Selected Bidder has submitted to the Authority the following.
- (a) An irrevocable and unconditional bank guarantee for an amount equal to INR 6,00,00,000 (Rupees Six Crore), in the form set forth in Schedule F, as Performance Security;
 - (b) Proof of payment of Project Development Fee (plus applicable service tax) for an amount equal to INR 1,00,00,000 (Rupees One Crore) to the Transaction Advisors
 - (c) Certificate of Incorporation of the Concessionaire formed for the purpose of entering into the Concession Agreement with the Authority along with Memorandum and Articles of Association of the Concessionaire SPV.
- H. The Concessionaire undertakes to pay to the Authority, Concession Fee subject to the terms and conditions set forth in this Agreement.
- I. After the Effective Date, the Authority will grant access and right of way to the Site in accordance with the terms and conditions of this Agreement.
- J. The Concessionaire acknowledges and confirms that it has undertaken an independent due diligence, audit of all aspects of the Project, including but not limited to technical and financial viability, legal framework, structure, demand for, growth and forecasts for Project Facilities in the region, and on the basis of its independent satisfaction hereby agrees to implement the Project at its own cost, risk and expense in accordance with the terms and conditions of this Agreement.

In light of compliance by the Selected Bidder/ Concessionaire of pre-conditions, to the execution of the Agreement, the Authority has agreed to enter into this Agreement vesting the rights for the implementation of the Project with the Concessionaire on the terms, conditions, and covenants hereinafter set forth in this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS HEREIN CONTAINED, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In addition to the terms defined in the introduction and recitals of this Agreement, the capitalised words and expressions used in this Agreement shall have the meanings set out in Clause 41 of this Agreement, unless the context otherwise requires, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules:

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws, circulars or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, partnership, limited liability partnership, corporation, society, trust, any unincorporated association, government, state or agency of a state or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;
- (f) general words shall not be given a restrictive meaning because they are followed by words which are particular examples of the acts, matters or things covered by the general words and the words “**includes**” and “**including**” shall be construed without limitation;
- (g) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, development of site, engineering, procurement, delivery, transportation, installation, processing, fabrication, equipping, establishment,

testing, commissioning and other activities incidental to the construction and “**construct**” or “**build**” shall be construed accordingly;

- (h) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (i) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (j) any reference to a day shall mean a reference to a calendar day;
- (k) any reference to INR or Rupees shall mean a reference to currency of India;
- (l) reference to a “**business day**” shall be construed as reference to a day on which banks generally are open in Andhra Pradesh for the transaction of normal banking business;
- (m) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (n) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (o) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (p) words importing singular shall include plural and vice versa;
- (q) reference to any gender shall include the other and the neutral gender;
- (r) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (s) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (t) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

- (u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (x) references to Recitals, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement, references to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs, and references to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of this Schedule or Annex, as the case may be, in which such reference appears;
- (y) the damages payable by either Party to the other as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
- (z) time shall be of the essence for performance of the Parties’ respective obligations; and
- (aa) wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate, agreement, authorization, communication, information or report or determination by any Party, unless otherwise specified, such notice, endorsement, consent, approval, certificate, agreement, authorization, communication, information or report or determination shall be in writing under the hand of duly authorized representative of such Party.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Engineer shall be provided free of cost and in three (3) copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two (2) copies thereof.

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein
- (c) RFP
- (d) Letter of Award

that is, the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between the Clauses of this Agreement and the RFP, the Clauses of this Agreement shall prevail;
- (d) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (e) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

- (f) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (g) between any value written in numerals and that in words, the latter shall prevail.

2. THE CONCESSION

2.1 The Concession

2.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws, and the Applicable Permits, the Authority hereby grants to the Concessionaire, the Concession set forth herein including an exclusive right, licence and authority to design, finance, construct, procure, operate and maintain the Project (the “**Concession**”) and associated development rights for a period stipulated in Clause 2.2, commencing from the Effective Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project, subject to and in accordance with the terms and conditions set forth herein.

2.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) right of way, access and lease to the Site vide a lease deed (the “**Lease Deed**”) as per format provided in Schedule-Q for the purpose of development of Project Facilities;
- (b) finance and construct the Project;
- (c) administer manage, operate, maintain and commercially run the Project for profit and regulate the use thereof by third parties;
- (d) demand, collect and appropriate User Fee from Users for using the Project and any part thereof and to refuse entry to any User if any User Fee remains due and is not paid in terms of Clause 23;
- (e) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
- (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (g) to enter into sub-contracts, joint development agreement, development management agreements, licence or any other kind of arrangements for the purposes of development, operations and maintenance of Project Facilities during the term of the Agreement with prior written approval of the Authority and in a way that does not contravene any of the underlying terms of the Concession under this Agreement.

2.1.3 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire has no right to sell or lease the whole or any part of the Project Site and/or whole of any part of the built up areas of the Mandatory Facilities and/or Allied Facilities, and it shall, on the Transfer Date, transfer and hand over the Site along with the Project Facilities and Project Assets, free of all Encumbrances, to the Authority or its nominated agency in accordance with the provisions hereof.

- 2.1.4 Notwithstanding anything to the contrary, the Concessionaire is not authorised and shall not assign, transfer or sublet or part with or create any Encumbrances, on the whole or any part of the Site, without prior written approval of the Authority; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to create security interest over its rights under this Agreement in favour of the Senior Lenders for the purpose of raising finance for developing the Project Facilities as per this Agreement. For the avoidance of doubt, it clarified that, notwithstanding anything to the contrary, the Concessionaire shall not be entitled to create any mortgage (or any other security) over the site or any part thereof.
- 2.1.5 The Concessionaire acknowledges, accepts and confirms that the covenant contained hereinabove are an essence of this Agreement.

2.2 Concession Period

- 2.2.1 The Concession Period shall commence from the Effective Date and shall extend for a period of thirty-three (33) years or the earlier termination of this Agreement in terms hereof and during which the Concessionaire is authorized to implement the Project and to operate the Project Facilities in accordance with the provisions hereof. For the avoidance of doubt, the Concession Period shall include the Construction Period.
- (a) In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Effective Date and ending with the Termination.
 - (b) At the end of the initial term of thirty-three (33) years, upon request of the Concessionaire submitted no later than twenty-four (24) months prior to expiry, the Authority shall consider granting an extension for a further period of thirty-three (33) years. Any such extension shall (i) be on terms and conditions to be mutually agreed, (ii) provide for revision of the Concession Fee and other financial obligations in accordance with the Wholesale Price Index (WPI) or such other agreed index, and (iii) be subject to the Concessionaire having complied with its obligations under this Agreement to the reasonable satisfaction of the Authority.
 - (c) At the end of the Concession Period (including extension thereto as per sub-clause (b) above) or the earlier termination of this Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Site and the Project Assets shall revert to the Authority, free of cost.
 - (d) With effect from the handover of the land by the Authority to the Concessionaire and further subject to provisions of Article 4, the Authority shall enter into a Lease Deed for the Site with the Concessionaire as per the format provided in Schedule Q. The Lease Deed shall grant leasehold rights to the Concessionaire for the Site or a period that shall be co-terminus with the Concession Period (including extension thereto as per sub-clause (b) above).

3. SCOPE OF THE PROJECT

- 3.1 The Project shall consist of Mandatory Facilities and Allied Facilities, together referred to as Project Facilities. Project Facilities shall be developed on the Site which is described in Schedule A of this Agreement. The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:
- (a) to design, engineer, finance, procure and construct the Project, including Mandatory Facilities and Allied Facilities, together with provision of Project Facilities in conformity with the Specifications and Standards set forth in Schedule D and in accordance with the provision of this Agreement;
 - (b) manage, market, operate and maintain the Project and the Project Facilities and regulate the use thereof, in accordance with the provisions of this Agreement; and
 - (c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
 - (d) to under the development of the Project Components as per the Scope of Work set out in Schedule B.
- 3.2 The Authority shall, at the time of handover, deliver the land parcel admeasuring 20 Acres to the Concessionaire with marketable title, free from encumbrances, claims, and encroachments.

4. CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Clauses 4, 5, 6, 7, 8, 9, 10, 21, 27, 37 and 40, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 Conditions Precedent for the Authority

Upon fulfilment of CP 2 (as set forth in Clause 4.1.3), the Concessionaire shall, by notice require the Authority to satisfy any or all the Conditions Precedent set forth in this Clause 4.1.2. The Authority shall fulfil its conditions precedent within a period of ninety (90) days from the receipt of the notice. This period of 90 days, at the instance of the Authority can be extended by another sixty (60) days). The following are the conditions precedent which are required to be satisfied by the Authority;

- (a) The Authority shall have by itself or through any other Government Authority as the case may be, cause the execution of the following agreements/documents;
 - (i) upon the Concessionaire having complied with all the terms and conditions for executing the Escrow Agreement and upon submitting the original Escrow Agreement, in the form provided in Schedule O, bearing the signature of the Concessionaire and the Lenders Representative, to the Authority, the Authority shall cause the execution of the Escrow Agreement
 - (ii) Issue/ sign necessary agreements/ no-objection certificates (NOCs) required by Senior Lenders and to enable the Concessionaire to raise debt financing for the Project;
 - (iii) upon the Concessionaire having complied with the terms and conditions for executing the Lease Deed for Site and submitting the original lease deed for site, in the form provided in Schedule Q, to the authority, the Authority shall cause the execution of the Lease Deed for Site.
- (b) The Authority shall, extend support and cooperation to the Concessionaire in connection with the procurement of the Environmental Clearance for the development of Mandatory Facilities of the Project. The responsibility for preparing, submitting, pursuing the application for Environmental Clearance and obtaining the Environmental Clearance shall solely rest with the Concessionaire and the lack of support and cooperation or the failure to provide support and cooperation by the Authority in no manner discharges the Concessionaire of its obligation to obtain the Environment Clearance, or make any claims against the Authority for the delay in obtaining the Environmental Clearance.

- (c) The Authority shall have provided, to the Concessionaire, access and right of way to the Site, upon completion of the joint survey (along with representatives of the Concessionaire) of the Site, as demarcated and agreed to at the joint survey.

4.1.3 **Conditions Precedent for the Concessionaire**

The Conditions Precedent required to be satisfied by the Concessionaire shall be deemed to have been fulfilled upon achievement of the following within the corresponding time-periods.

(a) **Condition Precedent 1 (CP 1)**

- (i) Within ninety (90) days from the effective date, the Concessionaire shall have submitted the Master Plan along with the project implementation schedule for approval of the Authority. The Master Plan shall, inter-alia, clearly demarcate the portion(s) of the Site that shall be used for the development of Mandatory Facilities (the “**Mandatory Facilities Area**”) and the portion(s) of the Site to be used for the development of Allied Facilities in terms of Clause 5.2.8 (the “**Allied Facilities Area**”).

(b) **Conditions Precedent 2 (CP 2)**

- (i) [Within ninety (90) days from the effective date, the Concessionaire shall have executed the operation and maintenance agreement (“**O&M Agreement**”) for a minimum period of 5 (five) years with the Hospitality Operator. For the purpose of clarity, incase the Selected Bidder proposes to replace the Hospitality Operator within the minimum period of 5 years, it shall make such request to the Authority along with the details of the proposed Hospitality Operator who meets the technical criteria laid down in this Agreement and the RFP. The Authority reserves it’s right to approve such request or to direct the Selected Bidder / Concessionaire to propose an alternative partners.]

[this clause shall be deleted in case the Selected Bidder has demonstrated the O&M technical capacity on its own in its bid]

- (ii) Within one hundred and eighty (180) days from the effective date the Concessionaire shall have:
- (A) executed and procured execution of the Escrow Agreement in Schedule-O;
 - (B)executed the Financing Agreements and delivered to the Authority three (3) true copies thereof, duly attested by the Director of the Concessionaire;
 - (C)delivered to the Authority three (3) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with three (3) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; and

(D) (subject to clause 5.2.1 of this Agreement) provided to the Authority, a detailed list of the activities that the Concessionaire intends to grant a license or a sub-lease for, within the built-up area of the Mandatory Facilities along with corresponding prospective licensees and/or sub-lessees. For the avoidance of doubt, it is clarified that (a) the Authority shall be entitled, at its sole discretion, to approve or reject any activities and/or any proposed licensees and/or sub-lessees and/or third parties under the aforesaid list and accordingly, the Concessionaire shall not be permitted to enter into any arrangements/ agreements for such activities/ with such licensees and/or sub-lessees or third parties, as the case may be, (b) the Concessionaire shall not be entitled to grant any sub-lease or license to any licensees and/or sub-lessees or third party for the underlying land comprising the Site and (c) if the Concessionaire intends to grant a sub-lease or license within the built-up area of the Mandatory Facilities: (A) for any activities; and/or (B) to any licensees and/or sub-lessees or third party, in either case, not covered within the aforesaid list submitted to the Authority in accordance with this Clause, the Concessionaire shall require the Authority's prior written consent for the grant of any such sub-lease or license.

(E) The Concessionaire shall, at its own cost and responsibility, prepare, submit, and obtain the requisite Environmental Clearance for the development of the Mandatory Facilities of the Project, in accordance with the applicable laws and regulations. For this purpose, the Concessionaire shall submit to the Statutory Authority all requisite information, documents, and responses to queries and clarifications as may be required for the Environmental Clearance process.

(F) delivered to the Authority a notice for fulfilment of the Conditions Precedent of the Authority as per Clause 4.1.2.

Provided that, without prejudice to any other provisions of this Agreement, upon request in writing by the Concessionaire with adequate proof of reasons of delay in fulfilling the Conditions Precedent, the Authority may, in its discretion, provide extension of time to the Concessionaire for the purpose of fulfilling the Conditions Precedent set forth in this Clause 4.1.3.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the period specified in respect thereof and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the specified periods from the effective date in case of CP 1 and CP 2 and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or any other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall in terms of clause 9.2 pay to the Authority, Damages in an amount calculated at the rate of zero point one per cent (0.1%) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent. Provided that in the event of delay by the Authority in procuring fulfilment of the Condition Precedent specified in Clause 4.1.2, no damages shall be due or payable by the Concessionaire under this Clause 4.2 until the date, Authority shall have procured the fulfilment of Conditions Precedent set out in Clause 4.1.2.

4.3 Commencement of Concession Period

The Effective Date shall be the date of commencement of the Concession Period and the Lease Period for the Site.

4.4 Commencement of Construction Period

The Appointed Date shall be the date of commencement of the Construction Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date as per the terms of the Agreement, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction on the Site.

4.5 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2, Clause 4.3 and Clause 4.4, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within one year from the effective date all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof. For the avoidance of doubt, the one-time upfront payment of project development costs made by the Selected Bidder / Concessionaire shall be non-refundable in the event of Termination.

5. OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, planning, development, finance, construction, marketing, administration, management, procurement, operation and maintenance of the entire Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all the Applicable Laws and secure and comply with all the Applicable Permits (including renewals as required) in performance of its obligations under this Agreement, at its own cost.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement observe, undertake, perform and comply during the Concession Period with the following obligations:
- (a) procure the Environmental Clearance for the Project upon timely submission of all the necessary and complete applications, documents and clarifications, if any;
 - (b) make, or cause to be made, necessary applications to the Government Authorities with such particulars and details, as may be required for obtaining Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (c) procure, as required the appropriate proprietary rights, licence, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (d) perform and fulfil its obligations under the Financing Agreements;
 - (e) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors or its sub-licensees in connection with the performance of its obligations under this Agreement;
 - (f) comply with all the Applicable Laws including environmental laws and Applicable Permits while performing its obligations under this Agreement;
 - (g) engage Contractors and / or sub-contractors and ensure that the Contractors and / or sub-contractors, at all times, comply with the Applicable Laws and Applicable Permits while performing any of the Concessionaire's obligations under this Agreement; not to do any act or omission, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

- (h) ensure that all the facilities and amenities within the Project are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same in accordance with the provisions of this Agreement and/or Applicable Laws;
- (i) take necessary precautions to avoid any accidents and ensure adequate safety measures;
- (j) take necessary steps to safeguard the environment while executing the Project;
- (k) ensure that Users are treated with due courtesy and consideration and provided with ready access to services and information
- (l) prepare and submit Master Plan, prepared by reputed and experienced architect/urban designer entity, along with the project implementation schedule for the approval of the Authority;
- (m) prepare Drawings and the Detailed Project Report as per the Master Plan approved by the Authority;
- (n) support, cooperate with and facilitate the Authority in implementation and operation of the Project in accordance with the provisions of this Agreement;
- (o) transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions thereof;
- (p) arrange at its cost the foreign exchange and clearances required for import of technology, equipment or materials and pay all requisite duties and levies in this behalf. The Concessionaire shall bear any risk on account of fluctuation in foreign exchange rates during the Concession Period;
- (q) undertake marketing, public relations and brand building of the Mandatory Facilities and Allied Facilities, at its cost and expense; and
- (r) provide or arrange at its cost, within the Site, during the Concession Period all on-site infrastructure including power, telecom, electricity, water, sanitation, sewage treatment and disposal, drainage, solid and hazardous waste disposal, effluent treatment and disposal, fire & emergency fighting and other utilities and facilities required from time to time in respect of the construction, operation and maintenance of the Project and be in compliance to the requirements relating thereto under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.

5.1.5. The Concessionaire may, with the prior approval of the Authority and in accordance with the applicable laws and regulations, undertake additional revenue generation measures that may result in enhanced revenue to the Authority, including but not limited to change of land use or zoning leading to increase in permissible Floor Area Ratio (FAR), permissible ground coverage, or other permissible development parameters, at its own cost and responsibility.

The Authority shall endeavour to assist the Concessionaire on a best effort basis (without any obligation or assurance) in coordinating with the concerned Government Authority for obtaining the requisite approvals.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Concessionaire Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder. It is expressly agreed that all Project Agreements should comply with the provisions of this Concession Agreement and that the term of any Project Agreement shall not exceed the remaining term of this Concession Agreement.

Notwithstanding anything to the contrary, the Concessionaire shall not be entitled to grant any sub-lease or license to any third party for the underlying land comprising the Site. For the avoidance of any doubt, entering into O&M Contracts by the Concessionaire shall be permitted, subject to the provisions of this clause 5.2 and such O&M Operator shall deposit all the respective Mandatory Facilities Revenues / Allied Facility Revenues, as the case may be, in the respective Escrow Account(s) of the Concessionaire.

- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within forty five (45) days of the receipt of such drafts. In the event no comments are provided within forty five (45) days of receipt of drafts by the Authority, it shall be deemed as approved by the Authority and the Concessionaire may execute the said agreement(s). Within seven (7) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement and ensuring that the pricing of Project Agreements conform to the then prevailing market conditions and protect the interest of the Authority. It is further agreed that no review and/or comments of the Authority and/or its failure to review and/or convey its comments on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt,

the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

- 5.2.4 The Authority shall have step-in right with respect to all Project Agreements. The Concessionaire shall cooperate with the Authority, should the Authority choose to exercise its rights. The Concessionaire undertakes to provide in each of the Project Agreement entered into by the Concessionaire with sub-contractors/sub-licensees such provisions that entitle the Authority to step into such agreements in substitution of the Concessionaire in the event of Termination or Suspension **(the “Covenant”)**. It is expressly clarified that all costs and expenses associated with exercise of the Authority’s step-in rights under this Agreement shall be solely to the account of the Concessionaire, save and except occasions where Authority’s exercise of step-in rights can be directly attributed to the Authority’s event of default under this Agreement. The Concessionaire agrees to provide an acknowledgement and undertaking, in such manner and form as is acceptable to the Authority, to acknowledge and accept the step-in right of the Authority and undertakes to provide similar acknowledgement and undertaking from each of its sub-contractor(s).

For Project Agreements, the exercise of the Covenant of the step-in right shall be at the sole discretion of the Authority. It is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding ninety (90) days from the Transfer Date, such Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Project Agreements shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension except in the terms of the said agreement/s.

- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that the Concessionaire shall intimate the Authority of any selection or replacement of an O&M Contractor and execution of the O&M Contract, for the Mandatory Facilities and/or for the Allied Facilities.
- 5.2.6 Save and except as set out in Clause 4.1.3, and notwithstanding anything else to the contrary contained in this Agreement, the Concessionaire shall not sub- lease or license any part of the built-up area of the Mandatory Facilities, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub- lease has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.

For the avoidance of doubt, the Parties hereto agree that the Concessionaire shall be required to take up the development of the Mandatory Facilities on its own and is prohibited from licencing / sub-licensing the development of the Mandatory Facilities to any third parties. However, the Concessionaire shall be permitted to enter into Operations and Management arrangements for any part of the Mandatory Facilities with prior approval as per Clause 5.2 of this Agreement, for the relevant portions subject to all revenues generated by the O&M Operator from the Mandatory Facilities being considered as Mandatory Facilities Revenues for the purpose of computation of the Mandatory Facilities Revenue Share.

- 5.2.7 The Authority shall be required to reply with its approval or comments, as applicable, on the written request for approval sought by the Concessionaire, under this Clause 5.2, within forty-five (45) days of receipt of such request for approval from the Concessionaire, after which, such approval shall be deemed to have been granted.
- 5.2.8 Subject to clause 5.2.6, the Parties agree and acknowledge that the Concessionaire may in its discretion grant license/sub-lease over the whole or part of the Allied Facilities Area up to the maximum period permissible under clause 2.2.1. and such licensees (the “**Licensees**”) shall have a right to develop and to earn revenue from the built-up properties developed therein (the “**Allied Facilities**”) subject to all revenues generated by the Concessionaire from the license/sub-lease of the Allied Facilities area shall considered as Allied Facilities Revenues for the purpose of computation of the Allied Facilities Revenue Share. However, Concessionaire shall ensure that any licence/sub-lease, etc. granted in relation to the Allied Facilities Area and the Allied Facilities are co-terminus with this Agreement and shall not extend beyond the period specified in clause 2.2.1. Concessionaire shall further procure that any contracts entered into by such Licensees and relatable to the Project and/or the Site shall also be co-terminus with this Agreement.

5.3 **Obligations relating to Change in Ownership**

- 5.3.1 The Concessionaire shall not undertake or permit any change in ownership of the SPV (“**Change in Ownership**”), except with the prior written approval of the Authority.
- 5.3.2 Notwithstanding anything contrary in this Agreement, the Concessionaire agrees and acknowledges that:
- (a) Any acquisition of Equity by an acquirer, either by himself or together with any person acting in concert, directly or indirectly (including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity), in aggregate of twenty-five per cent (25%) up to forty-nine per cent (49%) of the total Equity of the Concessionaire, as set forth in Clause 5.3.4, for the purposes of raising equity from financial investors, shall constitute a Change in Ownership.

Such a Change in Ownership shall require the prior written approval of the Authority only from the perspective of national security and public interest, and the Authority shall endeavour to convey its decision expeditiously.

- (b) Any acquisition of any control, directly or indirectly, of the Board of Directors of the Concessionaire (whether by change in the persons comprising the Board, change in the controlling rights of the promoters, or otherwise) by any person, either by himself or together with any person or persons acting in concert, shall constitute a Change in Ownership, and shall require the prior written approval of the Authority, which the Authority may grant or deny at its sole discretion.

The Concessionaire further undertakes that it shall not give effect to any such acquisition or change referred to in sub-clause (a) or (b) without such prior approval of the Authority. The Authority shall not be liable in any manner on account of grant or otherwise of such approval, and such approval or denial shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement. In case there is no response in 45 days from the authority, it will be considered as deemed approved.

5.3.3 For the purposes of clause 5.3.2:

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

5.3.4 The Selected Bidder have undertaken to hold at least fifty one percent (51%) (or as specified in the RFP) of the subscribed and paid-up equity share capital of the Concessionaire at all times until the fifth (5th) anniversary of the COD-1. The Change in Ownership as set out in this Clause 5.3 shall be subject to this undertaking.

5.4 **Obligations relating to procurement of goods and services**

- 5.4.1 The Concessionaire agrees and undertakes that it shall procure contracts, goods and services for the construction and operation of the Mandatory Facilities and Allied Facilities in a fair, transparent, and efficient manner, and without any undue favour or discrimination in this behalf. In pursuance hereof, it shall frame a procurement policy specifying the principles and procedures that it shall follow in awarding contracts for supply of goods and services, and shall place the policy on its website for the information of general public and all interested parties, for Facilities wherever permissible under this Agreement. The policy shall also include the principles and procedures to be followed for leasing, sub-licensing or grant or allocation of any space, building, rights, or privileges to private entities.

For procurement of goods, works or services or any other rights or privilege wherever permissible under this Agreement, where the consideration exceeds INR 5,00,00,000 (Rupees five crore) in any Accounting Year (collectively the “**Contracts**”), the Concessionaire shall invite offers through open competitive bidding by means of e-tendering and shall select the awardees in accordance with the policy specified under Clause 5.4.1. For the avoidance of doubt, the Parties agree that the Concessionaire may, in its discretion, pre-qualify and short-list the applicants in a fair and transparent manner for ensuring that only experienced and qualified applicants are finally selected on arm’s length in a manner that is commercially prudent and protects the interests of the Users and the Authority. The Parties further agree that the Concessionaire shall not enter into any related party transactions or Contract with any Related Party except with (a) the prior written consent of the Authority, which consent shall not be unreasonably withheld; and (b) such transaction is on arm’s length basis and is in compliance with the provisions of the Companies Act, 2013. The Parties also agree that before granting any consent hereunder, the Authority shall be entitled to seek such information as it may require in relation to the Contract, within thirty (30) days from the receipt of the request from the Concessionaire, and the Related Party with whom the Contract is proposed to be executed and in the event the Authority does not approve or reject the proposal within thirty (30) days of the date on which the required information has been provided, it shall be deemed that the Authority has no objection to such Contract.

- 5.4.2 Notwithstanding anything contained contrary elsewhere, the Concessionaire shall adhere to the following contracting principles in respect of any of the related party transactions:

- (a) No shareholder of the Concessionaire, and/or Key Managerial Person that has an interest in the Contract, can be involved in the design of the Contract, or the contracting process or decision-making; and
- (b) Where a shareholder of the Concessionaire, Key Managerial Person or any Related Party intends to tender for the contract, an independent probity auditor must be appointed to review and monitor the tender to ensure a complete arms’ length arrangement. It is clarified that the independent probity auditor shall not be a Related Party of the Concessionaire or

any of its shareholders. Concessionaire shall agree to the appropriate terms of reference and the selection procedure of the independent probity auditor as laid down by the Authority.

5.5 Employment of foreign nationals

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

5.6 Employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it or by its Contractors and their sub-contractors in the performance obligations under this Agreement, are at all times properly trained for their respective responsibilities.

5.7 Sole purpose of the Concessionaire

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

5.8 Facilities for differently abled and elderly person

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

5.9 Matter requiring prior approval of the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree that, during the Concession Period, the following matters related to the constitution/ structure of the SPV/ Concessionaire shall require prior approval of the Authority:

- (a) to alter or add to the provisions of the memorandum of association;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Concessionaire;
- (d) to purchase the Company's own shares or specified securities;

- (e) to issue sweat equity shares;
- (f) to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
- (g) to reduce share capital;
- (h) to remove the registered office of the Concessionaire outside the limits of the state of Andhra Pradesh;
- (i) to commence any new lines of business;
- (j) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- (k) to consent to a director or his relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debentures – holders of the Company;
- (l) to make inter-corporate loans and investments or guarantee/security to be given etc., if the aggregate amount thereof, exceeds the limit of ten percent (10%) of the Company's paid up share capital;
- (m) to apply to a court to wind-up the Concessionaire;
- (n) to wind up the Company voluntarily;
- (o) for various other matters pertaining to the winding up of the Concessionaire;
- (p) to change the name of the Convention & Exhibition Centre and/or Star Category Hotel;
- (q) to change the use of the Site other than as specified in this Agreement;
- (r) to carry out any additional construction or expansion of the Project other than as specified in the Agreement;
- (s) to invest in subsidiary(ies) or entities for the purpose of development and/or operations of Allied Facilities;
- (t) any other matter which is required by Companies Act, 2013 (or relevant Act in force) or any statutory re-enactment thereof to be passed by a special resolution of the shareholders of the Company;
- (u) any Change in Ownership.

The Authority shall communicate its decision related to matters specified in this Clause 5.9 within a period of thirty (30) days of receipt of such request from the Concessionaire.

5.10 Concessionaire's Representative

- (a) The Concessionaire shall, subject to the approval of the Authority, within thirty (30) days from the Effective Date, nominate its Concessionaire's Representative and shall authorise him for all correspondence, communication, signing of documents, participation in meetings etc. with the Authority in respect of the Project and issues relating to or arising out of the Agreement.
- (b) If at some point of time the Concessionaire is unable to provide the services of the person named as the Concessionaire's Representative, then it shall notify the Authority its reasons for this, and thereafter, provide a substitute person who can be the Concessionaire's Representative.
- (c) The person named as the Concessionaire's Representative under this Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project. Prior to appointment of the Concessionaire's Representative, the Concessionaire shall also submit the curriculum vitae of the person it proposes to appoint, detailing in particular the relevant project experience, and then obtain the written consent of the Authority to the appointment of the Concessionaire's Representative.
- (d) The Concessionaire's Representative shall be exclusively employed or engaged by the Concessionaire to give his whole time to directing the preparation of the construction documents, the execution of the Works, and operation and maintenance of the Project. Except as otherwise stated in the Concession Agreement, the Concessionaire's Representative shall receive on behalf of the Concessionaire all notices, instructions, consents, approvals, certificates, determinations and other communications under the Concession Agreement. Whenever the Concessionaire's Representative is to remain absent from the Site / Project for a continuous period in excess of fourteen (14) days, a suitable replacement Person shall be nominated.
- (e) The Concessionaire's Representative may delegate, while retaining his prime responsibilities, any of his powers, functions and authorities to any competent person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Authority has received prior notice signed by the Concessionaire's Representative, specifying the powers, functions and authorities being delegated or revoked. The Concessionaire's Representative shall notify to the Authority the names, duties and scope of authority of such persons. Any instructions given to any of them shall be deemed to have been given to the Concessionaire's Representative. Any such delegation shall not relieve the Concessionaire's Representative of its obligation and duties under this Agreement.

5.11 **Branding of the Project**

The name of Project shall be decided by the Authority. The Authority shall be entitled to decide the brand name/ identity of the overall Project and Convention & Exhibition Centre.

For further avoidance of doubt, naming rights for Project components, other than the Convention & Exhibition Centre and the overall Project, shall be the exclusive purview of the Concessionaire during the Concession Period and names of such components/ facilities may be assigned by the Concessionaire to third parties as per commercial requirements of the Project, during the Concession Period. The Authority shall retain the exclusive right to rename/ monetise the whole or any part of the Project upon termination or expiry of this Agreement.

6. OBLIGATIONS OF THE AUTHORITY

- 6.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide support on best effort basis to the Concessionaire in procuring Applicable Permits required from any Government Authority for implementation and operation of the Project. Provided that the support or failure to provide support by the Authority in no manner discharges the Concessionaire of its obligation to obtain all such permits/licenses, approvals for any part of the work;
 - (b) upon written request from the Concessionaire, provide support on best effort basis to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
 - (c) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (d) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (e) upon written request from the Concessionaire and subject to the provisions of Clause 5.5, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their respective obligations under this Agreement and the Project Agreements; and
 - (f) use reasonable endeavours to facilitate and procure external infrastructure including road connectivity, power supply and water supply upto the boundary of the Project Site by the relevant Government Authority.

7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire hereby represents and warrants to the Authority that:

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

- (j) it has complied with the Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the Selected Bidder shall hold not less than one hundred percent (100%) of its issued and paid-up Equity as on the Effective Date;
- (l) the Selected Bidder and its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) the Selected Bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with itself / the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project, shall pass to and vest in the Authority on the Transfer Date, free and clear of all Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement; from the transfer date the Concessionaire is deemed to have vacated and handed over vacant and peaceful possession to the Authority without any encumbrances and the authority shall be in full charge and in possession of the project site and the Project Assets.
- (o) no representation or warranty contained herein or in any other document furnished by it to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of any Government Authority in connection therewith. Neither should any such amounts be received by it for the purpose of award of tenders in terms of clause 5.4.1 of this Agreement or entering of Project Agreements;

- (q) all information provided by the Selected Bidder in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (r) all undertakings and obligations of the Concessionaire arising from the Request for Proposal or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 **Representations of the Authority**

The Authority hereby represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations under this Agreement;
- (b) it has taken all necessary actions in accordance with law to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects; and
- (g) it has good and valid right to the Site and has the power and authority to grant a licence in respect thereto to the Concessionaire.
- (h) the Site is free from any encumbrance, claim, lien, litigation including any environmental litigation.

7.3 **Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

8. DISCLAIMER

8.1 Disclaimer

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

9. PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 Within forty five [45] days from the issuance of the Letter of Award and prior to the signing of this Agreement, the Concessionaire shall have provided to the Authority an irrevocable and unconditional guarantee from a Bank for an amount equal to **INR 6,00,00,000 (Rupees Six Crore)** in the form set forth in Schedule F (the “**Performance Security**” or “**Construction Performance Security**”).

9.2 Appropriation of Performance Security

Upon occurrence of (i) a Concessionaire Default and/or (ii) failure to meet any Condition Precedent within the time frame mentioned in clause 4.1.3, , the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security, the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within fifteen (15) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Clause 30. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be (i) entitled to an additional Cure Period of one hundred and twenty (120) days for remedying the Concessionaire Default and/or (ii) an additional a cure period of 60 days for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Clause 30.

9.3 Release of Performance Security

50% (fifty percent) of the Performance Security shall be released upon achievement of COD-1. The balance 50% (fifty percent) of the Performance Security shall remain in force and effect by the Concessionaire, till the achievement of COD-2. Provided however, that the Performance Security shall not be released, at the stage of completion of COD-1 or COD-2, as the case may be, if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire, subsequent to achievement of COD-2, for release of the balance 50% of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith, subject to creation of Deemed Performance Security in accordance with Clause 9.4.

9.4 **Deemed Performance Security**

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire Concession period (the “**Deemed Performance Security**”). The amount of the Deemed Performance Security for a particular Accounting Year shall be 2 times of the previous Accounting Year’s Concession Fee and not less than INR 5,00,00,000 (Rupees five crore only). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 24.3, constitute the first and exclusive charge on an equivalent balance in the Escrow Account in addition to all amounts due and payable by the Concessionaire to the Authority, and the Authority shall be entitled to enforce the Deemed Performance Security through a withdrawal from the Escrow Account or by making a deduction from the amounts due and payable to it by the Concessionaire in accordance with the provisions of Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of a Concessionaire Default shall be liable to appropriation hereunder.

9.5 **Appropriation of Deemed Performance Security**

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation. Failure to maintain sufficient balance in the Escrow account for the replenishment to the extent of such apportionment shall amount to an Escrow default warranting termination.

9.6 **References to Performance Security**

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

10. LEASE AND ACCESS TO THE SITE

10.1 The Project shall be executed on the Site, which is described in Schedule A (the “Site”) and in respect of which a lease is granted by the Authority to the Concessionaire under and in accordance with this Agreement and the Lease Deed (Schedule Q). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the details set forth in Schedule A. The concession period under and in accordance with this agreement shall be for a period of thirty-three (33) years.

10.2 Access to the Site

10.2.1 The Authority hereby grants to the Concessionaire access from the effective date to the contiguous land parcel admeasuring 20 Acres for carrying out any surveys, investigations, inspections and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations, inspections and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby agrees to grant to the Concessionaire, lease in respect of the contiguous land parcel admeasuring 20 Acres which is described, delineated and shown in Schedule A hereto, on an ‘as is where is’ basis, to develop, operate and maintain the said land parcel, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said land parcel, or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever. Provided that any changes to the schedule shall be made with the prior written consent of the Authority (which consent shall not be unreasonably withheld or delayed).

10.2.3 It is expressly agreed that the lease granted hereunder and as per Lease Deed (Schedule Q) shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the lease, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the termination of lease hereunder shall be subject to the substitution/ mortgage rights of Senior Lenders. Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire, the lease in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.4 It is expressly agreed that the trees, if any, on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.2.5 The Concessionaire shall be allowed to sub-lease/ license the built-up spaces developed as part of Project Facilities in accordance with Clause 5.2. Subject to Clause 5.2.4, all such sub-lease/ license agreements shall be co-terminus with the Concession Agreement.

10.3 Handover of the Site

10.3.1 It is expressly agreed that the handover of the land parcel of the Site on the Appointed Date along with execution of the Lease Deed by both Parties, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid lease to the Concessionaire for unrestricted use and development of the vacant Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it shall be clarified that any development on the Site by the Concessionaire shall be subject to applicable development control and zoning guidelines.

10.3.2 On and from the Effective Date, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expenses.

10.4 Site to be free from occupation

Subject to the provisions of Clause 10.3, the Project Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Special / temporary access to the Site

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

10.6 Access to the Authority and Independent Engineer

The Licence to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.7 **Geological and archaeological finds**

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

11. UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

11.2.1 The Concessionaire shall, subject to Applicable Laws, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Concessionaire. In such case, the Concessionaire shall assist the Authority in preparation of all needful documentation, surveys, etc, as may be required by the competent authority for considering such change.

11.3 New utilities and roads

11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water pipes, electric cables, piped gas lines, data cables or other public utilities. For the avoidance of doubt, it is agreed that use of the Site under this Clause 11.3.1 shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 The Authority may, by notice, require the Concessionaire to connect the Project to any public infrastructure. Upon receipt of a notice hereunder, the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at its own cost, and the maintenance thereof shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.2.

11.4 Felling of trees

The Authority shall reasonably assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Project. For the avoidance of doubt, the Parties hereto agree that the cost and expenses in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority.

12.CONSTRUCTION OF THE MANDATORY FACILITIES AND ALLIED FACILITIES

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer, its Detailed Project Report, detailed design basis report(s) and designs, construction methodology, quality assurance procedures, procurement, engineering and construction time schedule for completion of the Mandatory Facilities and Allied Facilities in accordance with the Project Completion Schedule as set forth in Schedule-G;
- (b) appoint its representatives duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits, including inter-alia obtaining construction license from the competent authority(ies); and
- (d) make its own arrangement for construction and procurement of materials needed for the Mandatory Facilities under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall maintain, at its cost, the existing facilities (for example road, water supply system, sewerage and others) and shall undertake the necessary repair and maintenance works for this purpose. Provided that the Concessionaire may, at its cost, interrupt and divert the facility if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project.

12.3 Detailed Project Report

In respect of the Concessionaire's obligations relating to Detailed Project Reports, as set out in Schedule H, the following shall apply:

- (a) The Concessionaire shall, at its own cost, prepare and submit with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three (3) copies each of all Detailed Project Report including Design Basis Report(s), Drawings, designs, Specifications and Standards for the Mandatory Facilities and Allied Facilities, each, to the Independent Engineer for review.

- (b) The Detailed Project Report shall, *inter alia*, set out the full details of the developmental activities proposed to be carried out by the Concessionaire for implementation of the Mandatory Facilities and Allied Facilities proposed, in complete order, sequence and method of working, the steps, procedures and processes to be undertaken by the Concessionaire, the Project Completion Schedule with the Project Milestones, detailed schedule bar charts with milestone dates, master plan and building plans of the Mandatory Facilities and Allied Facilities, including the site development, proposed construction activities, names of likely Contractors/ sub-contractors/ vendors, etc., plans for mobilization of finances, plans for marketing the Mandatory Facilities and Allied Facilities, proposed arrangements for operating and managing the Mandatory Facilities and Allied Facilities, the organisation chart of the Concessionaire and such other similar details which define and clarify the method and direction of the Concessionaire's plans for the implementation of the Project and such other similar details as may be called for by the Independent Engineer;
- (c) The Concessionaire shall prepare the Drawings only as per the Master Plan approved by the Authority prior to the Appointed Date, as set forth in Clause 4.1.3. However, with the prior approval of the Authority, the Concessionaire can make modifications to the Master Plan based on need / justification;
- (d) By submitting the Detailed Project Report for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the Detailed Project Report, designs and Drawings are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (e) Within fifteen (15) days of the receipt of Detailed Project Report, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards.
- (f) If the aforesaid observations of the Independent Engineer indicate that the Detailed Project Report are not in conformity with the Scope of the Project or the Specifications and Standards, such documents shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within seven (7) days of receipt of the revised documents.
- (g) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on Detailed Project Report shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.

- (h) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for its approval the Detailed Project Report. The Authority shall respond within thirty (30) days of the receipt of such documents. The Concessionaire will be obliged to make changes, if any, as suggested by the Authority within thirty (30) days. The provisions of this Clause 12.3 shall apply mutatis mutandis to the review and comments hereunder.
- (i) Within ninety (90) days of COD-1, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in two (2) hard copies, pen drive, CD, hard disk form or in such other medium as may be acceptable to the Authority, reflecting the Mandatory Facilities as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Mandatory Facilities and setback lines, if any, of the buildings and structures forming part of the Mandatory Facilities.
- (j) Within ninety (90) days of COD-2, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in two (2) hard copies, pen drive, CD, hard disk form or in such other medium as may be acceptable to the Authority, reflecting the Allied Facilities as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Allied Facilities and setback lines, if any, of the buildings and structures forming part of the Allied Facilities.
- (k) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Detailed Project Report. Provided however the Authority may suitably extend the Construction Period or provide other relief to compensate for any such delay not attributable to the Concessionaire.
- (l) The Concessionaire shall not make any changes in the Detailed Project Report approved by the Independent Engineer and the Authority under this Agreement, without prior written consent of the Authority.
- (m) The Concessionaire shall obtain sanction to the building plans for the Project Assets, with necessary designs, plans and specifications, as necessary to commence and undertake construction, from the Government Authority, at its own expense.

12.4 Construction standards and maintenance of the Project

- 12.4.1 The Concessionaire shall ensure that all contract(s) and arrangement(s) entered into in relation to the Construction Works shall (to the extent such provisions can be reasonably obtained in the market concerned) include provisions whereby the relevant Contractor warrants that each part of such Works carried out there under shall be fit for its purpose and free from all defects in design, workmanship and materials.

- 12.4.2 In the execution of the Construction Works, the Concessionaire shall procure coordination amongst and avoidance of conflicts in the working of the Contractors, including all types of suppliers, subcontractors, agents, advisors and consultants. The Concessionaire shall monitor and supervise the activities of the Contractors, retained by it to fulfil its obligations hereunder, under the terms of their respective contracts.
- 12.4.3 The Concessionaire shall, by itself or through its Contractors, at its cost and risk undertake the development of the Site, including land filling, levelling, clearing, landscaping and demarcation and division of the Site etc. for establishment of the Mandatory Facilities and Allied Facilities, in accordance with the provisions of this Agreement, including the Specifications and Standards and Good Industry Practice. For the avoidance of doubt, in case of excess of earthwork excavated that needs to be carried out of the Site, the Concessionaire shall be required to obtain the prior written approval of the Authority and shall be required to make a payment of applicable royalty to the respective statutory authority as well as a fair value of the transported soil, as determined by the Independent Engineer.
- 12.4.4 The Concessionaire shall arrange at its cost the internal infrastructure facilities, including but without limitation, the power and water supply, necessary for carrying out the construction, Operation and Maintenance of the Project. Each of the Project Facilities shall have adequate facilities with respect to water supply, power, entry & exit arrangement, fire safety provisions, etc.
- 12.4.5 The Concessionaire shall at its responsibility arrange for materials such as bricks, cement, steel, aggregates, soil, bituminous and asphalt materials, and any other materials used in undertaking the Construction Works, as well as equipment, machinery, tools and ancillary materials such as shuttering and scaffolding, bearings, joint fillers and similar materials. The Concessionaire shall make arrangements for transport, loading and unloading, stacking and proper storage (including making sheds) for all materials and equipment. The Independent Engineer / Authority shall have the right to inspect and check the quality and quantity of the materials and equipment and their storage in compliance with the terms of this Agreement.
- 12.4.6 The Concessionaire shall organize the Site during the period of construction with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel and labour and industrial relations and general site services including, without limitation, access to and on the Site.
- 12.4.7 The Concessionaire shall ensure that the Works shall comprise only materials and goods which shall be of sound quality and which shall have been manufactured and prepared and all workmanship shall be in accordance with the Specifications and Standards and Good Industry Practice and that each part of the Works shall be fit for the purpose for which it is required as stated in or as may be reasonably inferred from such plans.

- 12.4.8 The Concessionaire shall carry out or cause to be carried out the Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, engineers and contractors with experience of work similar in scope and nature to that required under this Agreement. The Concessionaire shall design, engineer and execute the construction and implementation of the Works using the best design and engineering principles and practices.
- 12.4.9 The Concessionaire shall ensure that the components of the Project Facilities are appropriately furnished, equipped, staffed as per the Specifications and Standards and Good Industry Practice so as to comply respectively with the requirements of the agencies granting accreditation / affiliation / recognition for the Project.
- 12.4.10 The Concessionaire shall ensure that in fulfilling its obligations hereunder it shall procure, as required, the appropriate proprietary rights, licence, agreements and permissions for the designs, software, materials, methods, processes and systems used or incorporated into the Works undertaken by it and indemnify and keep indemnified the Authority and its advisors and consultants against all costs, damages, liabilities or consequences arising out of any breach by the Concessionaire in this behalf.

12.5 Construction of the Project

- 12.5.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule B wherein Project Facilities shall be as per Schedule C, and in conformity with the approved Detailed Project Report, Specifications and Standards set out in Schedule D as per the terms and conditions of this Concession Agreement.
- 12.5.2 The Concessionaire shall construct the Mandatory Facilities and Allied Facilities in accordance with the Project Completion Schedule set forth in Schedule G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of ninety (90) days from the date set forth for such Project Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall be liable to pay Damages to the Authority in a sum calculated at the rate of zero point one per cent (0.1%) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; for the avoidance of doubt, it is agreed that the aforesaid damages shall apply separately to the COD-1 and COD-2, individually and respectively. Provided that such damages shall accrue to the Authority during the Construction Period and such accrued and accruing damages shall be due for payment to the Authority the day on which delay in achievement of Scheduled COD occurs and until such time till the COD-1 and COD-2 are achieved. Provided that if any or all Project Milestones or the Scheduled COD is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule G has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.5.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 12.5.3 In the event COD-1 does not occur within three (3) years from the date of execution of this Agreement (the “**Scheduled Commercial Operations Date-1**” or “**Scheduled COD-1**”), unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.
- 12.5.4 In the event COD-2 does not occur within five (5) years from the date of execution of this Agreement (the “**Scheduled Commercial Operations Date-2**” or “**Scheduled COD-2**”), unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

13.MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Mandatory Facilities and Allied Facilities at least once a month from the start of construction of the Mandatory Facilities and Allied Facilities, respectively, and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Project Completion Schedule, Drawings, Master Plan, Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. The costs incurred on such tests shall be borne by the Concessionaire. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to

and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.5.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Scheduled COD-1 for the Mandatory Facilities and Scheduled COD -2 for the Allied Facilities is not likely to be achieved, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD-1 and/or COD-2.

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens public safety.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 27.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the **“Preservation Costs”**) shall be borne by the Concessionaire.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled COD is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled COD.

13.6 Video recording

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

13.7 Joint Co-ordination Committee

13.7.1 With the objective of monitoring the implementation progress of the Mandatory Facilities and facilitating effective co-ordination between the Parties, the Authority may constitute a committee (the “**Joint Co-ordination Committee**” or “**JCC**”), which shall include, inter alia, the Concessionaire’s Representative as a member.

13.7.2 Subject to this Clause 13.7, the composition, procedures, and frequency of meetings of the JCC shall be determined by the Authority in consultation with the Concessionaire.

13.7.3 Without prejudice to its other functions as may be determined by the Authority from time to time, the JCC shall:

- (a) monitor and review the implementation schedule and progress of the Mandatory Facilities;
- (b) facilitate co-ordination between the Concessionaire and any Government Instrumentality in connection with the Project; and
- (c) provide reasonable support and assistance to the Concessionaire, upon request, in procuring the Applicable Permits required from any Government Instrumentality for the implementation, operation, and maintenance of the Project.

13.7.4 It is hereby clarified that the primary responsibility for obtaining the Applicable Permits shall rest with the Concessionaire; however, the Authority, through the JCC, shall extend such support and corporation in procurement of the permits.

14.COMPLETION CERTIFICATE

14.1 Tests

- 14.1.1 No later than ninety (90) days prior to the likely completion of the Mandatory Facilities and/or Allied Facilities, the Concessionaire shall notify the Independent Engineer of its intent to subject the Mandatory Facilities and/or Allied Facilities to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than ten (10) days' notice to the Independent Engineer, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof.
- 14.1.2 All Tests shall be conducted in accordance with Schedule I at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Mandatory Facilities and/or Allied Facilities with Specifications and Standards, Drawings and Master Plans and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Mandatory Facilities and/or Allied Facilities or any part thereof does not meet the Specifications and Standards and approved Detailed Project Report, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer 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 Mandatory Facilities and/or Allied Facilities with Specifications and Standards.

14.2 Completion Certificate

- 14.2.1 Upon completion of Construction Works and the Independent Engineer determining the Tests for the Mandatory Facilities and/or Allied Facilities to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set out in Schedule J(a) (the “**Completion Certificate**”).

14.3 Provisional Certificate

- 14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule J(b) (the “**Provisional Certificate**”) if the Tests are successful and the Mandatory Facilities and/ or Allied Facilities can be safely and reliably placed in commercial operation though certain works or things

forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto, a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the **“Punch List”**); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

- 14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Mandatory Facilities and/or Allied Facilities, if it can be safely and reliably be placed in commercial operations in accordance with the provisions of Clause 14.3.1 (the **“Project Components”**). Upon issue of such Provisional Certificate, the provisions of this Agreement shall apply to Project Components, and the rights and obligations of the Concessionaire for and in respect of such completed part of the Mandatory Facilities and/or Allied Facilities shall be construed accordingly. The Concessionaire will remain obligated to complete the Punch List items within the prescribed period and to obtain all necessary Applicable Permits before starting commercial operations in accordance with Applicable Laws.

14.4 Completion of Punch List items

- 14.4.1 All items in the Punch List shall be completed by the Concessionaire within one hundred and twenty (120) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed of zero point one per cent (0.1%) of the Performance Security. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding one hundred and twenty (120) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.
- 14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5 Withholding of Provisional or Completion Certificate

- 14.5.1 If the Independent Engineer determines that the Mandatory Facilities and/or Allied Facilities or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of

the opinion that the Project is not fit and safe for commercial service, it shall, within seven (7) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Clause 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

- 14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate or Completion Certificate under Clause 14.3 or Clause 14.2, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

15. ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date -1 (COD-1)

The Mandatory Facilities shall be deemed to be complete when the Completion Certificate is issued under the provisions of Clause 14.

The Commercial Operation Date of the Mandatory Facilities shall be the date on which such Completion Certificate or provisional certificate is issued i.e. whichever is issued earlier, and the Concessionaire shall have obtained the Applicable Permits to operate the Mandatory Facilities or any particular project of the Mandatory Facilities as per specifications set forth in Schedule-B and applicable provisions of Schedule-C and Schedule-D (the “**Commercial Operations Date-1**” or “**COD-1**”). For avoidance of doubt, each Project Facility that forms part of Mandatory Facilities can enter into commercial service upon the Concessionaire obtaining the Provisional Certificate for the particular Project Facility i.e. even prior to obtaining the completion certificate. The Mandatory Facilities or any part thereof can enter into commercial service on COD-1 whereupon the Concessionaire shall be entitled to demand and collect User Fee from Users in accordance with the provisions of this Agreement.

15.2 Damages for delay

Subject to the provisions of Clause 12.5, if COD-1 does not occur prior to the ninety first (91st) day after the scheduled completion date for Mandatory Facilities, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of zero point one per cent (0.1%) of the amount of Performance Security for delay of each week until COD-1 is achieved. If COD-1 does not occur prior to three (3) years from the date of execution of this Agreement, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement in accordance with the provisions of this Agreement.

15.3 Commercial Operation Date -2 (COD-2)

The Allied Facilities shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Clause 14. The commercial operation date of Project shall be the date on which such Provisional Certificate or Completion Certificate(s) for the Allied Facilities is issued and the Concessionaire shall have obtained the Applicable Permits to operate the Allied Facilities (the “**Commercial Operations Date-2**” or “**COD-2**”). The Allied Facilities can enter into commercial service on COD-2 whereupon the Concessionaire shall be entitled to demand and collect User Fee from Users in accordance with the provisions of this Agreement.

15.4 Damages for delay

Subject to the provisions of Clause 12.5, if COD-2 does not occur prior to the ninety first (91st) day after the “**Scheduled Commercial Operations Date-2**” or “**Scheduled COD-2**”,

unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of zero point one per cent (0.1%) of the amount of Performance Security for delay of each week until COD-2 is achieved. If COD-2 does not occur prior to five (5) years from the date of execution of this Agreement, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement in accordance with the provisions of this Agreement.

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17. OPERATION AND MAINTENANCE

17.1.1 The Concessionaire shall take up operations and maintenance of the entire Project, including the Mandatory Facilities and Allied Facilities by itself or through third parties, as per Good Industry Practices. For the avoidance of doubt, irrespective of the operations and maintenance practice adopted by the Concessionaire, the Mandatory Facilities Revenue Share and Allied Facilities Revenue Share shall be due and payable to the Authority as per provisions of clause 5.2 of this Agreement.

The Concessionaire shall engage, an experienced Hospitality Operator(s), having prior experience of operating a hotel and/or convention and/or exhibition centre facility as specified in this clause 17.1.1, for the operation and maintenance of the Mandatory Facilities, which includes Convention & Exhibition Centre and Star Category Hotel, in conformity with the provisions of this Concession Agreement.

Project Facility	Prior experience of “Hospitality Operator”
For Star Category Hotel	operating one or more four (4) -star or equivalent or higher hotel(s) with a minimum capacity of seventy-five (75) guest rooms each and a minimum combined capacity of not less than two hundred and fifty (250) guest rooms for a minimum period of ten (10) years and operational as on the Bid Due Date of the RFP vide which the Selected Bidder has been selected.
For Convention & Exhibition Centre	operating one or more four (4)-star or equivalent or higher hotel(s) with combined Convention Facility capacity of not less than one thousand five hundred (1500) seating for a minimum period of ten (10) years and operational as on the Bid Due Date of the RFP vide which the Selected Bidder has been selected. OR operating a standalone air-conditioned convention and/or exhibition centre of not less than one thousand five hundred (1500) seating for a minimum period of ten (10) years and operational as on the Bid Due Date of the RFP vide which the Selected Bidder has been selected. Such air-conditioned convention and/or exhibition centre shall have hosted a minimum of 1 (one) MICE event of not less than 1000 delegates within the last five (5) years. (For the purpose of clarity, MICE shall mean Meetings, Incentives, Conventions, Exhibitions. Further, for avoidance of doubt, Marriages / Wedding Receptions shall not be considered as a MICE event)

Such engagement of the Hospitality Operator(s) shall be for a minimum period of five (5) years and shall be demonstrated by way of an O&M agreement with the Hospitality Operator(s). Any

such engagement shall be governed by the provision of clause 5.2 of this Agreement. The signing up of the O&M Agreement(s) with Hospitality Operator(s) is a CP2 condition as per this Concession Agreement. For the avoidance of doubt, the Selected Bidder/ Concessionaire may engage either separate or a single Hospitality Operator(s) for the Star Category Hotel and the Convention & Exhibition Centre, respectively, subject to each Hospitality Operator fulfilling the respective required credentials set forth in this clause 17.1.1.

Further, in case of the Selected Bidder having met the O&M Experience requirements of the Hospitality Operator(s) on its own, then in such case, the Concessionaire shall enter into an O&M Agreement with the Selected Bidder having the requisite experience, subject to the provisions of clause 5.2 of this Agreement. However, in the event that the Concessionaire chooses to select O&M Operator(s) other than the Selected Bidder having the requisite experience, then in such case the selected O&M Operator(s) shall need to have requisite prior experience of operating a hotel and/or convention and/or exhibition centre facility as specified in this clause 17.1.1, as well as atleast the equivalent experience of the Selected Bidder whose experience was used for qualifying for the conditions of the RFP. For the avoidance of doubt, any such selection and appointment of O&M Operator(s) shall be subject to the provisions of clause 5.2 of this Agreement.

17.1.2 During the Part-Operation Period and the Operation Period, the Concessionaire shall operate and maintain the Mandatory Facilities and Allied Facilities in accordance with this Agreement either by itself, or through third-party O&M Contractors and if required, modify, repair or otherwise make improvements to the Mandatory Facilities and/or Allied Facilities to comply with the provisions of this Agreement and the Maintenance Requirements for Mandatory Facilities and/or Allied Facilities as specified in Schedule K, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. For the avoidance of doubt, irrespective of the operations and maintenance practice adapted by the Concessionaire, the Mandatory Facilities Revenue Share and Allied Facilities Revenue Share shall be due and payable to the Authority as per provisions of clause 5.2 of this Agreement.

17.1.3 The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted use of Mandatory Facilities and Allied Facilities during normal operating conditions;
- (b) collecting, appropriating and sharing with the Authority, the Project Revenues as per the terms of this Agreement;
- (c) carrying out periodic preventive maintenance of the Mandatory Facilities and Allied Facilities;

- (d) undertaking routine maintenance including prompt repairs of cracks, joints, drains, markings, lighting, signs and other control devices;
- (e) undertaking major maintenance such as repairs to structures and refurbishment of parking system and other equipment;
- (f) preventing, with the assistance of concerned law enforcement agencies, if necessary, any unauthorized use of the Mandatory Facilities and Allied Facilities;
- (g) preventing, with the assistance of the concerned law enforcement agencies, if necessary, any encroachments on the Site;
- (h) protection of the environment and provision of equipment and materials therefor;
- (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Mandatory Facilities and Allied Facilities;
- (j) complying with Safety Requirements in accordance with Clause 18.

17.1.4 The Concessionaire shall remove promptly from the Site, all surplus construction machinery and materials, waste materials (including hazardous materials and wastewater), rubbish, debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

17.2 **Maintenance requirements**

The Concessionaire shall procure that at all times during the Part-Operation Period and the Operation Period, the Mandatory Facilities and Allied Facilities conform to the maintenance requirements set forth in Schedule K (the “**Maintenance Requirements**”).

17.3 **Maintenance Manual**

17.3.1 No later than ninety (90) days prior to the Scheduled COD-1, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the “**Mandatory Facilities Maintenance Manual**”) for the regular and preventive maintenance of the Mandatory Facilities in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide five (5) copies thereof to the Authority and two (2) copies to the Independent Engineer. The Mandatory Facilities Maintenance Manual shall be revised and updated once every three (3) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

No later than ninety (90) days prior to the Scheduled COD-2, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the “**Allied Facilities Maintenance Manual**”) for the regular and preventive maintenance of the Allied Facilities in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide five (5)

copies thereof to the Authority and two (2) copies to the Independent Engineer. The Allied Facilities Maintenance Manual shall be revised and updated once every three (3) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

Mandatory Facilities Maintenance Manual and Allied Facilities shall collectively be referred to as “**Maintenance Manual**”.

- 17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Mandatory Facilities and Allied Facilities, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.4 **Maintenance Programme**

- 17.4.1 On or before COD-1 and/or COD-2 and no later than forty-five (45) days prior to the beginning of each Accounting Year during the Part-Operation Period and the Operation Period, as the case may be, the Concessionaire shall provide to the Authority, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Mandatory Facilities and Allied Facilities;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for major maintenance works and the scope thereof.

- 17.4.2 Within thirty (30) days of receipt of the Maintenance Programme, the Authority or Independent Engineer, as the case may be, shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements. By submitting the Maintenance Programme for review to the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the Maintenance Programme is in conformity with the Maintenance Requirements, Maintenance Manual, Safety Requirements and Good Industry Practice.

No review and/or observation of the Authority, Independent Engineer or the Authority's and/or its failure to review and/or convey its observations on Maintenance Programme shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority or Independent Engineer be liable for the same in any manner.

- 17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply *mutatis mutandis* to such modifications.

17.5 Modifications/Renovation to the Mandatory Facilities and Allied Facilities

The Concessionaire shall not carry out any material modifications to the Mandatory Facilities and/ or Allied Facilities, save and except where such modifications are necessary for the Mandatory Facilities to operate in conformity with the approved Detailed Project Report, Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Authority of the proposed modifications along with particulars thereof at least fifteen (15) days before commencing work on such modifications and shall reasonably consider any suggestions that the Authority may make within fifteen (15) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws, Good Industry practice and the provisions of this Agreement.

The Concessionaire shall renovate the Mandatory Facilities and/or Allied Facilities to then contemporary international standards with new interiors, furniture, furnishing, facilities, technology and services every fifteen (15) years or such longer period as may be permitted by the Authority.

For the avoidance of doubt, even in case the Mandatory Facilities and/or Allied Facilities, or part thereof, are not in operations due to renovation/ maintenance, the Concession Fee shall be payable for such periods.

17.6 Authority's right to take remedial measures

- 17.6.1 In the event the Concessionaire does not maintain and/or repair the Mandatory Facilities and/or Allied Facilities or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within fifteen (15) days of receipt of such notice from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire.

- 17.6.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs specified in Clause 17.6.1 directly from the Escrow

Account as if such costs were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.6.2 and debit the same to O&M Expenses.

17.7 Overriding powers of the Authority

17.7.1 If in the reasonable opinion of the Authority, the Concessionaire is in Breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.7.2 In the event that the Concessionaire, upon notice under Clause 17.7.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.7.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.6.

17.7.3 In the event of a national Emergency, or any other act specified in Clause 27.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Clause 27. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.7, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.8 Restoration of loss or damage

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy

such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

17.9 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Mandatory Facilities is not available to public on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Mandatory Facilities except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Authority, the effect of which is to close all or any part of the Mandatory Facilities, except where such directions of any Government Authority have been issued in because of the failure of the Concessionaire to act in accordance with the law:

Provided, that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority without any delay.

18. SAFETY REQUIREMENTS

18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users and other persons present at the Site. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project and shall comply with the safety requirements set forth in Schedule L (the “**Safety Requirements**”). The Concessionaire shall take all necessary precautions required under Applicable Laws to avoid any accidents, health hazards, pollution of air, water or land arising out of the implementation of the Project.
- 18.1.2 During the Construction Period, the Independent Engineer shall carry out the safety audit of the Mandatory Facilities and Allied Facilities in accordance with the Safety Requirements and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the Works and services included in the Scope of the Project.

18.3 Safety Requirements during Project Operations

- 18.3.1 The Concessionaire shall ensure compliance to all safety requirements at the Project for securing the safety of the Users and other persons present at the Site / Project / Project Assets, during the operations / concession period, that shall not be limited to Fire Safety or any other safety protocols that may be required to be followed for checking including but not limited to frisking of Users entering the Project, use of CCTV, Security personnel, safety signages, etc.
- 18.3.2 At all times during the Concession Period, the Concessionaire shall take necessary safety measures for securing the safety of the Users and other persons present at the Site / Project / Project Assets as may be necessary from time to time, not limited to that prescribed by the local authorities or police, from time to time.

19.MONITORING OF OPERATION AND MAINTENANCE

19.1 Quarterly status reports

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

The quarterly status reports shall be deemed as a self-certification from the Concessionaire with respect to compliance with Maintenance Manual, Maintenance Programme and Safety Requirements. However, the Authority shall have the right to review and verify the information stated therein by itself or through the Independent Engineer.

During the Operation Period, the Concessionaire shall, no later than seven (7) days after the close of each quarter, furnish to the Authority, a quarterly report stating in reasonable detail a comprehensive statement of the Allied Facilities including its compliance or otherwise with the Safety Requirements, operations status, and shall promptly give such other relevant information as may be required by the Authority.

19.2 Tests

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

No review and/or observation of the Authority or Independent Engineer and/or its failure to review and/or convey its observations on Tests shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority, or the Independent Engineer be liable for the same in any manner.

19.3 Remedial measures

19.3.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the Quarterly status reports or as identified at any time by the Authority or the external agency

appointed by the Authority through a written notice issued by the Authority and furnish a report in respect thereof to the Authority within fifteen (15) days of receiving such notice; provided that where the remedying of such defects or deficiencies is likely to take more than fifteen (15) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.3.2 The external agency appointed by the Authority may require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Mandatory Facilities and/or Allied Facilities into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.3 shall be repeated until the Mandatory Facilities and/or Allied Facilities conform to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.7.

20. INDEPENDENT ENGINEER

20.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm set forth in Schedule M, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than ninety (90) days from the date of this Agreement and shall be continued until the lapse of twelve (12) months from the achievement of COD-2. The appointment may thereafter be renewed for such period as the Authority deems fit.

20.2 Duties and functions

20.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-N, subject to change in the terms of reference as deemed appropriate by the Authority from time to time.

20.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-N.

20.2.3 A true copy of all communications sent by the Authority to the Independent Engineer and the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

20.2.4 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

20.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule M. The Concessionaire shall reimburse its portion of the Independent Engineer cost and expenses to the Authority within fifteen (15) days of receiving a statement of expenditure from the Authority, failing which it shall accrue penal interest at the rate of fifteen percent (15%) of such amount per annum for the period that shall be computed from the date of the amount being due until and including the day of remittance of the amount to the Authority.

20.4 Termination of Appointment

20.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 20.1.

20.4.2 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 appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 20.1.

20.5 Authorised signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to two (2) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

20.6 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.

20.7 Interim arrangement

In the event that the Authority has not appointed an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when the Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 20.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

21.FINANCIAL CLOSE

21.1 Financial Close

21.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within one hundred and eighty (180) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding thirty (30) days, subject to payment of Damages to the Authority in a sum calculated at the rate of zero point zero five per cent (0.05%) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week and the period beyond the said one hundred and eighty (180) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.2.

21.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, not later than two (2) days after the Financial Close, three (3) true copies of the proof of funds required to develop the Mandatory Facilities and the Financial Model, duly attested by a Director of the Concessionaire, along with three (3) soft copies of the financial model in MS excel version or any substitute thereof, which is acceptable to the Senior Lenders.

21.2 Termination due to failure to achieve Financial Close for the Project

21.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 27.6.1, in the event that Financial Close for the Project does not occur, for any reason whatsoever, within the period set forth in Clause 21.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement, shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

21.2.2 Upon Termination under Clause 21.2.1, the Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close for the Project has not occurred due to Force Majeure or as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, release the Performance Security forthwith.

22. PAYMENT TO THE AUTHORITY

22.1 Upfront Fee

In consideration of the Concessionaire being granted the right to undertake the development, operations and maintenance of the Project, subject to and in accordance with this Agreement, on or prior to the Appointed Date, the Concessionaire shall pay to the Authority a one-time non-refundable fee of INR [•] (Rupees [•]) (“**Upfront Fee**”).

The Upfront Fee shall be subject to applicable Taxes, which other than income Tax incident on the Authority, shall be borne by the Concessionaire, as a bullet payment.

The Parties acknowledge and agree that this Upfront Fee is non-refundable and payable only once during the concession period of 33 years. In the event of extension of the Agreement for a further period of 33 years, a fresh upfront fee as mutually decided upon shall be paid by the Concessionaire.

22.2 Concession Fee

22.2.1 In consideration of the Concessionaire being granted the right to undertake the operations, maintenance and management of the Project, subject to and in accordance with this Agreement, the Concessionaire undertakes to pay to the Authority, starting from the respective COD-1 and/or COD-2, as the case may be, a Concession Fee, on a quarterly basis, which shall be calculated as follows:

- (a) a revenue share amount equal to 5% of the Gross Revenue arising out of or in relation to the Mandatory Facilities (**the “Mandatory Facilities Revenue Share”**);
- (b) a revenue share amount equal to 5% of the Gross Revenue arising out of or in relation to the Allied Facilities (**“Allied Facilities Revenue Share”**)

The Concession Fee shall be payable by the Concessionaire, as the case may be, to the Authority not later than ten (10) days from the end of each quarter of an accounting year, failing which it shall accrue penal interest at the rate of fifteen percent (15%) of such amount per annum for the period that shall be computed from the date of the amount being due until and including the day of remittance of the amount to the Authority..

Within sixty (60) days from the end of each Accounting Year, the Concessionaire shall submit to the Authority a report from its internal auditor certifying the gross revenue arising out of or in relation to the Mandatory Facilities Revenue and the gross revenue arising out of or in relation to the Allied Facilities Revenue (together referred to as **“Project Revenues”**) as well as the Mandatory Facilities Revenue share and the Allied Facilities Revenue share during the Accounting Year. Upon review of the actual amount paid to Authority as Concession Fee during the Accounting Year with the Project Revenues certified by the Concessionaire’s internal auditor, the difference in the amount due and the amount paid shall be reconciled. In the case the Concession Fee paid is less than the reconciled Concession Fee, the Concessionaire

shall pay the balance amount of Concession Fee along with the accrued interest within fifteen (15) days of such reconciliation. In case the Concession fee paid exceeds the reconciled Concession Fee, the balance amount shall be adjusted by the Concessionaire in the payment of Concession Fee for the subsequent period.

22.2.2 Minimum Guarantee Revenue (“MGR”) is the assured amount of revenue that a Concessionaire commits to pay to the Authority, regardless of the Project Revenues generated in an accounting year. With effect from the Accounting Year 4 of the Concession Period, the MGR shall start from the base value of INR 3,00,00,000 (Rupees Three Crore). Thereafter MGR shall escalate by 15% at the end of every three-year period.

22.2.3 For each relevant payment period during the Concession Period, the Concessionaire shall pay to the Authority an amount equal to the higher of:

- (a) the Revenue Share determined as per Clause 22.2.1; or
- (b) the applicable MGR as per Clauses 22.2.2 above.

For the avoidance of doubt, the MGR is not payable in addition to the Revenue Share; only the higher of the two amounts is payable in any given period.

22.2.4 The Authority may in order to satisfy itself that the Concessionaire is reporting its Project Revenues honestly and faithfully, depute its representatives at the offices of the Concessionaire and/or the O&M Operators and/or the Licensees, and undertake such measures as it may deem necessary to ascertain the actual Project Revenues. The Authority may call upon any data, information, log, sheet, document or statement from the Concessionaire and/or its Licensees, within thirty (30) days, as it may deem fit and necessary for the purposes of determination of the Project Revenues. The Authority shall further have the right, but not the obligation, to appoint its own auditor to ascertain the Project Revenues in any Accounting Year. If the Authority’s auditor finds that the Project Revenues reported by the Concessionaire are in order or more than the Project Revenues determined by the auditor, the cost of the auditor shall be borne entirely by the Authority.

22.2.5 The Parties further agree that in the event that the Project Revenues declared by the Concessionaire (on the basis of which the Mandatory Facilities Revenue Share and/or Allied Facilities Revenue Share is determined and paid by the Concessionaire or on its behalf to the Authority) is less than the Project Revenues of the Project determined by Authority pursuant to Clause 22.2, the differential amount, along with accrued interest as per this Clause 22.2.5, shall be payable within thirty (30) days by the Concessionaire to the Authority upon

such determination by Authority and shall accrue penal interest at the rate of eight percent (8%) above the prevailing 1-year SBI MCLR of such amount per annum for the period from the date of start for that particular Accounting Year and until the date of actual payment of the differential amount. In the event that Project Revenues declared by the Concessionaire are found to be less than that determined by the Authority as provided in this Clause 22, the cost of such determination, including the auditor fee, shall be recovered from the Concessionaire. If such under reporting of Project Revenues by the Concessionaire is found to be greater than ten percent (10%) of the Project Revenues determined by the Authority's auditor, in addition to the penal interest set out in this Clause 22.2.5, a penalty equal to five percent (5%) of the Project Revenues determined for the relevant accounting year shall be payable by the Concessionaire to the Authority.

22.2.6 The Concessionaire shall pay to the Authority, as land lease rent, an Annual Lease Rental at the rate of INR 130 per square metre, which shall escalate by fifteen percent (15%) at the end of every three (3) year period. Such Annual Lease Rental shall be payable quarterly in advance, before the commencement of each quarter during the Concession Period, with effect from the handover of the land by the Authority to the Concessionaire.

22.3 Particulars and Timeline of Payments

S. No.	Particulars	Mode of Payment	Amount	Payable by	Timeline
1.	Performance Security	Performance Bank Guarantee	An amount equal to INR 6,00,00,000 (Rupees Six Crore)	Concessionaire	45 days from signing of Letter of Award
2.	Upfront fee	Demand Draft	Quoted by the successful bidder	Concessionaire	30 days from signing of concession agreement
3.	Annual Lease Rental	Escrow Account	Annual Lease Rental of INR 130 per sqm to the Authority (to be escalated @15% every 3 years)	Concessionaire	To be paid before commencement of every quarter
4.	Revenue share	Escrow Account	5% for Mandatory Facilities 5% for Allied Facilities	Concessionaire	To be paid before commencement of every quarter

22.4 Applicable Taxes

Any or all taxes applicable on the payment to the Authority shall be over and above the amounts mentioned in this Clause 22 and shall be payable by the Concessionaire as and when such taxes fall due.

23.PROJECT REVENUES

23.1 Collection and appropriation of Project Revenues

- 23.1.1 On and from the COD-1 till the Transfer Date, the Concessionaire shall have the right to demand, collect and appropriate Project Revenues in respect of the use of Project Facilities or the goods, services facilities or amenities provided thereat and shall have the right to demand, collect and appropriate fee from users of the Project Facilities developed within the Project Site in accordance with this Agreement; provided that the same shall be in compliance with the requirements, if any, under the Applicable Laws, terms of Applicable Permits and Good Industry Practice
- 23.1.2 The Concessionaire acknowledges and agrees that the Authority shall be charged zero fee for its use or for the use of any other Government body of the Convention & Exhibition Centre for a period of fifteen (15) days over one or several or consecutive periods of use in every calendar year, during the term of this Agreement. The Parties agree that such fifteen (15) days in a calendar year shall be identified and intimated to the Concessionaire in writing three (3) months in advance in each case. It is hereby clarified that even a part usage of the convention hall and/or exhibition space by the Authority shall be treated as a full day usage of the Convention & Exhibition Centre for the purposes of this clause. It is further stated that the free use period for the Authority as provided in this Clause shall expire at the end of each Accounting Year and shall not be carried forward to succeeding Accounting Year(s) regardless of the actual utilisation of the free use period by the Authority.
- 23.1.3 Subject to Clause 23.1.2, the Parties hereto acknowledge and agree that the Concessionaire shall have the right to enhance, modify, alter, revise the User Fee at its own discretion and notify the same to the Authority on a quarterly basis.

23.2 Collection & Handling

- 23.2.1 The Concessionaire shall be liable for the loss of any User Fee collected by it or its agents or servants whether by fraud, misappropriation, theft, accident, event of Force Majeure or any other event or circumstance whatsoever.
- 23.2.2 The Concessionaire shall put in place, prior to the receipt of any of the User Fee, security measures necessary for handling, deposit and protection of User Fee from loss, theft or destruction. Notwithstanding such security measures (i) all money being held by the

Concessionaire shall at all times be insured against loss due to but not limited to theft, loss, fire and natural disasters and (ii) the Concessionaire shall remain liable for timely payment of Concession Fee to the Authority in accordance with the terms of this Agreement.

23.2.3 All User Fee/ Project Revenues collected by the Concessionaire or O&M Operator or development partner(s) of the Concessionaire shall necessarily be deposited in the respective Escrow Account of the Facility / Project Asset.

24.ESCROW ACCOUNT

24.1 Escrow Account

24.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank, acceptable to the Authority (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement. Provided that the Escrow Bank shall not be a Senior Lender for the Project.

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

24.2 Deposits into Escrow Account

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

- (a) all monies received in relation to the Project from Banks, other lenders, shareholders and insurance companies; and
- (b) all revenues from or in respect of the Project, including the proceeds of any rentals, sub-licence premium, rent, deposits, capital receipts or insurance claims.

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

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

- (a) Termination payments, if any, to be made by the Authority after deduction of any outstanding Concession Fee.

24.3 Withdrawals during Concession Period

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

- (a) all Taxes, due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to Construction Works, subject to and in accordance with the conditions, if any, set out in the Financing Agreements;
- (c) Concession Fee due and payable to the Authority;

- (d) Other costs and expenses incurred by the Authority in accordance with the provision of this Agreement, and certified by the Authority as due and payable to it;
- (e) 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;
- (f) 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;
- (g) monthly proportionate provision of Debt Service due in an Accounting Year;
- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirement set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

24.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 24.3.1 above except with the prior written approval of the Authority.

24.4 Withdrawals upon Termination

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

- (a) all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) ninety per cent (90%) of the Debt Due excluding Subordinate Debt;
- (c) outstanding 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 Clause 32;
- (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 appropriation shall be made under sub-clause (j) of this Clause 24.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Clause 31.

24.4.2 The provisions of this Clause 24 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in clause 24.4.1 has been discharged.

24.4.3 In addition to the Escrow Account, the Concessionaire and the Licensees (if applicable) shall set up separate escrow accounts for each Allied Facility (the “**Ancillary Escrow Accounts**”) wherein the Authority shall have first charge over the Allied Facilities Revenue Share for the respective Allied Facilities. The Concessionaire shall submit the draft of each proposed Ancillary Escrow Account agreement (as per the escrow agreement format shared/ approved by the Authority) to the Authority for prior approval, which approval the Authority shall grant within a period of fifteen (15) days of submission of the agreement subject to the Ancillary Escrow Account providing first charge on Project Revenues (to the extent of 5% of the Gross Revenue arising out of or in relation to the Allied Facilities).

25.INSURANCE

25.1 Insurance during the Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period, and/or Part-Operation Period, and/or the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements, and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also affect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

25.2 Insurance Cover

Without prejudice to the provisions contained in Clause 25.1, the Concessionaire shall, during the Construction Period, the part-operation period and the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- (c) the Concessionaire's general liability arising out of the Concession;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

25.3 Notice to the Authority

No later than thirty (30) days prior to commencement of the Construction Period or the Part-Operation Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to affect and maintain in accordance with this Clause 25. Within thirty (30) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such

other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

25.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Clause 25 shall be maintained with insurers on terms consistent with Good Industry Practice. Within fifteen (15) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least forty five (45) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

25.5 Remedy for failure to insure

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

25.6 Waiver of subrogation

All insurance policies in respect of the insurances obtained by the Concessionaire pursuant to this Clause 25 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, nominated agencies, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

25.7 Concessionaire's waiver

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

25.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 24.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery 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.

25.9 Compliance with conditions of insurance policies

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with the conditions imposed under the insurance policies affected in accordance with the provisions of this Agreement.

26.ACCOUNTS AND AUDIT

26.1 Audited accounts

- 26.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues derived/collected by it from or on account of the Project and the Site and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide to the Authority two (2) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within ninety (90) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by the Concessionaire to the Authority under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 26.1.2 The Concessionaire shall, within thirty (30) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter for the Concessionaire.
- 26.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the occupancy of the Project Facilities (b) User Fee charged and received and other revenues derived from the Project / Site / Project Facilities, (c) annual gross revenue earned from the Project / Site / Project Facilities, and (d) such other information as the Authority may reasonably require.

26.2 Appointment of auditors

- 26.2.1 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a reputed firm of its choice. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 26.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of forty-five (45) days to the Authority, subject to the replacement Statutory Auditors being appointed.
- 26.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) of its choice to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

26.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors.

26.4 Set-off

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

26.5 Dispute Resolution

In the event of there being any difference between the findings of the Additional Auditors or the Statutory Auditors, as the case may be, and the certification provided by the Statutory Auditors, such auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

27.FORCE MAJEURE

27.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all events, as defined in Clause 27.2, if it prevents the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”), of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice.

27.2 Force Majeure Event

A Force Majeure Event shall mean one or more of the following acts or events:

- (a) acts of God, epidemic, cyclone, landslide, lightning, earthquakes, volcanic eruption, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site),;
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of twenty-four (24) hours and an aggregate period exceeding thirty (30) days in an Accounting Year;
- (c) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action;
- (e) industry-wide or State-wide strikes or industrial action for a continuous period of twenty-four (24) hours and exceeding an aggregate period of thirty (30) days in an Accounting Year;
- (f) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors; or

27.3 Duty to report Force Majeure Event

27.3.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 27 with evidence in support thereof;

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

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

In the event the Affected Party is the Concessionaire, it shall endeavour to continue to perform its obligations as far as reasonably practicable and shall notify the Authority and the Independent Engineer of any proposals, including any reasonable alternative means for performance, but shall not effect such proposals without the consent of the Authority.

27.3.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 27.3.1, and such other information as the other Party may reasonably request the Affected Party to provide.

27.4 Effect of Force Majeure Event on the Concession

27.4.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent and in Clause 21.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is unable to collect Project Revenues despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Authority shall consider the impact of any such Force Majeure Event and provide appropriate remedies in accordance with the provisions of Applicable Laws.

27.5 Allocation of costs arising out of Force Majeure

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

Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “Force Majeure Costs”) shall be borne by the respective parties; i.e., the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.

Save and except as expressly provided in this Clause 27, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

27.6 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of one hundred and eighty (180) days or more within a continuous period of three hundred and sixty five (365) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Clause 27, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant fifteen (15) days’ time to make a representation, and may after the expiry of such fifteen (15) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

27.7 Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

27.8 Excuse from performance of obligations

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

27.9 Deleted

27.10 Termination Payment for Force Majeure Event

27.10.1 If Termination is on account of a Force Majeure Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then eighty per cent (80%) of such unpaid claims shall be included in the computation of Debt Due; and
- (b) One hundred and ten per cent (110%) of the Adjusted Equity.

27.10.2 It is clarified that for the purpose of computation of Force Majeure Costs, if any, under this Clause 27, the computation shall be limited to and only account for expenditure directly attributable towards the development and/or operations of Mandatory Facilities.

The Authority shall not be liable/accountable to pay any Force Majeure Costs attributed to the Allied Facilities in any way.

28.INTENTIONALLY LEFT BLANK

29. SUSPENSION OF CONCESSIONAIRE'S RIGHTS

29.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Project Revenues, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding one hundred and eighty (180) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of one hundred and eighty (180) days by a further period not exceeding ninety (90) days.

29.2 Authority to act on behalf of Concessionaire

29.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all User Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Accounts. The Authority shall be entitled to make withdrawals from the Escrow Accounts for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 24.3.

29.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 29.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

29.3 Revocation of Suspension

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

29.4 **Substitution of the Concessionaire**

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Financing Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding one hundred and eighty (180) days from the date of Suspension, and any extension thereof under Clause 29.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

29.5 **Termination**

- 29.5.1 At any time during the period of Suspension under this Clause 29, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 29.3, the Authority shall, within fifteen (15) days of receipt of such notice, terminate this Agreement under and in accordance with Clause 30 as if it is a Concessionaire Default.
- 29.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within one hundred and eighty (180) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 29.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

30. TERMINATION

30.1 Termination for Concessionaire Default

30.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of sixty (60) days, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of fifteen (15) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of sixty (60) days or one hundred and twenty (120) days, respectively;
- (c) the Concessionaire abandons or manifests intention to abandon the construction of Mandatory Facilities or operation of the Mandatory Facilities without the prior written consent of the Authority;
- (d) COD-2 does not occur within the period specified in Article 12;
- (e) COD-1 does not occur within the period specified in Article 12;
- (f) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (g) an Escrow Default has occurred, and the Concessionaire fails to cure the default within a Cure Period of thirty (30) days;
- (h) upon occurrence of any default under the Financing Agreements, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Financing Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (i) a breach of any of the Project Agreements by the Concessionaire;
- (j) the Concessionaire creates any Encumbrance in breach of this Agreement;

- (k) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (l) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire;
- (n) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (o) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets;
- (p) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted;
- (q) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within ninety (90) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction;

provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

- (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
- (iii) each of the Project Agreements remains in full force and effect;
- (r) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (s) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which is false;

- (t) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (u) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement; or
- (v) the Concessionaire commits a default in complying with any other provision of this Agreement.
- (w) a breach of any of its obligations under the Lease Deed

30.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant thirty (30) days to the Concessionaire to make a representation, and may after the expiry of such thirty (30) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 30.1.3.

30.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 30.1.2 to inform the Lenders' Representative and grant thirty (30) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Financing Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding one hundred and eighty (180) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Financing Agreement:

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

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

30.2 **Termination for Authority Default**

30.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of ninety (90) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach

of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority repudiates this Agreement;
- (c) The Authority is in breach of any representation or warranty made under this Agreement, or it repudiates this Agreement; or
- (d) Any defect in the title, ownership and possession of the Authority with respect to the Site.

30.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Financing Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant thirty (30) days to the Authority to make a representation, and may after the expiry of such thirty (30) days, whether or not it is in receipt of such representation, issue the Termination Notice.

30.3 Termination Payment

30.3.1 Upon Termination on account of a Concessionaire Default during the Part-Operation Period and the Operation Period, the Authority shall deposit in the Escrow Account, by way of Termination Payment, an amount equal to ninety per cent (90%) of the Debt Due less Insurance Cover which will be payable to the Senior Lenders subject to clause 4.2 of Schedule O; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then eighty per cent (80%) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, it is hereby acknowledged by the parties herein that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD-1, save and except as provided in Clause 30.3.3.

30.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) Debt Due; and
- (b) one hundred and fifty per cent (150%) of the Adjusted Equity.

30.3.3 Upon Termination on account of Concessionaire Default during the Construction Period, prior to the beginning of the Part-Operation Period, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first forty per cent (40%) of the Total Project Cost and in the event of expenditure exceeding such forty per cent (40%) and forming part of Debt Due, the provisions of Clause 30.3.1 shall, to the extent applicable to Debt Due, apply for

and in respect of the expenditure exceeding such forty per cent (40%). The Parties also agree that for determining the Termination Payment under this Clause 30.3.3, only the expenditure comprising and up to the latest Project Milestone shall be reckoned.

30.3.4 Termination Payment shall become due and payable to the Concessionaire within ninety (90) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to the prevailing 1-year SBI MCLR on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed a further period of 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

30.3.5 The Concessionaire expressly agrees that Termination Payment under this Clause 30 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

30.3.6 An independent chartered accountant/ auditor and independent valuer shall be appointed by Authority, as the case may be, for audit of the accounts and construction the Concessionaire for arriving at the payments due for refund to the Concessionaire as above. The cost of the independent chartered accountant/auditor and independent valuer shall be deducted from the amount due for refund to the Concessionaire in terms of Clause 30.3.2(b) above.

30.4 Certain limitations on Termination Payment

30.4.1 Termination Payment due and payable under this Agreement shall be computed with reference to the Debt Due and Adjusted Equity, as the case may be, in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, the Parties agree that within a period of sixty (60) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment. The Parties further agree that in the event such disaggregation is not notified to the Authority, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. It is further agreed that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed Seventy per cent (70%) of the Total Project Cost.

30.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take control of the Site, Project/Project Facilities forthwith;

- (b) terminate the Lease Deed;
- (c) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (d) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (e) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 31.1; and
- (f) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority selects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

30.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 30.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money, damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

31.DIVESTMENT OF RIGHTS AND INTERESTS

31.1 Divestment Requirements

31.1.1 Upon Termination, the Concessionaire shall comply with and confirm to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all the Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Financing Agreement;
- (c) cure all Project Assets, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

31.2 **Inspection and cure**

Not earlier than ninety (90) days prior to termination but not later than fifteen (15) days prior to the effective date of such Termination, the Authority and/or the engineer appointed by the Authority shall verify, after giving due notice to the Concessionaire of the time, date and place of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Clause 32 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Clause 31.

31.3 **Cooperation and assistance on transfer of Project**

- 31.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.
- 31.3.2 The Parties shall provide to each other, nine (9) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of six (6) months after the Transfer Date.
- 31.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any Encumbrance all or any part of the plant and machinery used in connection with the Project, but which does not form part of the assets specified in Clause 31.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.
- 31.3.4 Notwithstanding anything contained in any clause of this Concession Agreement or any annexure thereto mentioned in the Schedule thereof, the Parties hereby agree and undertake that they will be bound by the following clauses:
- a) That on the expiry of period of Concession mentioned in Clause 2.2.1 i.e., 33 years, or the eventualities as mentioned therein including termination of the Agreement, the Concessionaire and any person(s) claiming through or under them shall forthwith stop all operations on the land, remove themselves out and handover the said Project / Project Site, free of cost, to the State Government of Andhra Pradesh or any of its nominated authority, within the period as stipulated in the said Clause.

- b) In the event however, the Concessionaire or any person(s) claiming through or under them fails to comply and handover the same, the Collector and District Magistrate who is the head of the revenue lands, is hereby empowered to forthwith resume the Project /Project Site in question, take possession thereof and stop all operations of the Concessionaire or any other person(s) claiming through or under them or any person(s) and physically remove with the help of uniform force of the State of Andhra Pradesh be it Police or Home Guards as the case may be, and lock and seal the entire place and pass further Orders as regards any restriction or entry thereof.
- c) It is further agreed the Concessionaire and each of the persons claiming through the Concessionaire would have agreed and undertaken to bind themselves with this clause which is inserted in greater public interest to protect the rights of the Government of Andhra Pradesh and the Public Exchequer and that all rights, if any, assuming there be, without admitting, any of the Concessionaire and any other person(s) claiming through them shall cease to be in operation and shall stand surrendered to and vested in the Government of Andhra Pradesh in public interest.

It is further agreed that notwithstanding any provision of the Notice Inviting Tender, RFP Document, Concession Agreement or any of the Annexures hereto, the aforesaid clauses will prevail and bind the Parties at all times, and shall further survive Termination of this Agreement.

31.4 Vesting Certificate

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

31.5 Divestment costs

- 31.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 31.5.2 In the event of any Dispute relating to matters covered by and under this Clause 31, the Dispute Resolution Process shall apply.

32.DEFECT LIABILITY AFTER TERMINATION

32.1 Liability for defects for Mandatory Facilities and Allied Facilities

The Concessionaire shall be responsible for all defects and deficiencies in the Mandatory Facilities and/or Allied Facilities for a period of one hundred and eighty (180) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Mandatory Facilities and/or Allied Facilities during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of fifteen (15) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Mandatory Facilities and/or Allied Facilities conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within fifteen (15) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 32.2. For the avoidance of doubt, the provisions of this Clause 32 shall not apply if Termination occurs prior to COD-1.

32.2 Retention in Escrow Account

- 32.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.2.3, a sum equal to five per cent (5%) of the Gross Revenue for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of two hundred and seventy (270) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 32.1.
- 32.2.2 Without prejudice to the provisions of Clause 32.3.1, the Authority and/or the Independent Engineer shall carry out an inspection of the Project at any time between two hundred and ten (210) and one hundred and eighty (180) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 32.3.1 should be retained in the Escrow Account and for a period longer than the aforesaid one hundred and twenty (120) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 32.2.3 The Concessionaire may, for the performance of its obligations under this Clause 32, provide to the Authority a guarantee from a Nationalised Bank for a sum equivalent to the amount determined under Clause 32.2.1, to the satisfaction of the Authority, and for the period specified therein, substantially in the form set forth in Schedule F (the “**Additional Performance Guarantee**”), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this

Clause 32. Upon furnishing of a Performance Guarantee under this Clause 32.2.2, the retention of funds in the Escrow Account in terms of Clause 32.2.1 shall be dispensed with.

33.ASSIGNMENT AND CHARGES

33.1 Restrictions on assignments and charges

33.1.1 Subject to Clause 33.2, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

33.2 Permitted assignment and charges

The restrains set out in Clause 33.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/ pledges/ hypothecation of goods/ assets and their related documents of title, arising or created in the ordinary course of business, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Mandatory Facilities, as permitted by the provisions of this Agreement. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- (c) assignment of rights (including development rights and rights over any receivable and/or revenue from the Project), interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by as security for financing provided by Senior Lenders under the Financing Agreements;
- (d) liens or encumbrances required by any Applicable Law.

Provided that in all of the above cases, the Concessionaire shall intimate the Authority within seven (7) days of such assignment.

33.3 Financing Agreement

33.3.1 Upon written request of the Concessionaire, the Authority shall sign necessary agreements/ no-objection certificates (NOCs) required by Senior Lenders and to enable the Concessionaire to raise debt financing for the Project.

33.3.2 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire (the "**Financing Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, pursuant to the agreement for substitution of the Concessionaire on behalf of Senior Lenders, as set forth in the Financing Agreement.

33.3.3 Upon substitution of the Concessionaire under and in accordance with the Financing Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of one hundred and twenty (120) days to the Concessionaire for curing such breach.

33.4 Substitution by the Authority

33.4.1 In the event the Lenders' Representatives fail to appoint a Nominated Company substituting the Concessionaire in accordance with the provisions of Financing Agreement within a period of thirty (30) days, then the Authority may, in its sole discretion, appoint such other company, through a process of competitive bidding in compliance with the Applicable Laws, substituting the Concessionaire which shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire.

33.5 Assignment by the Authority

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

34.INTENTIONALLY LEFT BLANK

35.LIABILITY AND INDEMNITY

35.1 General indemnity

35.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Authority, designate GoI and GoG agencies and Authority owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties including Concessionaire’s employees, for any loss, damage, cost, compensation and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of law or any of its obligations under this Agreement or any related agreement or due to any breach by the Contractors or sub-contractors appointed by the Concessionaire or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority or to any User from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

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

35.2 Indemnity by the Concessionaire

35.2.1 Without limiting to the generality of Clause 35.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and Authority Indemnified Persons from and against any and all losses and / or damages arising out of or with respect to:

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

35.2.2 Without limiting the generality of the provisions of this Clause 35, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

35.3 **Notice and contest of claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Clause 35 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within fifteen (15) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

35.4 **Defence of claims**

35.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Clause 35, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses

incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

35.4.2 If the Indemnifying Party has exercised its rights under Clause 35.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonable withheld or delayed).

35.4.3 If the Indemnifying Party exercises its rights under Clause 35.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

Provided that if sub-clauses (b), (c) or (d) of this Clause 35.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

35.5 **No consequential claims**

Notwithstanding anything to the contrary contained in this Clause 35, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

35.6 Survival on Termination

The provisions of this Clause 35 shall survive Termination.

36. RIGHTS AND TITLE OVER THE SITE

36.1 Lease rights over the Site

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as sole lessee subject to and in accordance with this Agreement and the Lease Deed (Schedule Q), and to this end, it may regulate the entry and use of the said Site and any Project Facilities developed therein by third parties in accordance with and subject to the provisions of this Agreement and the Lease Deed.

36.2 Access rights of the Authority and others

The Concessionaire shall allow free access to the Site at all times for the authorised representatives and vehicles of the Authority, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorised by any Government Authority to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

36.3 Taxes and charges

The Concessionaire shall:

- (a) pay in a timely manner all Taxes (including property tax on behalf of the Authority), duties, levies, cess and charges including but not limited to income tax, goods and service tax and customs duty that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project.
- (b) pay all applicable charges, taxes, fines, late fees and other outgoings in relation to the use of utilities and services by the Contractors and agents during the implementation and operation of the Project such as water supply, sewage disposal, fuel, garbage collection and disposal, electric power, gas, telephone and other utilities and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility.

37.DISPUTE RESOLUTION

37.1 Dispute Resolution

37.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 37.2.

37.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

37.2 Conciliation

37.2.1 In the event that any dispute, controversy, or difference (hereinafter referred to as the “Dispute”) arising out of or in connection with this Agreement, including its interpretation, performance, breach, termination, or validity, is not resolved amicably through conciliation as provided hereinabove, the same shall be referred to the Chief Secretary, Government of Andhra Pradesh , for final determination. The decision of the Chief Secretary shall be final, conclusive, and binding on both Parties. If the Authority is resultantly directed to pay interest to the Concessionaire vide the decision of the Chief Secretary, the same shall be in the nature of simple interest to the maximum extent of 8% per annum and the liability to pay the interest shall commence from the date of the decision of the Chief Secretary.

37.2.2 The Concessionaire expressly agrees and acknowledges that it shall not raise any objection to such reference or to the authority of the Chief Secretary, Government of Andhra Pradesh , on the ground that he is a Government Servant, that he has dealt with or supervised any matter relating to this Agreement in the course of his official duties, or that he may have previously expressed any views, opinions, or decisions on any of the matters forming the subject of the Dispute. The Parties further agree that such circumstances shall not disqualify the Chief Secretary from acting as the final authority under this Clause.

37.2.3. All questions, disputes, or differences of opinion whatsoever arising under, out of, or in any manner relating to or concerning this Agreement, or the interpretation, performance, operation, or effect thereof, or the rights, duties, or liabilities of the Parties hereto, shall, in the of rejection or non-acceptance of any claim by the Chief Secretary, Government of Andhra Pradesh , under Clause 37.2.1, be settled through Civil suits to be filed in the Civil Court of competent jurisdiction at Vijayawada, within the State of Andhra Pradesh . The Parties expressly agree that only the Courts situated at Vijayawada, Andhra Pradesh, shall have exclusive jurisdiction in all matters arising out of or in connection with this Agreement and that no proceedings shall be initiated in any other Court or forum outside the said jurisdiction.

37.2.4. The Concessionaire further agrees and undertakes that no injunction, restraining order, or similar relief shall be sought or obtained against the Authority to prevent or delay the re-tendering or re-allotment of the Project during the existence of any Dispute or during the pendency of any proceedings arising therefrom. The Parties expressly agree that the Authority shall be entitled to proceed with the re-tendering or other administrative actions relating to the Project notwithstanding the pendency of any such dispute or proceedings before any forum.

38.INTENTIONALLY LEFT BLANK

39.DISCLOSURE

39.1. Disclosure of Specified Documents

39.1.1. The Parties acknowledge that any and all Information, including any commercial and technical information and data provided by one to the other shall be considered to be confidential and the party receiving such information and data shall not, at any time, directly or indirectly disclose such information and data to any person or firm or use the same in any manner other than in connection with the pursuit of this Agreement, without the prior consent of the other party. Neither the Concessionaire nor Authority shall, unless otherwise agreed (which agreement may be on such general or specific terms as the parties may determine) disclose to any third party any Information which is the property of the other party (parties) to this Agreement, or which otherwise relates to its business, secrets, dealings, transactions or affairs or which relates in any way to either of the parties unless, and to the extent that, such disclosure:

- (a) is reasonably required for the exercise or performance by either party of its rights or obligations under this Agreement; or
- (b) is required pursuant to any relevant statutory or regulatory requirements or duties or any requirement of Applicable Law; or
- (c) relates to Information which is already in the public domain, other than as a result of breach of this Clause 39.1 by the Party seeking to make such disclosure; or
- (d) is reasonably required by the lenders of Concessionaire or lenders of the Authority;
- (e) is made to its employees, directors, officers or authorized representatives who are bound by similar obligations as to confidentiality,

provided that, in the case of any disclosure in accordance with sub-Clauses (a) or (b) above, the Party disclosing such Information shall, so far as reasonably practicable, impose on the third party receiving such Information such obligations as may be appropriate to maintain its confidentiality.

39.1.2. The Concessionaire shall not make any public announcement or disclosure in respect of the subject matter of this Agreement or any of the transactions contemplated herein without the prior written approval of the Authority (save as may be required by Applicable Law or any Relevant Authority in which event the scope of the announcement will be limited to the matters required to be disclosed and the Concessionaire will consult with the Authority on the terms and timing of such announcement).

39.1.3. The obligations under this Clause 39 shall survive the expiry / termination of this Agreement for a period of 3 (three) years.

40.MISCELLANEOUS

40.1 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 Andhra Pradesh shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

40.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

40.3 Depreciation

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

40.4 Delayed payments

- 40.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within thirty (30) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal

to four per cent (4%) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

40.5 **Waiver**

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

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

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

40.6 **Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

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

40.7 **Exclusion of implied warranties etc.**

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

40.8 **Survival**

40.8.1 Termination shall:

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

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

40.9 **Entire Agreement**

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

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

40.11 **No partnership**

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

40.12 **Third parties**

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

40.13 **Successors and assigns**

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

40.14 **Notices**

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand/registered post to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number or the e-mail address as the Concessionaire may from time to time designate by notice to the Authority.

Attention:

Designation:

Address:

Fax No:

Email:

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

Attention:

Designation:

Address:

Fax No:

Email:

- (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.

40.15 Language

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

40.16 Counterparts

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

41. DEFINITIONS

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

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement;

“Act” shall have the meaning ascribed to it in Clause 37.3.1;

“Actual Project Cost” means the combined capital cost incurred, by Concessionaire after Appointed Date, on the construction of Mandatory Facilities and Allied Facilities;

“Additional Auditors” shall have the meaning ascribed to it in Clause 26.2.3;

“Additional Performance Guarantee” shall have the meaning ascribed to it in Clause 32.2.3;

“Adjusted Equity” means the Equity funded in Rupees and adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Price Index, and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Rupees and expended on the Total Project Cost, revised to the extent of one half of the variation in Price Index occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the fourth (4th) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in Price Index occurring between COD and the Reference Date; and
- (c) after the fourth (4th) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by zero-point one percent (0.1%) thereof at the commencement of each month following the fourth (4th) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of Price Index shall continue to be made;

“Affected Party” shall have the meaning ascribed to it in Clause 27.1;

“Agreement” or **“Concession Agreement”** means this agreement, including the recitals, Schedules and documents appended hereto, as amended, supplemented or modified from time to time in accordance with the provisions hereof;

“Allied Facilities” means the facilities such as hotel(s), restaurant(s), shopping areas, food courts, retail area or any other tourism related allied facility etc. which the Concessionaire may, in its discretion and subject to Applicable Laws, construct, by itself or, and which are permitted to be constructed as per this Agreement and are in addition to the Mandatory Facilities specifically mentioned in this Agreement;

“Allied Facilities Area” shall have the meaning as set forth in Clause 4.1.3(a);

“Allied Facilities Revenues” shall mean all pre-tax gross revenues earned by the Concessionaire from the Allied Facilities under or pursuant to the Concession Agreement, at any time from COD up-to the Transfer Date and shall include monies received from the Allied Facilities and the Allied Facilities Area including but not limited to all revenues from all sources or amounts of money and the total receipts of business of the Concessionaire/ Licensee for any period, that arise, accrue to and/or are received (or which would have been received) from the operation of Allied Facilities, including without limitation the monies charged, collected demanded, levied, received by the Concessionaire pursuant or incidental to – (i) exploitation in any manner whatsoever of the Allied Facilities by any Person, including but not limited to capital receipts, non-refundable deposits, advances, registration payments, fees, tariff, parking charges, profits on maintenance charges, profits on service charges, etc; (iii) revenues from guests, visitors, persons utilizing the facilities, any other person(s), etc., which shall also include booking amounts, sales proceeds, advances, earnest monies, parking, etc., including deposits (both refundable or otherwise), but shall exclude the following:

- (i) Any insurance proceeds received by the Concessionaire relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against; and (ii) any form of physical damage of assets, and the Concessionaire has incurred or will incur an expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently of such assets;
- (ii) any monies received by the Concessionaire, for or on behalf of any Government Instrumentality, as an authorized agent of such Government Instrumentality; and

It is expressly clarified that:

- a. insurance proceeds referred to in exclusion (i) above, shall not include any exclusion of insurance proceeds received for loss of revenues and/or business interruption;
- b. monies referred to in exclusion (ii) above, shall be excluded only if the same has been credited or will be credited by the Concessionaire to the relevant Government Instrumentality promptly and diligently and any fine, penalty or other amounts of similar nature that may accrue as a result of non-payment or delayed payment of such

monies under the Applicable Laws, will not be excluded; and

in case of any dispute, discrepancy, ambiguity, doubt or otherwise, relating to the computation and/or meaning of Allied Facilities Revenues, the decision of the Authority, at its sole discretion, shall be final and binding on the Concessionaire;

“Ancillary Escrow Accounts” shall have the meaning as set forth in Clause 24.4.3;

“Applicable Laws” means all laws, rules, regulations, notifications, guidelines, orders, directions, circulars and/or directives brought into force and effect by the GoI or State Government including GoG or any municipal, administrative and / or local government authority, and also includes any judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licences, permits, authorisations, no objection certificates, consents, occupancy certificate, approvals and exemptions required to be obtained or maintained by the Concessionaire under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement;

“Appointed Date” means the date on which the Financial Close is achieved and every Condition Precedent is either being satisfied or waived, as the case may be, in accordance with the provisions of this Agreement;

“Associate” or **“Affiliate”** means, in relation to either Party and / or Selected Bidder, a person who controls, is controlled by, or is under the common control with such Party or Selected Bidder (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation,

- (a) the ownership, directly or indirectly, of more than fifty per cent (50%) of the voting shares of such person; or
- (b) holding more than fifty per cent (50%) of the voting rights of such person by virtue of an agreement; or
- (c) power to govern the policy decisions of such person under statute or an agreement; or
- (d) to appoint or remove the majority of members of the board of directors; or
- (e) to cast majority of votes at a meeting of the board of directors; and

with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“Authority Default” shall have the meaning ascribed to it in Clause 30.2.1;

“Authority Indemnified Persons” shall have the meaning ascribed to it in Clause 35.1.1;

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

“Award” shall have the meaning ascribed to it in Clause 37.3.3;

“Bank” means a bank incorporated in India having a minimum net worth of Rupees one hundred and thousand crore (INR 1000,00,00,000) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

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

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

“Bid Due Date” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal;

“Bid Security” means the security provided by the selected Bidder to the Authority along with Bid, in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

“Board of Directors” means board of Directors of the Concessionaire, as constituted from time to time;

“Change in Ownership” shall have the meaning ascribed to it in Clause 5.3.1;

“Change of Scope” shall have the meaning ascribed to it in Clause 16.1.1;

“Change of Scope Notice” shall have the meaning ascribed to it in Clause 16.2.1;

“Change of Scope Order” shall have the meaning ascribed to it in Clause 16.2.3;

“Commercial Operation Date” or **“COD”** shall collectively refer to COD-1 and COD-2;

“Commercial Operation Date- 1” or **“COD- 1”** shall have the meaning ascribed to it in Clause 15.1;

“Commercial Operation Date-2” or **“COD- 2”** shall have the meaning ascribed to it in Clause 15.3;

“Complainant” shall have the meaning ascribed to it in Clause 39.1.1;

“Complaint Register” shall have the meaning ascribed to it in Clause 39.1.1;

“Completion Certificate” shall have the meaning ascribed to it in Clause 14.2;

“Concession” shall have the meaning ascribed to it in Clause 2.1;

“Concession Fee” shall have the meaning ascribed to it in Clause 22.1.1;

“Concession Period” means the period starting on and from the Effective Date and ending on the Transfer Date;

“Concessionaire Default” shall have the meaning ascribed to it in Clause 30.1.1;

“Concessionaire's Representative” means the Person appointed by Concessionaire under Clause 5.10;

“Conditions Precedent” shall have the meaning ascribed to it in Clause 4.1;

“Construction Period” means the period beginning from the Appointed Date and ending on COD;

“Construction Works” means all the Works and things necessary to complete the Mandatory Facilities and Allied Facilities in accordance with this Agreement;

“Contracts” shall have the meaning ascribed to it in Clause. 5.4.1;

“Contractor” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing Financial Assistance to the Concessionaire;

“Covenant” shall have the meaning ascribed to it in Clause 5.2.4.

“Convention & Exhibition Centre” shall have the meaning specified in the Mandatory Facilities prescribed in Schedule B of this Agreement;

“CPI (IW)” means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to the CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter;

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

Provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

“**Damages**” shall have the meaning ascribed to it in sub-clause (y) of Clause 1.2.1;

“**DBFOT**” or “**Design, Build, Finance, Operate and Transfer**” shall have the meaning ascribed to it in Recital B;

“**Debt Due**” means the aggregate of the following sums expressed in Rupees outstanding on the Transfer Date:

- (b) the principal amount of the debt provided by the Senior Lenders and drawn down by the Concessionaire under the Financing Agreements for financing the Total Project Cost (the “**principal**”) but excluding any part of the principal that had fallen due for repayment two (2) years prior to the Transfer Date; and
- (c) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one (1) year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default.

Provided further that the Debt Due shall in no case exceed seventy percent (70%) of the Total Project Cost;

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

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

“**Detailed Project Report**” or “**DPR**” means the detailed design, Drawings, specifications and engineering reports for the Mandatory Facilities and Allied Facilities, respectively, as set forth in Schedule H;

“Development Permits” means all clearances, licences, permits, authorisations, no objection certificates, occupancy certificates, consents, approvals and exemptions required to be obtained by the Concessionaire under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement;

“Development Period” means the period from the Effective Date until the Appointed Date;

“Directors” means directors of the Concessionaire who shall be appointed in accordance with the Companies Act, 2013, and **“Director”** shall be construed accordingly;

“Dispute” shall have the meaning ascribed to it in Clause 37.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Clause 37;

“Divestment Requirements” means the obligations for the Concessionaire for and in respect of Termination as set forth in Clause 31.1;

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

“Drawings” means all the drawings, calculations and documents pertaining to the Mandatory Facilities and Allied Facilities as annexed to the Detailed Project Report, and shall include ‘as built’ drawings of the Project;

“Easement” means all easements, reservations, Right-of-Way, utilities and other similar rights as to the use of real property which are necessary or appropriate for the conduct of activities by Concessionaire related to the Project;

“Effective Date” means date of signing of this Agreement;

“Encumbrance” means in relation to the Project, any encumbrance or security interest, including without limitation any claim, mortgage, debenture, charge (legal or equitable, fixed or floating), pledge, lien, hypothecation, option, restriction, right to acquire or similar right, assignment by way of security or trust arrangement for the purpose of providing security or other security interest of any kind (including any retention arrangement), beneficial ownership (including usufruct and similar entitlements), public right, common right, wayleave, easement, any provisional or executorial attachment and any other direct interest held by any third party, or any agreement to create any of the foregoing and shall include physical or legal obstructions or encroachments on the whole or any part of the Site or third party claims or rights of any kind attaching to the whole or any part of the Site or any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, and **“Encumber”** shall be construed accordingly;

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

“EPC Contractor” means the person with whom the Concessionaire has entered into an EPC Contract;

“Equity” means the sum expressed in Rupees representing the paid-up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

“Escrow Account” means an account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement and includes the sub-accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning ascribed to it in Clause 24.1.2;

“Escrow Bank” shall have the meaning ascribed to it in Clause 24.1.1;

“Escrow Default” shall have the meaning ascribed to it in Schedule O;

“Financial Close” means fulfilment of all the Conditions Precedent to the initial availability of funds under the Financing Agreements;

“Financial Model” means the financial model adopted by the Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“Financial Package” means the financial package indicating the total capital cost of the Project and means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt;

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total

Project Cost, including any hedging arrangements in case of off shore borrowings and includes amendments or modifications made in accordance with Clause 5.2.3;

“Force Majeure” shall have the meaning ascribed to it in Clause 27.1;

“Force Majeure Costs” shall have the meaning ascribed to it in Clause 27.7.2;

“GoAP” means the Government of Andhra Pradesh;

“GoI” means the Government of India;

“Good Industry Practices” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient Project Assets;

“Government Authority” means GoI, GoAP or any State Government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial, quasi-judicial or administrative body, central, state, or local authority or statutory body including Panchayat, having jurisdiction over the Concessionaire, the Project, the Project Assets and the Works or any part thereof or the performance of all or any of the services, obligations or covenants of Concessionaire under or pursuant to this Agreement or any portion thereof;

“Gross Revenue” means total revenue received in a year, before any deductions or allowances, cost of goods sold, taxes, etc.

“Hospitality Operator” shall have the meaning as set forth in the RFP;

“Indemnified Party” shall have the meaning ascribed to it in Clause 35.3;

“Indemnifying Party” shall have the meaning ascribed to it in Clause 35.3;

“Independent Engineer” shall have the meaning ascribed to it in Clause 20.1;

“Indirect Political Event” shall have the meaning ascribed to it in Clause 27.3;

“Inspection Report” shall have the meaning ascribed to it in Clauses 5.6 and 13.2.

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Clause 25, and includes all insurances required to be taken out by the Concessionaire under Clause 25.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“Joint Co-ordination Committee” or **“JCC”** shall have the meaning as set forth in Clause 13.7.1.

“Key Managerial Personnel”, with reference to the Concessionaire, has the meaning as assigned to such term under the Companies Act, 2013;

“Lease Deed” shall have the meaning as set forth in Clause 2.1.2 (a);

“Lenders’ Representative” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Licensees” shall have the meaning ascribed to it in Clause 5.2.8.

“LOA” or **“Letter of Award”** shall have the meaning ascribed to it in Recital D;

“Maintenance Manual” shall have the meaning set forth in Clause 17.3.1;

“Maintenance Programme” shall have the meaning set forth in Clause 17.4.1;

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

“Mandatory Facilities” means the Convention & Exhibition Centre, Star Category Hotel and common infrastructure facilities such as landscape, structures, pavement and walkways, vehicle parking, drainage facilities, sign boards, electrical, mechanical, civil, sanitation and other works, telephone, other communication equipment, laboratories with equipment, other equipment, technology at the Site/ relating to the Convention & Exhibition Centre and Star Category Hotel to be fully developed under the development obligations of the Concessionaire in respect of the Project as mentioned in the RFP document and in the Schedule C of this Agreement;

“Mandatory Facilities Area” shall have the meaning set forth in Clause 4.1.3(a);

“Mandatory Facilities Revenues” shall mean all pre-tax gross revenues earned by the Concessionaire from the Mandatory Facilities under or pursuant to the Concession Agreement, at any time from Appointed Date up to the Transfer Date and shall include all monies received from the Mandatory Facilities and the Site including but not limited to all revenues from all sources or amounts of money and the total receipts of business of the Concessionaire for any period, that arise, accrue to and/or are received (or which would have been received) from the operation of Mandatory Facilities, including without limitation the monies charged, collected demanded, levied, received by the Concessionaire pursuant or incidental to – (i) exploitation in

any manner whatsoever of the Mandatory Facilities by any Person, including but not limited to capital receipts, non-refundable deposits, advances, registration payments, fees, tariff, parking charges, profits on maintenance charges, profits on service charges, etc; (ii) revenues from guests, visitors, persons utilizing the facilities, monies received from other person(s), etc., which shall also include booking amounts, sales proceeds, advances, earnest monies, parking, etc., including deposits (both refundable or otherwise), but shall exclude the following:

- (i) any insurance proceeds received by the Concessionaire relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against; and (ii) any form of physical damage of assets, and the Concessionaire has incurred or will incur an expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently of such assets;
- (ii) any monies received by the Concessionaire, for or on behalf of any Government Instrumentality, as an authorized agent of such Government Instrumentality; and

It is expressly clarified that:

- a. insurance proceeds referred to in exclusion (i) above, shall not include any exclusion of insurance proceeds received for loss of revenues and/or business interruption;
- b. monies referred to in exclusion (ii) above, shall be excluded only if the same has been credited or will be credited by the Concessionaire to the relevant Government Instrumentality promptly and diligently and any fine, penalty or other amounts of similar nature that may accrue as a result of non-payment or delayed payment of such monies under the Applicable Laws, will not be excluded; and

in case of any dispute, discrepancy, ambiguity, doubt or otherwise, relating to the computation and/or meaning of Mandatory Facilities Revenues, the decision of the Authority, at its sole discretion, shall be final and binding on the Concessionaire;

“Mandatory Facilities Revenue Share” shall have the meaning ascribed to it in Clause 22.2;

“Master Plan” is a graphic representation/ conceptual layout of the land development, arrangement of buildings, utilities, parking, drives, landscape structures and any other structure that is part of the Project.;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement which act or event causes a material financial burden or loss to either Party;

“Material Breach” means a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;

“Minimum Guarantee Revenue” or **“MGR”** shall have the meaning ascribed to it in Clause

22.2.2;

“**MoU**” means Memorandum of Understanding;

“**Nominated Company**” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Financing Agreement;

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

“**O&M Contract / Agreement**” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations related to the Mandatory and Allied Facilities and shall further have the meaning ascribed to it in Clause 4.1.3 (b);

“**O&M Contractor**” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire related to the Mandatory and Allied Facilities;

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premium for insurance, (d) all Taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**O&M Inspection Report**” shall have the meaning ascribed to it in Clause 19.2;

“**Operation Period**” means the period commencing from COD and ending on the Transfer Date;

“**Part-Operation Period**” means the period commencing from completion of the first Mandatory Facility and ending on COD;

“**Performance Security**” or “**Construction Performance Security**” shall have the meaning ascribed to it in Clause 9.1.1;

“**Preservation Costs**” shall have the meaning as set out in Clause 13.5.3;

“**Price Index**” shall comprise:

- (a) seventy percent (70%) of WPI; and
- (b) thirty percent (30%) of CPI (IW),

which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

“Project” means the development of Mandatory Facilities and Allied Facilities at Kapuluppada, Visakhapatnam, Andhra Pradesh on Design, Built, Finance, Operate and Transfer (DBFOT) Basis, subject to the provisions of this Agreement, the (i) designing, financing, construction, implementation, completion, commissioning, marketing, operation, management and transfer of the Project Facilities and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Concessionaire during the Concession Period; (ii) entering into licence or development agreements with respect of development of Allied Facilities (iii) determination, demanding, charging, collecting, retaining and appropriating and revision of user fee by the Concessionaire and (iv) the transfer of the Project Facilities by the Concessionaire to the Authority or its nominated agency at the end of the Concession Period by efflux of time or prior termination;

“Project Agreements” means this Agreement, Financing Agreements, EPC Contract, O&M Contract, Management Agreement, licence and any other material agreements or contracts entered into or hereafter be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement and Financing Agreement;

“Project Assets” means and comprise of all tangible and intangible assets relating to the Project/ Project Facilities as the case may be excluding land but including and not limited to:

- (a) rights over the Site in the form of licence, Right of Way or otherwise;
- (b) each of tangible assets comprising the Project Facilities such as civil works and equipment including foundation, embankments, buildings, structures, super structures, constructions, additions, alterations or improvements etc. thereof, landscape structures, pavement and walkways, drainage facilities, sign boards, milestones, electrical, mechanical, civil, sanitation and other works, telephone, other communication equipment, laboratories with equipment, other equipment, technology at the Site / relating to the Project;
- (c) financial assets of the Project such as receivables, cash and investments, security deposits for utilities, etc.;
- (d) rights of the Selected Bidder / Concessionaire under the Project Agreements and other agreements relating to the Project entered into by the Concessionaire;
- (e) proceeds from insurance policies taken by the Concessionaire in relation to the Project Facilities;
- (f) all Applicable Permits, affiliations and authorizations relating to or in respect of the Project; and

(g) movable assets of the Project / Project Facilities, movable property, things and goods like equipment, machinery, fittings and fixtures etc.

“Project Completion Schedule” means the progressive Project Milestones set out in Schedule G for completion of Mandatory Facilities and Allied Facilities on or before their respective Scheduled COD;

“Project Components” shall have the meaning ascribed to it in Clause 14.3.2;

“Project Facilities” means all facilities developed as part of the Scope of Work described in Schedule B including as further described in Schedule C and will also include any other facilities developed during the Concession Period at the Site;

“Project Milestone” shall have the meaning ascribed to it in Schedule G;

“Project Revenues” shall have the meaning ascribed to it in Clause 22.2.1;

“Provisional Certificate” shall have the meaning ascribed to it in Clause 14.3.1;

“Punch List” shall have the meaning ascribed to it in Clause 14.3.1;

“Reference Exchange Rate” means in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Vijayawada by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Vijayawada by the Bank of India and the Bank of Baroda;

“Related Party” with reference to the Concessionaire, has the meaning as assigned to such term under the Companies Act, 2013;

“Related Party Transaction” means, any transaction of transfer or allocation of function(s), resource(s) or obligation(s) between Related Parties regardless of whether or not a price is charged, and shall at all times comply with the contracting principles set out in Clause 5.4.3;

“RFP” or **“Request for Proposal”** shall have the meaning ascribed to it in Recital C;

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

“Rupees” or **“Indian Rupees”** or **“INR”** means the lawful currency of the Republic of India;

“Safety Requirements” shall have the meaning ascribed to it in Clause 18.1.1;

“Schedule” means any of the schedules appended to this Agreement;

“Scheduled Commercial Operations Date” or **“Scheduled COD”** shall refer to Schedule COD-1 and Scheduled COD-2;

“Scheduled Commercial Operations Date-1” or **“Scheduled COD-1”** shall have the meaning ascribed to it in Clause 12.5.3;

“Scheduled Commercial Operations Date- 2” or **“Scheduled COD-2 ”** shall have the meaning ascribed to it in Clause 12.5.4;

“Scheduled Completion Date” shall have the meaning ascribed to it in Schedule G;

“Scope of the Project” shall have the meaning ascribed to in Clause 3.

“Selected Bidder” means any entity that has been successful in the bidding process for the Project;

“Senior Lenders” means the financial institutions and banks, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interest of the Concessionaire;

“Site” shall have the meaning ascribed to it in Clause 10.1;

“Special Purpose Company” or **“Special Purpose Vehicle”** or **“SPV”** shall mean the Concessionaire;

“Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Mandatory Facilities and/or Allied Facilities, as set forth in Schedule D, and any modifications thereof, or additions thereto, as included in the Detailed Project Report for the Mandatory Facilities and/or Allied Facilities submitted by the Concessionaire to, and expressly approved by, the Authority;

“State” means the State of Andhra Pradesh and **“State Government”** means the government of Andhra Pradesh ;

“Star Category Hotel” shall have the meaning specified in the Mandatory Facilities prescribed in Schedule B of this Agreement;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, and appointed in accordance with Clause 26.2.1;

“Subordinated Debt” means the aggregate of the following sums expressed in Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to five per cent (5%) above the Bank Rate in case of loans expressed in Rupees and lesser of the actual interest rate and six (6)

month LIBOR (London Inter Bank Offer Rate) plus two per cent (2%) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one (1) year prior to the Transfer Date;

Provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"Suspension" shall have the meaning ascribed to it in Clause 29.1;

"Tax" or **"Taxes"** or **"Taxation"** means any Indian taxes including custom duties, goods and service tax (GST), local taxes, cess and any impost, levy 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 Taxation Authority, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For avoidance of doubt, Taxes shall not include taxes on corporate income;

"Taxation Authority" means any Government Authority having or purporting to have power or authority to impose, levy and/or collect Tax;

"Termination" means the expiry or termination of this Agreement and the Concession hereunder;

"Termination Notice" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"Termination Payment" means the amount payable by the Authority to the Concessionaire upon Termination in accordance with the provisions of this Agreement;

"Tests" means the tests as set forth in Schedule I to determine completion of the Project in accordance with the provisions of this Agreement and such additional tests determined by the Independent Engineer / Authority in accordance with the Good Industry Practices which are required to determine the completion of the Project;

"Total Project Cost" means the lowest of:

- (a) the combined capital cost of the Mandatory Facilities and Allied Facilities, as set forth in the Financial Package; and
- (b) actual project cost incurred post completion of development of the Mandatory Facilities and Allied Facilities

Provided that in the event Price Index increases, on an average, by more than three per cent (3%) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in Price Index, in excess of such three per cent (3%), is reflected in the Total Project Cost;

Provided further that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement;

Provided further that any expense incurred by the Successful Bidder prior to the incorporation of the Concessionaire shall not be considered as part of Total Project Cost;

Provided also that the Total Project Cost shall not exceed the actual capital cost of the Project upon completion of the Project;

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

“Unforeseen Event” shall have the meaning ascribed to it in Clause 27.9.1;

“Upfront Fee” shall have the meaning ascribed to it in Clause 22.1;

“User Fee” means the fee payable by the users of the Project Facilities to the Concessionaire;

“Vesting Certificate” shall have the meaning ascribed to it in Clause 31.4;

“Works” means the works under and in accordance with the provisions of this Agreement relating to design, development of Site, construction, completion, testing and commissioning of the Mandatory Facilities and Allied Facilities (the **“Construction Works”**), and the O&M Works, collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project / Project Facilities and any other permanent, temporary or urgent works required hereunder; and

“WPI” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GoI and shall include any index which substitutes the WPI, and any reference to the WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

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

Signed for and on behalf of:

Signed for and on behalf of:

Authority

[Concessionaire]

By:

By:

(insert name and designation)

(Address)

(e-mail address)

(insert name and designation)

(Address)

(e-mail address)

In the presence of:

(signature of witness)

(signature of witness)

SCHEDULES

Schedule A
Site of the Project

(See Clause 10.1)

Schedule B – Scope of the Project

(See Clause 3.1& Clause 15)

The following facilities shall constitute the scope of work for the Concessionaire:

Sr. No.	Project Components	Facilities (Indicative, but not exhaustive, details are provided below)
(A)	Mandatory Facilities	1. Convention & Exhibition Centre (i) Auditorium with a minimum seating capacity of 5,000 persons, incorporating removable partitions and retractable seating arrangements. The facility shall include an entrance lobby designed to function flexibly as an auditorium foyer, ballroom, banquet hall, or for similar uses. (ii) The facility shall have provision for multiple modular and/or convertible meeting rooms with a combined seating capacity of not less than 500 persons. (iii) Open-air Exhibition Space; (iv) Covered/ Air-conditioned Exhibition Space of 1 lakh sqft (v) Vehicle Parking (On-ground / Stilt / Basement / Multi-level Car Parking) as per applicable laws and development control regulations; (vi) Other basic facilities such as Reception, Information counters, public facilities, The Convention & Exhibition Centre shall match international standards (like GSTC MICE Standards) in terms of design, architecture, specifications, interiors, lighting, acoustics, air conditioning, building, structures, facilities, signage, loading-unloading bays, car ramps, etc. The Convention & Exhibition Centre should have unique iconic architecture.

Sr. No.	Project Components	Facilities (Indicative, but not exhaustive, details are provided below)
		2. Star Category Hotel A not less than 250 key Star Category Hotel of minimum 4-star standards shall be developed adjoining the Convention & Exhibition Centre. The Star Category shall meet globally accepted standards in terms of design, architecture, specifications, interiors, lighting, air conditioning, building, structures, facilities, signage, etc.
(B)	Allied Facilities	Concessionaire is permitted to develop any permissible facility/ work/ service over and above Mandatory Facilities subject to compliance with relevant development control regulations and Applicable Permits and Prohibited Activities mentioned below on the remaining Site, as per this Agreement.
(C)	Prohibited Activities	Prohibited activities shall include but not limited to activities prohibited under the Applicable laws and Zoning regulations. Prohibited activities includes but not limited to, use of any built-up space for the purposes directly or indirectly, as Warehousing, Industrial Activities, Automobile-repair/ services/ vehicular servicing shops, LPG godowns, any trade or activity involving any kind of obnoxious, hazardous, inflammable, non-compatible and polluting substance or process.

Schedule C – Project Facilities for Mandatory Facilities

(See Clause 3.1& Clause 15)

The Project Facilities for the Project should conform to the standard and specification provided in Schedule–D.

FACILITIES: -

- (i) Landscaped forefront
- (ii) Administrative facilities for corporate office including Internet.
- (iii) Trade Show/ Fair Facilities such as Tourist Office, Bank and Money
- (iv) Changing facilities, Travel Desk, STD/ISD, Press Lounge,
- (v) Technical facilities such as plant room, electric substation, stores, electric
- (vi) Power back-up-system, fire hydrant etc.
- (vii) Gate complex for stipulating entry and exit.
- (viii) Information booths.
- (ix) Parking
- (x) Public Convenience.
- (xi) Public Address System.
- (xii) First aid with doctor on call facilities.
- (xiii) Security office and booths for security arrangements.
- (xiv) Storage complex for custom storage and handling etc.
- (xv) Fire safety arrangements
- (xvi) Locker facilities
- (xvii) Telephone, Wi-Fi and other relevant infrastructure
- (xviii) Facilities for physically disabled persons

Before the DPR is approved by the Authority, the Authority may add/ delete/ change the minimum facilities mentioned above, which the Concessionaire shall be required to incorporate in the DPR

Schedule D – Specifications and Standards for Project Facilities

(See Clause 3.1 & Clause 15)

Specifications and Standards for the Project Facilities

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-I of this Schedule-D for construction of the Project Facilities and shall always adhere to Good Industry Practice.

Annex – I

The Project shall conform to the applicable provisions, principles and guidelines laid down under:

- (a) Specifications specified for Convention & Exhibition Centres under the relevant Guidelines, rules and regulations issued by Government of India, Ministry of Tourism, as updated time to time;
- (b) Regulations and approvals under the Environmental Protection Act, 1986, as amended from time to time;
- (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 Practice and any other norms as applicable from time to time.

In addition to above, Project Facilities shall conform to latest applicable Indian guidelines/ norms like National Building code (NBC) INDIA, MORT&H, IRC Codal Practices, CPHEEO manual, Bureau of Indian Standards (BIS) etc. The reference list of standards and codes adopted in concept design & master plan shall be submitted to the Authority along with DPR. Some of the codes and standards are listed below, these are indicative:

- URDPFI Guidelines
- Bureau of Indian Standards (BIS) for Engineering
- Town and Country Planning Act
- Municipal and applicable by-laws of state/local governing bodies.
- MoEF - Ministry of Environment, Forest and Climate Change (Government of India), for environmental considerations in development projects
- Development Guidelines - prescribed particularly in GO No. 119
- LEED India (Leadership for Environment and Development)
- GRIHA - (Green Buildings Rating System India)

And any other applicable and prevailing national/international codes and standards

Schedule E – Applicable Permits and Development Permits

(See Clause 5.1)

1. Applicable Permits:
- 1.1 The Concessionaire shall obtain all Applicable Permits, as required under Applicable Laws, save and except to the extent of a waiver granted by the Authority in accordance with the Concession Agreement.

Schedule F – Performance Security

(See Clause 9.1)

The.....,

.....

.....

WHEREAS:

- (A) (the “**Concessionaire**”) and the, (the “**Authority**”) have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the development of the Project on design, build, finance, operate and transfer (the “**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of (Rupees only) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Concession Period (as defined in the Agreement).
- (C) We, _____ through our Branch at _____ (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Concession Period under the Agreement and its decision that the

Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force throughout the Concession Period and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank or in person at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period equivalent to the Construction Period mentioned in the Concession Agreement or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
11. The jurisdiction of this Performance Security shall be in Vijayawada, Andhra Pradesh .

Signed and sealed this day of....., 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

(Email)

NOTES:

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

Schedule G – Project Completion Schedule

(See Clause 12.1)

Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the project milestones for the Mandatory Facilities and Allied Facilities (“**Project Milestones**”) and the Scheduled COD (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of achievement of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

Project Completion Schedule for Mandatory Facilities

1. Mandatory Facilities Project Milestone-I:

- 1.1. Prior to the occurrence of Mandatory Facilities Project Milestone-I, the Concessionaire shall have submitted the Detailed Project Report of the Project to the Authority and the Independent Engineer for review and approval and shall have obtained the construction license from the competent authority required for commencement of construction at the Project Site.
- 1.2. Mandatory Facilities Project Milestone-I shall occur at completion of 3 (three) months from the Appointed Date (the “**Mandatory Facilities Project Milestone-I**”)

2. Mandatory Facilities Project Milestone-II:

- 2.1. Prior to the occurrence of Mandatory Facilities Project Milestone-II, the Concessionaire shall ensure the development and operational readiness of a facility with a minimum capacity of 2,000 persons and 20,000 sq.ft of Exhibition area along with all associated supporting infrastructure, including adequate parking facilities, pre-function and circulation areas, dining and food court facilities, catering support spaces, service areas, and ancillary amenities necessary for the purpose of hosting the “Andhra Pradesh Partnership Summit 2027”. Such facility may comprise a combination of temporary or semi-permanent or permanent structures or any combination thereof.
- 2.2. Mandatory Facilities Project Milestone-II shall occur on or before 1st November 2027 (the “**Mandatory Facilities Project Milestone-II**”).

3. Mandatory Facilities Project Milestone-III:

- 3.1. Prior to the occurrence of Mandatory Facilities Project Milestone-III, the Concessionaire shall have completed the construction of 50% of the Mandatory Facilities, and the same shall be verified by the Independent Engineer.
- 3.2. Mandatory Facilities Project Milestone-III shall occur at completion of 18 (eighteen) months from the Appointed Date (the “**Mandatory Facilities Project Milestone-III**”).

4. Mandatory Facilities Project Milestone-IV:

- 4.1. Prior to the occurrence of Mandatory Facilities Project Milestone-IV, the Concessionaire shall

have completed the construction of 75% of the Mandatory Facilities, and the same shall be verified by the Independent Engineer.

- 4.2. Mandatory Facilities Project Milestone-IV shall occur at completion of 24 (twenty-four) months from the Appointed Date (the “**Mandatory Facilities Project Milestone-IV**”).

5. Project Milestone-V: Scheduled COD -1

- 5.1. Prior to the occurrence of Mandatory Facilities Project Milestone-V, the Concessionaire shall have completed the construction of the Mandatory Facilities and the same shall be verified by the Independent Engineer.
- 5.2. Mandatory Facilities Project Milestone-V shall occur at completion of three (3) years from the Appointed Date (the “**Mandatory Facilities Project Milestone-V**”).
- 5.3. The Scheduled COD -1 as per Schedule B shall be three (3) from the Appointed Date. On or before the Scheduled COD -1, the Concessionaire shall have completed the Mandatory Facilities in accordance with this Agreement.

6. Extension of period

Upon extension of any or all of the aforesaid Project Milestones and/or the Scheduled COD-1, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

Project Completion Schedule for Allied Facilities

[Drafting Note: To be incorporated prior to signing of the Concession Agreement.]

Schedule H – Detailed Project Report

(See Clause 12.3)

1. Detailed Project Report

In compliance of the obligations set forth in Clause 12.3 of this Agreement, the Concessionaire shall furnish to the Independent Engineer and the Authority, free of cost, all Drawings, designs, specification and reports listed in Annexure of this Schedule – H:

2. Additional Drawings/Report

If the Authority determines that for discharging its duties and functions under this Agreement, it requires any drawings or reports other than those listed in Annex-I, 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 or reports to the Authority, as if such drawings or reports formed part of Annexure of this Schedule – H.

Annex-I *(Schedule-H)*

[Note: The Authority in consultation with the Independent Engineer shall describe in this Annexure, all the Drawings or reports that the Concessionaire is required to furnish under Clause 12.3]

Schedule I – Tests

(See Clause 14.1)

1. Schedule for Tests

- 1.1 The Concessionaire shall, no later than 90 (ninety) days prior to the likely completion of the Mandatory Facilities and/or Allied Facilities, notify the Independent Engineer and the Authority of its intent to subject the Mandatory Facilities and/ or Allied Facilities to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of the Construction Works.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Mandatory Facilities and/ or Allied Facilities to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer 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 shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

2. Tests

[Note: The Authority, in consultation with the Independent Engineer shall hereunder describe all the Tests that are required to be performed]

3. Agency for conducting Tests

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

4. Completion Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate in accordance with the provisions of Article 14.

5. Tests during construction

Without prejudice to the provisions of this Schedule-I, tests during Construction Works shall be conducted in accordance with the provisions of Clause 13.3.1.

Schedule J (a) – Completion Certificate

(See Clauses 14.2 & 14.3)

1. I / We,(Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for the Project (the “**Project**”) on design, build, finance, operate and transfer (the “**DBFOT**”) basis, through(Name of Concessionaire), hereby certify that the Tests specified in Clause 14 and Schedule I of the Agreement have been successfully undertaken to determine compliance of the [Mandatory Facilities and/ or Allied Facilities] with the provisions of the Agreement, and I / We am / are satisfied that the [Mandatory Facilities and/ or Allied Facilities] can be safely and reliably placed in commercial service.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Mandatory Facilities have been completed, and the [Mandatory Facilities and/ or Allied Facilities] is hereby declared fit for entry into commercial operation on this the..... day of20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of the INDEPENDENT

ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

Schedule J (b) – Provisional Certificate

(See Clauses 14.3)

1. I/ We,(Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated.....(the “Agreement”), for the Project (the “**Project**”) on design, build, finance, operate and transfer (the “DBFOT”) basis through (Name of Concessionaire), hereby certify that the Tests specified in Clause 14 and Schedule I of the Agreement have been undertaken for the Project Components to determine compliance thereof with the provisions of the Agreement.
2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire) I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Components, pending completion thereof.
3. In view of the foregoing, I/We am/are satisfied that the Project Components can be safely and reliably placed in commercial service, and in terms of the Agreement, the Project Components is hereby provisionally declared fit for entry into commercial operation on this the.....day of 20.....

ACCEPTED, SIGNED, SEALED AND SIGNED, SEALED AND DELIVERED
DELIVERED

For and on behalf of Independent Engineer by:

For and on behalf of Concessionaire by:

(insert name and designation)

(insert name and designation)

(Address)

(Address)

(e-mail address)

(e-mail address)

Schedule K – Maintenance Requirements for Project Facilities

(See Clause 17)

1 Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Project Facilities in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Part-Operation Period and the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the “**Maintenance Requirements**”).
- 1.2 The Concessionaire shall follow the minimum operation and maintenance standards and repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.7 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall include follow the minimum operation & maintenance standards and repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule - K within the time limit set forth therein.
- 2.2 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3 Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.
- 3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-K, the Independent Engineer, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

4 Extension of time limit

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

5 Emergency repairs/ restoration

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

6 Divestment Requirements

All defects and deficiencies specified in this Schedule-K shall be repaired and rectified by the Concessionaire so that the Project Facilities conforms to the Maintenance Requirements on the Transfer Date.

Annex – I

(Schedule-K)

1. Repair/Rectification of Defects and Deficiencies

[to be listed out based on the DPR of the Concessionaire in consultation with the Authority and the Independent Engineer]

2. Minimum Operation and Maintenance standards

a) General

During the Part-Operation Period and the Operation Period the Concessionaire shall maintain the Mandatory Facilities in accordance with performance standards and maintenance requirements, as mentioned below:

- i. Perform maintenance on a routine and periodic basis.
- ii. Provide functional facilities that (a) meet the convention & exhibition centre requirements; (b) have an environmentally acceptable atmosphere for users of the facility; (c) ensure safety and security of VVIPs; (d) ensure the safety of the visitors; and (e) maintain a good environment in the site conducive to all tourism and leisure facilities.
- iii. Identify potential problems early within the context of the planned maintenance system so that corrective action may be planned and completed in a timely manner.
- iv. Establish a maintenance list for planned operation and maintenance. Follow an orderly program so that maximum operational efficiency is attained.

b) Maintenance Works:

- i. The Concessionaire shall perform routine and periodic maintenance activities for the Mandatory Facilities viz, civil, mechanical and electrical works and equipment, furniture for meeting the specified performance standards as shown in the table below.

Maintenance Requirement:

Description	Required Level	Facility/ Equipment
Power Supply, Electrical Installations, Electrical Equipment's	Standby power arrangements shall be made for necessary project facilities of Convention & Exhibition Centre, etc. No loose, open, un-insulated wiring any of the areas. Switch Boards, Electric meters are enclosed in boxes and access to authorized persons only.	Standby power supply by DG sets shall be ready to be operated and should be available 24 hours

Description	Required Level	Facility/ Equipment
Natural and Mechanical Ventilation and Illumination	Shall meet the required Illumination level as specified in the Indian Standard (IS) Code and National Building Code (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. Arrangements for natural ventilation like skylights ventilators, shafts etc. shall be cleaned after every 5 days.

- ii. Maintenance of circulation areas of International Convention Center & other facilities: circulation area maintenance shall include the entire house keeping activities requiring routine and periodic maintenance. Annual maintenance shall be done for accessories like fans, lighting arrangements, Air Conditioners and geyser etc in these areas
- c) Performance Standards:
- i. The performance levels define the level at which the Mandatory Facilities are to be maintained and operated.
 - ii. The obligations of the Concessionaire in respect of Maintenance requirements shall include:
 - a) maintaining site environment so as to cause minimum disturbance to the environment.
 - b) ensure that the Mandatory Facilities are operational and rectification of the defects and deficiencies within the minimum time.
 - c) ensure that the fixed parameters provided in this Agreement are abided by at any time during the Concession Period
 - iii. Notwithstanding anything contrary to specified in this schedule, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. However, the Concessionaire shall get prior approval from the Authority, for such additional requirements of time.
 - iv. Notwithstanding anything to the contrary contained in this Schedule, if any defect, deficiency or deterioration in the Mandatory Facilities poses danger to life and property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger

d) Routine Maintenance Performance Standards:

S. No	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
Mandatory Facilities			
1	Power Supply, Electrical Installations, Electrical Equipment shall be functional	100% with zero tolerance	Any disruption in power supply shall be rectified in six hours. Standby power supply by DG sets shall be ready to be operated and should be available 24 hours.
2	Natural and Mechanical Ventilation and Illumination for multi-storey parking, if any, shall be functional	100% with zero tolerance	Any disruption to mechanical ventilation if provided shall be rectified within 24 hours. Sky-lights, ventilators, shafts etc shall be cleaned after every 5 days.
3	Boundary Wall as per applicable regulations shall be without any Damage / Breach	100% with zero tolerance	Any damage / breach to the boundary wall shall be rectified within three (3) days after their detection.
4	There shall be no standing water on pavement surface, no water logging in the centre	100% with zero tolerance	Immediate measures to be taken and water logging should be cleared within four hours.
5	All Toilets, Urinals, bathrooms shall be clean and functional	A minimum of 95% toilets and urinals shall be functional at any given point of time.	Toilets, Urinals, bathrooms shall be demarked with suitable sign boards. These should be kept clean and hygienic, and cleaning shall be done at least twice daily.
6	All drinking water chambers shall be clean and functional	A minimum of 95% drinking water chambers shall be functional at any given point of time.	These shall be cleaned daily. Water supply shall be for 24 hours. Drinking water quality in all the seasons shall be as per WHO standards.
7	Dustbins, spittoons etc. shall be clean and functional	A minimum of 95% Dustbins, spittoons shall be functional at any given point of time.	The dustbin shall be emptied after every six hours or earlier if it is full or if creates foul smell in the neighbourhood.
8	All Information Signage and Display Boards shall be	A minimum of 98% of signage and	These shall be cleaned once in a week. Damaged signage and boards

S. No	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
	visible, legible and functional	Display Boards shall be visible, legible and functional at any given point of time.	shall be replaced, repaired within seven days of their detection
9	Seating Arrangements shall not be damaged	A minimum of 95% of seats shall not be damaged at any given point of time.	Any damaged seat shall be repaired, replaced within seven days of detection. These shall be cleaned daily and checked that they are firmly fixed/grouted to the platform with the base.
10	Power Supply, Electrical Installations, Electrical Equipment shall be functional	100% with zero tolerance	Timely intervention with Temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required as decided by the Independent Engineer.
11	Staircases shall be clean and functional	A minimum of 95% of Staircases shall be clean and functional.	The staircases shall be cleaned at least twice a day. Damaged handrails, risers or treads shall be repaired within three days after detection.
12	Illumination (Lighting) shall be functional	To illumination shall be functional as per national standards.	The ventilators, sky-lights, etc serving as source of natural ventilation and other luminaries for artificial lighting shall be cleaned once in seven days to maintain the illumination level.
13	Defects in Electricity gadgetry like bulbs/ lamp shades/ wiring/ etc.	100% with zero tolerance	Temporary measures within 4 hours, permanent restoration within 7 days
14	Defects in all other utilities like water supply/ tap/ tap connections/ pipe/ sewerage and drainage pipes/ tanks & overflow/ glasses/ windowpanes/ all other building furniture	100% with zero tolerance.	Timely intervention with Temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required.
	Telecom systems / Networking		

S. No	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
15	Telecommunication and Networking Systems shall be functional	100% with zero tolerance.	Temporary measures within 8 hours, and permanent restoration within 3 days
16	Fire Fighting Equipment shall be functional	100% with zero tolerance.	Any damage to firefighting equipment installed in the facilities and in public spaces 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 firefighting purpose shall remain flooded with water to its capacity at all the times.
17	Water Tank shall be clean and functional	100% with zero tolerance	Water tank shall be cleaned and disinfected every month (by usage of approved chemicals) to ensure that no inorganic sedimentation takes place.

e) Periodic Maintenance Performance Standards:

In order to maintain the quality and operational standards of high quality, the periodic maintenance/ renewal activities are proposed for the Mandatory Facilities in the table below

S.No.	Periodic Renewal Activities	Time Limit for renewal
1	Repainting of furniture, signages delineators, markings etc.	Minimum once in a year
2	Repainting of Buildings and all other structures.	Minimum once in three years
3	Repainting/re-polishing of carpentry work like joinery, doors, windows, ventilators, wooden furniture etc. in the offices, cabins, booths etc.	Minimum once in three years
4	Resurfacing of Pavement	Routine repairs once in a year and premix carpet once every four year. In case the pavement is of Rigid type, no periodic renewal would be required except cleaning & filling of joints.

S.No.	Periodic Renewal Activities	Time Limit for renewal
5	Mechanical Equipment	Minimum once in a year or as per manufacturer's installation, operation and maintenance instruction manual.
6	Electrical Equipment	Minimum once in a year or as per manufacturer's installation, operation and maintenance instruction manual.

f) Performance Standards for Operation:

S.No.	Parameters	Performance Indicators
1	Convention & Exhibition Centre	To remain operational 24 hours a day throughout the year
2	Star Category Hotel	To remain operational 24 hours a day throughout the year
3	Parking Area	To remain operational 24 hours a day throughout the year
4	Enquiry Offices	To remain operational 16 hours a day throughout the year
5	Information System Displays	To remain operational 24 hours a day throughout the year
6	Toilets	To remain operational 24 hours a day throughout the year
7	Water Supply	To remain operational 24 hours a day throughout the year
8	Electricity Supply	To remain operational 24 hours a day throughout the year
9	Telecommunication and Networking Equipment	To remain operational 24 hours a day throughout the year
10	Standby Diesel Generator Sets	Standby diesel generator sets to supply power to the Mandatory Facilities must be available 24 hours a day, throughout the year in case of disruption or breakdown in power supply.
11	Maintenance Office	This shall remain operational for 16 hours a day and throughout the year.
12	Security	To remain functional 24 hours a day throughout the year Appropriate fencing of the site with lighting and security shall be provided to ensure that there will be no encroachment on the site.

(The aforementioned specifications will be finalized based on the DPR subject to compliance of the Terms and Conditions as mentioned in the Concession Agreement and guidance from the Authority and/ or Independent Engineer).

Schedule L – Safety Requirements

(See Clause 18.1.1)

1. **Guiding principles**
- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

[to be listed out based on the DPR of the Concessionaire in consultation with the Authority and the Independent Engineer]

Schedule M – Selection of Independent Engineer
(See Clause 20.1)

1. Selection of Independent Engineer

- 1.1 The Authority shall select an experienced firm/individual to discharge the functions and duties of an Independent Engineer.
- 1.2 In the event of termination of an Independent Engineer, appointed in accordance with the provisions of paragraph 1.1, the Authority shall appoint another firm/individual forthwith or may engage a government-owned entity in accordance with the provisions of paragraph 4 of this Schedule-M.

2. Terms of Reference

- 2.1 The Terms of Reference for the Independent Engineer shall substantially conform with Schedule-N, provided further that the Terms of Reference are subject to change by the Authority for every subsequent selection of Independent Engineer after the completion of term of the initial selection

3. Fee and expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed 1% (one per cent) of the Total Project Cost for a tenure of 3 (three) years. Payments to the Independent Engineer shall be done by the Authority, the Concessionaire shall reimburse the fee and expenses of the Independent Engineer to the Authority subject to a maximum limit of 1% (one per cent) of the Total Project Cost in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.

Schedule N – Terms of Reference for Independent Engineer

(See Clause 20.2.1)

1. Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated.....(the “**Agreement**”), which has been entered into between the Authority and (the “**Concessionaire**”) for the Project on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of Mandatory Facilities and Allied Facilities.

2. Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

3. Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
 - (a) review of the Drawings and Documents as set forth in Paragraph 4;
 - (b) review, inspection and monitoring of Construction Works for Mandatory Facilities and Allied Facilities;
 - (c) conducting Tests on completion of construction and issuing Completion / Provisional Certificate as set forth in Paragraph 5;
 - (d) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (e) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (f) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
 - (g) undertaking all other duties and functions in accordance with the Agreement.

- 3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
- 3.3 The scope of work of Independent Engineer shall be limited to Mandatory Facilities and Allied Facilities.

4. Development Period

- 4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Master Plan.

5. Construction Period

- 5.1 During the Construction Period, the Independent Engineer shall undertake a detailed review of the Drawings and Detailed Project Report to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites and topographical surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within fifteen (15) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings and Detailed Project Report with the Scope of the Project and Specifications and Standards.
- 5.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within seven (7) days of receiving such Drawings or Documents.
- 5.3 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within fifteen (15) days of receipt thereof.
- 5.4 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction of Mandatory Facilities and Allied Facilities, operation and maintenance of the Mandatory Facilities and Allied Facilities, and furnish its comments within seven (7) days from receipt of such reference from the Authority.
- 5.5 In respect of the Drawings, Detailed Project Report, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis. The Independent Engineer shall review the monthly 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.
- 5.6 The Independent Engineer shall inspect the Construction Works and the Project Facilities once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the twentieth (20th) day of each month in any case, 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 Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Mandatory Facilities and Allied Facilities. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within seven (7) days of the inspection.

- 5.7 The Independent Engineer may inspect the Project Site more than once in a month if any lapses, defects or
- 5.8 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer 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 in accordance with Good Industry Practice for quality assurance. The Independent Engineer 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.
- 5.9 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise ten per cent (10%) of the quantity or number of tests prescribed for each category or type of tests in the Maintenance Manual; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to ten per cent (10%) for certain categories or types of tests.
- 5.10 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Maintenance 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.
- 5.11 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.12 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Construction Works is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within fifteen (15) days the steps proposed to be taken to expedite progress in order to achieve COD within the time specified in the Agreement. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.

- 5.13 If at any time during the Construction Period, the Independent Engineer 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 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.
- 5.14 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 to inspect such works, and within three (3) days of receiving such notice, the Independent Engineer 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.
- 5.15 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.16 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Clause 14 and Schedule I.
- 5.17 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Clause 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.18 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6. Deleted

6.1 Deleted

7. Deleted

7.1 Deleted

7.2 Deleted

8. Determination of costs and time

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

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

9. Other duties and functions

9.1 The Independent Engineer shall perform all other duties and functions specified in the Agreement.

10. Miscellaneous

10.1 The Independent Engineer 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.

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

10.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two (2) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one (1) of the copies to the Authority along with its comments thereon.

10.4 The Independent Engineer shall retain at least one copy each of all Drawings, Detailed Project Report and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

10.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Detailed Project Report, 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 (2) copies of the said documents shall also be furnished in digital form or in such other medium as may be acceptable to the Authority.

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

Schedule O – Escrow Agreement

(See Clause 24.1)

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 atacting 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

The.....Department, represented by..... 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 of International Convention & Exhibition Centre, Star Category Hotel and Allied Facilities at Kapuluppada, Visakhapatnam, Andhra Pradesh on design, build, finance, operate and transfer (the “DBFOT”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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 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 Within thirty (30) 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 with the(name of 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, 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**

Save and except as otherwise provided in the Concession Agreement, 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 Financing 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 monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its shareholders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
- (e) all proceeds received pursuant to any insurance claims.

- 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 the Authority

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

- (a) all payments by the Authority after deduction of any outstanding Concession Fee.

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 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.

3.4 Interest on deposits

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

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

- 4.1.1 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 there from 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 Works, subject to and in accordance with the conditions, if any, set out in the Financing Agreements;
- (c) Concession Fee due and payable to the Authority;

- (d) 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;
 - (e) 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
 - (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) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
 - (i) any reserve requirement set forth in the Financing Agreements; and
 - (j) balance, if any, in accordance with the instructions of the Concessionaire.
- 4.1.2 No 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 set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 **Withdrawals upon Termination**

Upon Termination of the 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 Mandatory Facilities;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Clause 32 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 the Concession 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 Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

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

4.4 Application of insurance proceeds

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

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Clause 29 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

Seven (7) 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 five (5) 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 five (5) 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 (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 five (5) 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 five (5) 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 five (5) business days.

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

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than forty-five (45) 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

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 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.

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 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.

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 fifteen (15) 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, the same shall be referred to the Chief Secretary, Government of Andhra Pradesh , for final determination. The decision of the Chief Secretary shall be final, conclusive, and binding on both Parties
- 10.1.2 The Concessionaire expressly agrees and acknowledges that it shall not raise any objection to such reference or to the authority of the Chief Secretary, Government of Andhra Pradesh , on the ground that he is a Government Servant, that he has dealt with or supervised any matter relating to this Agreement in the course of his official duties, or that he may have previously expressed any views, opinions, or decisions on any of the matters forming the subject of the Dispute. The Parties further agree that such circumstances shall not disqualify the Chief Secretary from acting as the final authority under this Clause.
- 10.1.3. All questions, disputes, or differences of opinion whatsoever arising under, out of, or in any manner relating to or concerning this Agreement, or the interpretation, performance, operation, or effect thereof, or the rights, duties, or liabilities of the Parties hereto, shall, upon the rejection or non-acceptance of any claim by the Chief Secretary, Government of Andhra Pradesh, under Clause 10.1.1, be referred to and finally decided by a Civil Court of competent jurisdiction at Vijayawada, within the State of Andhra Pradesh. The Parties expressly agree that only the Courts situated at Vijayawada, Andhra Pradesh, shall have exclusive jurisdiction in all matters arising out of or in connection with this Agreement and that no proceedings shall be initiated in any other Court or forum outside the said jurisdiction.
- 10.1.4. The Concessionaire further agrees and undertakes that no injunction, restraining order, or similar relief shall be sought or obtained against the Authority to prevent or delay the re-tendering or re-allotment of the Project during the existence of any Dispute or during the pendency of any proceedings arising therefrom. The Parties expressly agree that the Authority shall be entitled to proceed with the re-tendering or other administrative actions relating to the Project notwithstanding the pendency of any such dispute or proceedings before any forum.

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 Vijayawada 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 or e-mail. The addresses for service of each Party, its facsimile number or email 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 five thirty (5.30) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

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

11.12 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.

THE COMMON SEAL OF ACCEPTED, SIGNED, SEALED AND
CONCESSIONAIRE has been affixed pursuant DELIVERED
to the resolution passed by Board of Directors of
the Concessionaire at its meeting held on
day of 20__hereunto affixed in the presence of For and on behalf of Senior Lenders by the
_____, Director, who has signed these Lender's Representative:
presents in token thereof and _____,
Company Secretary / Authorised Officer who has
countersigned the same in token thereof:

(insert name and designation)

(insert name and designation)

(Address)

(Address)

(e-mail address)

(e-mail address)

ACCEPTED, SIGNED, SEALED AND
DELIVERED

ACCEPTED, SIGNED, SEALED AND
DELIVERED

For and on behalf of Escrow Bank by:

For and on behalf of Authority by:

(insert name and designation)

(insert name and designation)

(Address)

(Address)

(e-mail address)

(e-mail address)

In the presence of:

(signature of witness)

(signature of witness)

Schedule P – Vesting Certificate

(See Clause 31.4)

1. The, Department, Government of Andhra Pradesh (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for development of an International Convention & Exhibition Centre, Star Category Hotel and Allied Facilities at Kapuluppada, Visakhapatnam (the “**Project**”) on design, build, finance, operate and transfer (the “**DBFOT**”) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 31.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this..... day of....., 20.....

ACCEPTED, SIGNED, SEALED AND
DELIVERED

ACCEPTED, SIGNED, SEALED AND
DELIVERED

For and on behalf of Concessionaire by:

For and on behalf of Authority by:

(insert name and designation)

(insert name and designation)

(Address)

(Address)

(e-mail address)

(e-mail address)

In the presence of:

(signature of witness)

(signature of witness)

Schedule Q – Lease Deed for Site

THIS LEASE DEED is made on this _ day of __2024 at _____

By and Between

Andhra Pradesh Industrial Infrastructure Corporation, constituted by Government of Andhra Pradesh and incorporated under the Indian Companies Act., 1956, having its Registered Office at _____ acting through its Vice Chairman and Managing Director, hereinafter referred to as “**APIIC**” or the “**Lessor**” which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and assigns) of the **FIRST PART**

And

M/s -----, a company incorporated under the Indian Companies Act., 2013, having its Registered Office at -----, represented by -----hereinafter referred to as the “**Concessionaire**” or the “**Lessee**” (which expression shall, unless the context otherwise requires, include its successors and permitted assigns) of the **SECOND PART**

Each singly a “**Party**” and both collectively the “**Parties**”

WHEREAS:

- A. The Lessor is the absolute owner of the land bearing nos.____ admeasuring about -- acres, situated at Kapuluppada, Visakhapatnam in the State of Andhra Pradesh, more particularly described in **Schedule I** hereunder and shown delineated in colour boundary line on the Site plan annexed thereto (hereinafter the “**Demised Plot**” or the “**Site**”).
- B. The Lessor invited bids for the Project vide its Request For Proposal (hereinafter the “**RFP**”) dated ----- . The bid dated ----- offered by the Lessee being the highest bid has been accepted by the Lessor vide its Letter of Award dated ----- on the terms and conditions set forth therein.
- C. The **Lessor** has vide the Concession Agreement dated ----- (hereinafter “**Concession Agreement**”) granted the concession to ----- (the Concessionaire or the Lessee herein) for implementing the Project at the Site and appropriating Project Revenues generated therein as per the terms of the Concession Agreement.
- D. Pursuant to and under the Concession Agreement the Lessor is required to vest with the Lessee the land comprising the Site and all rights relating thereto under a valid and binding Lease Deed for the purpose of implementing the Project.
- E. Being the owner of the Site with a good and marketable title thereto and having lawful possession thereof, the Lessor is desirous of demising the Site unto the Lessee and vesting unencumbered possession thereof with the Lessee, on the terms and conditions hereinafter contained.

NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:

1. The words and phrases used in this Deed but not defined shall, unless the context otherwise requires, have the meaning assigned to them respectively in the Concession Agreement.
2. The interpretation Article 41 of the Concession Agreement shall be deemed to be incorporated in this Deed in extenso mutatis mutandis.
3. The following terms shall, except where the context otherwise requires, have the meaning as hereunder
 - (a) Deed or Lease Deed or Site Lease Deed means this lease deed, schedules to it, as amended or modified by the Parties in accordance with the provisions hereof,
 - (b) **Concession Agreement** shall mean the Concession Agreement dated ----- entered into between the Authority (the Lessor herein) and the Concessionaire (the Lessee herein);
 - (c) **Demised Premises or Site** means all the lands comprising the Site, i.e. sq m of land, more particularly delineated in Schedule 1 and marked in colour in the Site plan attached hereto;
 - (d) **Lessor** means the Authority;
 - (e) **Lessee** means the Party with whom Authority is entering into this Lease Deed or the Concessionaire;
 - (f) **Schedule** means any of the schedules and supplements hereto.
4. The Lessor hereby demises the Demised Premises unto the Lessee under the terms of this Deed from the Appointed Date as specified in the Concession Agreement (hereinafter referred to as the “**Commencement Date**”) for a period of 33 (thirty-three) years therefrom, which period shall be co-terminus with the Concession Agreement and shall be extended or terminated at a prior date to coincide with the Concession Period. The Lessor hereby undertakes that it shall not terminate this Deed or refuse to renew and extend the lease term in accordance with the provisions of this clause, except upon the due and valid termination of the Concession Agreement or expiry/ termination of Concession Period or the breach of any of the terms and conditions of this lease deed by the Lessee.
5. In consideration of the Concession Agreement between the Lessor and the Lessee and in consideration of the Lessee agreeing to pay the Concession Fee as specified in the Concession Agreement and the covenants on the part of the Lessee, the Lessor hereby demises unto the Lessee on an “as is where is basis” and effective from the Commencement Date the Demised Premises without interruption or interference, free from encumbrances and together with the full and free right and liberty of way and passage, easements, right of way/way leaves and other rights in relation thereto with delivery of Vacant Possession thereof.
6. The Lessor hereby vests the Demised Premises with the Lessee with effect from the Commencement Date along with all easements, free from any encumbrances. Provided that the Lessee shall at its cost be required to remove the utilities including power transmission lines and

structures at, over or under the Demised Premises as per the provisions of the Concession Agreement and the Lessor shall render the necessary facilitation in this behalf.

7. In consideration for the lease of the Site by the Lessor to the Lessee, the Lessee shall, effective from Commencement Date and during the Concession Period the Lessee shall pay an amount at the rate of Rs 110 (Rupees One Hundred Ten) per square metre of the Project Site (the '**Annual Lease Rental**') to the Grantor, which shall be escalated by 15% at the end of every three-year period. Such Annual Lease Rental shall be payable quarterly in advance, before the commencement of each quarter during the Concession Period.

After the expiry of the Concession Period transfer the entire Project Facilities to the Lessor. On transfer, the Lessor shall have the exclusive right over the Project Facilities and shall be at liberty to utilize and maintain the same in any manner whatsoever. However, lender's/lenders' rights shall be protected in case of termination of this Concession Agreement prior to expiry of the Concession Period.

8. (a) The Lessor hereby vests the Demised Premises with the Lessee under this deed for the purpose of implementing the Project, including the design, finance, construction, provision and operation and maintenance of the Project Facilities in accordance with the terms and conditions of the Concession Agreement and the applicable development guidelines .

(b) The Lessee shall procure at its cost all Applicable Permits from the relevant competent authorities as are required, from time to time, for the development, construction, implementation, completion, commissioning and the operation and maintenance of the Project Facilities unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect.

(c) The Lessee shall comply with all the specifications and controls set forth in the RFP, its bid, this Deed, Concession Agreement, any addendums, clarifications issued, the applicable law, the Applicable Permits and good industry practice and shall construct and complete the Project Facilities within the stipulated time.

9. The Lessor recognizes the right of the Lessee to transfer or otherwise deal with the Demised Premises by grant of sub-leases of built up spaces of the Mandatory Facilities and Allied Facilities , in accordance with clause 5.2 of the Concession Agreement and appointment of Contractors and other suitable arrangements with any Person selected or procured by the Lessee (the "**Contractual Arrangements**") for implementing the Project at the Demised Premises and carrying on its business of establishing, implementing, managing and operating and maintaining the Project Facilities; provided that the same shall be subject to and be carried out in accordance with the provisions of the Concession Agreement.

PROVIDED THAT (i) any sub-leases of built-up spaces of the Mandatory Facilities or Allied Facilities or similar arrangement, in accordance with the terms of the Concession Agreement, under or pursuant to this Deed shall not contain any terms or provisions inconsistent with or in derogation of any terms or provisions contained in this Deed; (ii) the terms and conditions

of this Deed shall be complied with in the case of such sub-leases or similar arrangement and, as applicable, form a part thereof; (iii) the term of such sub-leases or similar arrangements shall be limited to and be co-terminus with the Term of Lease granted herein by the Lessor to the Lessee; (iv) all such sub-leases or similar arrangements shall be determined and terminated simultaneously with and automatically on the expiry, determination or termination of this Deed, as the case may be. The Lessee's failure to comply with this sub-clause shall be at its cost: risk and consequence and constitute a Lessee Event of Default that shall entitle the Lessor to terminate this Deed.

10. **PROVIDED FURTHER THAT** the execution of such sub-leases of built-up spaces of the Mandatory Facilities and Allied Facilities in accordance with the terms of the Concession Agreement, shall not relieve the Lessee of its liability or obligations as set out in this Deed. The Lessor shall not be liable in any manner whatsoever to any person in respect of or in connection with execution of agreements or disputes relating to such sub-leases or similar arrangement. The Lessee shall indemnify and keep indemnified the Lessor and its employees and consultants from and against all costs, losses, damages, liabilities, proceedings, litigation, penalties etc. in this behalf.
11. Subject to the provisions of the Concession Agreement in this behalf, the Lessor hereby consents and confers on the Lessee for the duration of the Concession Period the right to transfer, assign or otherwise encumber the Project Assets and/or any or all of its rights and interests in relation thereto or to create a Security Interest thereon in favour of the Lenders for the purpose of raising Financial Assistance provided or agreed to be provided by them under the Financing Agreements and that no such transfer, assignment, encumbrance or creation of security interest by the Lessee of or over the Project Assets in favour of the Lenders shall be construed as being in any way an event of default hereunder or a violation of the terms hereof.

Provided further, (i) the Lessor shall be informed by the Lessee as to the creation of any Security Interest in favour of the Lenders within a period of 14 days from the date such security interest comes into existence. A letter sent by the Lessee under registered post with due proof of postal registration receipt, shall constitute sufficient compliance of the requirement by the Lessee; (ii) except as provided in this Deed/ the Concession Agreement, the Lessee shall not create any security interest in favour of any Person without the prior written consent of the Lessor; and (iii) in the event of the termination of the Concession Agreement/ this Deed by efflux of time or otherwise, such assignment/Security Interest shall stand extinguished.

Failure of the Lessee to provide the required information to the Lessor in terms of this clause shall amount to an event of default on the part of the Lessee and any consequential failure or inability on the part of the Lessor to provide any notice or intimation to such Lender, in terms of the relevant provisions of the Concession Agreement, if any required, shall be at the sole risk and responsibility of the Lessee only.

Provided further, nothing contained in this clause 10 shall (i) absolve the Lessee from its responsibilities to perform/ discharge any of its obligations under and in accordance with the

provisions of this Deed; (ii) shall authorize or be deemed to authorize the Lenders to implement and execute the Project themselves; and (iii) under any circumstances amount to any guarantee from or recourse to the Lessor.

12. In the event of termination of the Concession Agreement by efflux of time or otherwise, this Deed shall be terminated and the lease of the Demised Premises and all sub-leases of built-up areas of the Allied Facilities and Mandatory Facilities and rights in relation thereto shall be determined, the Lessee and Persons claiming through or under it (including without limitation the Contractors, and Contractual Counter Parties to the Contractual Arrangements including the sub-lessees of built up areas of the Allied Facilities and Mandatory Facilities and the persons claiming through or under them) shall hand over the possession of the Demised Premises, free from all encumbrances to the Lessor or its nominated agency and forthwith vacate the Demised Premises without any demur or delay.
13. In the event of termination of the Concession Agreement by efflux of time or otherwise, this Deed shall be terminated and the lease of the Demised Premises and shall be determined, the Lessee and Persons claiming through or under it (including without limitation the Contractors, and Contractual Counter Parties to the Contractual Arrangements shall hand over the possession of the Demised Premises, free from all encumbrances to the Lessor or its nominated agency and forthwith vacate the Demised Premises without any demur or delay.
14. The Lessor hereby covenants with the Lessee as under:
 - (a) That it shall not interfere with or impede in any manner or otherwise limit, restrict or impose conditions in relation to: (i) the complete, free and full enjoyment of the Demised Premises by the Lessee for the purpose of the implementation of the Project and all rights related thereto; (ii) the design, construction, operation and maintenance of the Project Facilities; (iii) the implementation of the Project Facilities by the Lessee; and (iv) the possession, control and use by the Lessee of the Demised Premises, the facilities constructed thereon and any other facilities developed in the course of implementation of the Project; provided that the same are in compliance with the terms and conditions of the Concession Agreement and this Deed.
 - (b) That it shall not terminate this Deed, except upon the due and valid termination of the Concession Agreement in accordance with the provisions thereof or upon any breach of any of the terms and conditions of this lease deed by the Lessee; and
 - (c) That there are no litigations, claims, demands or any proceedings pending before any authority in respect of acquisition of the Demised Premises or in respect of any other land-dispute, and that the Lessee shall have complete, lawful and uninterrupted possession, control and use of the Demised Premises.
15. The Lessee hereby covenants with the Lessor as follows:
 - (a) That the Annual Lease Rental due and payable to the Lessor under Section 7 hereof shall be

payable in advance to the Lessor within seven (7) days of the commencement of the respective Accounting Year ;

- (b) That it shall develop, establish, design, construct and operate and maintain the Project Facilities at the Demised Premises as per its obligations under the Concession Agreement;
 - (c) That it shall operate and maintain the Project Facilities or cause it to be operated and maintained in accordance with the Concession Agreement;
 - (d) That it shall observe and perform all terms, covenants, conditions and stipulations of this Deed;
 - (e) That it shall keep the Demised Premises free from encroachments during the Concession Period and operate and maintain and carry out repairs in accordance with the provisions of the Concession Agreement;
 - (f) That in respect of the Demised Premises/built up areas thereat/its business activities thereat/relating to the Project it shall pay all municipal rates, levies, taxes, rents, including penalties etc for late payment, at the applicable rates from time to time, to the concerned Government Authorities and be liable for payments of all rates and charges for the use of utilities and services at the Demised Premises; and
 - (g) The Concessionaire shall not sub-lease the whole or any part of the underlying land comprising the Site to any third party, leased to it by Lessor under the Lease Deed, to any person in any form or under any arrangement, device or method. This is an essential condition of this Agreement, the breach of which shall constitute a Concessionaire Default under the Concession Agreement. Provided that the Concessionaire shall be entitled to sub-lease the built up areas for the Mandatory Facilities and Allied Facilities constructed by it at or on the Demised Site and to enter into Contractual Arrangements subject to and in accordance with the terms and conditions of the Concession Agreement and this -lease deed and the same shall be co-terminus with this lease deed.
16. Each Party hereto represents and warrants that:
- (a) It has full power and authority to execute, deliver and perform its obligations under this Deed and to carry out the transactions contemplated hereby;
 - (b) It has taken all necessary actions to authorize the execution, delivery and performance of this Deed; and
 - (c) This Deed constitutes its legal, valid and binding obligations that shall be enforceable against it in accordance with the terms hereof.
17. The Parties agree that
- (a) The failure of the Lessee to perform its obligations under this Deed and any breach of covenants or undertakings given and provided for in this Deed by the Lessee shall amount to

a Concessionaire Default under the Concession Agreement.

- (b) Any dispute, controversy or claim arising out of or in relation to this Deed or the interpretation of any of its provisions shall be settled in accordance with the provision of the Concession Agreement.
- (c) The stamp duty and registration charges for the execution and registration of this Deed shall be borne by the Lessee.
- (d) In case of ambiguities, conflicts or discrepancies between the Concession Agreement and this Deed, the Concession Agreement shall prevail.
- (e) All notices under the terms of this Deed shall be sent either by hand, facsimile or courier to the following addresses:

Lessor _____

Lessee

IN **WITNESS WHEREOF** the Parties have executed and delivered this Deed by their duly authorized representative on the date first above written:

SIGNED ON BEHALF OF LESSOR SIGNED, SEALED AND DELIVERED

	Lessee by the hand of its authorized representative
_____(Signature)	_____(Signature)
_____(Name)	_____(Name)
_____(Designation)	_____(Designation)
	Pursuant to Resolution dated _____ by its Board of Directors

In the presence of

Witnesses:

(i)

(ii)

Date:

Place: