

**Directorate of Tourism
Government of Uttar Pradesh**

Request for Qualification cum Proposal

**Volume - II
Draft Development Agreement**

**Operation of Rahi TRC Mathura through Private
Sector Participation on Lease and Development basis
in the state of Uttar Pradesh**

January 2016

Tender No: 2/8-16(PPP)Lease/2016

**Paryatan Bhawan, C-13, Vipin Khand,
Gomti Nagar, Lucknow - 226010
Tel: 0522-2308017/2308993
Fax: 0522-2307074/2308937**

Development Agreement

This Development Agreement is entered into on this the [●] day of [●] Two Thousand _____ at Lucknow, State of Uttar Pradesh, India.

Among

1. **The Governor of State of Uttar Pradesh, acting through Secretary / Director General, Directorate of Tourism, Government of Uttar Pradesh**, a nodal agency appointed by Government of Uttar Pradesh, and being represented herein by its authorised officer, Director General, and having its principal office at Paryatan Bhawan, C-13, Vipin Khand, Gomti Nagar, Lucknow, Uttar Pradesh - 226010 (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of **First Part**;

and

2. **M/s.**, a special purpose company incorporated under the provisions of the Companies Act, 2013 and rules notified thereunder, and having its registered office at [●], through its Authorized Signatory [●] [insert name], [●] [insert designation of the Authorized Signatory] (hereinafter referred to as the "**Developer**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the **Second Part**.

and

3. **M/s. [●]**, a [company/LLP/Partnership Firm]{incorporated/constituted} under the applicable Indian laws, and having its registered/head office at [●], through its Authorized Signatory [●] [insert name], [●] [insert designation of the Authorized

Signatory] being the Selected Bidder joining and executing this Agreement as confirming party (hereinafter referred to as the "**Confirming Party**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the **Third Part**.

WHEREAS

- A. The Government of the State of Uttar Pradesh ("**GoUP**") intends to promote tourism in the State and create employment opportunities for its people, in the tourism, hospitality and allied sectors. The State's Tourism Policy aims at encouraging investment in travel & tourism sector and allied sectors within the State.
- B. GoUP is focusing on developing necessary infrastructure, development of human capital, proactive engagement with investors and effective policy implementation, so as to create conducive ambience for travel & tourism industry in the state. GoUP has approved the up gradation, development and Operation of Rahi TRC Mathura through Private Sector Participation on Lease and Development basis in the state of Uttar Pradesh (the "**Project**").
- C. Directorate of Tourism / UP State Tourism Development Corporation Ltd. (UPSTDCL), a 100% owned State Government Company, incorporated under the Companies Act, 1956, owns and operates Rahi TRC Mathura (as provided in Schedule A) for development of the Project. In order to meet the aforementioned objective, GoUP has appointed **Directorate of Tourism**, as the nodal agency for undertaking the development of the **Project** at Rahi TRC Mathura, with private sector participation, by inviting competitive proposals from interested parties, through a transparent bidding process, inter alia, to design, finance, develop / upgrade, operate and maintain the Project in accordance with the terms and conditions as set forth in this Development Agreement.
- D. The Project shall consist of activities allowed in accordance with the provisions of Tourism Policy of the Government of Uttar Pradesh, this Agreement and other applicable rules & regulations.
- E. The Authority had accordingly invited proposals by its Request for Qualification cum Request for Proposal dated _____ (the "Request for Proposal" or "RFP") comprising of technical qualification and financial proposal for short listing of bidders inter-alia for designing, financing, developing / upgrading, operation and maintenance of the Project and had shortlisted certain bidders including, inter alia, the Selected Bidder[●].
- F. Pursuant to evaluation of the bids, the Authority accepted the Proposal submitted by [●] and issued a Letter of Intent (herein after referred as "**LOI**") bearing number [●] dated [●] requiring, inter alia, the execution of this Development Agreement within 30 (thirty) days of the date of issue thereof. The Authority acknowledges that Selected Bidder has signed and returned the duplicate copy of the LOI in acknowledgement thereof vide their letter bearing number [●] dated [●].
- G. The Selected Bidder has since promoted and incorporated the Developer as a new company under the Indian Companies Act, 2013 and rules notified thereunder, and has requested the Authority to accept the Developer as the entity, which shall

undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOI, including the obligation to enter into this Development Agreement pursuant to the LOI for executing the Project.

- H. By its letter dated [●], the Developer has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Development Agreement pursuant to the LOI. The Developer has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.
- I. The Authority has agreed to the said request of the Selected Bidder and the Developer, and has accordingly agreed to enter into this Development Agreement with the Developer for execution of the Project on Lease & Development basis, subject to and on the terms and conditions set forth hereinafter.
- J. The Developer / Selected Bidder has paid the Upfront Premium of Rs _____/- (Rupees _____ only) through Demand Draft / Bankers Cheque No _____ dated _____ drawn on _____ Bank.
- K. The Selected Bidder has agreed to execute and join this Development Agreement as Confirming Party to the transactions contemplated herein.

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

Article 1 – Definitions and Interpretation

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in **Article 40**) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, 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 or notifications which have the force of law in the territory of Uttar Pradesh and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST);
- (h) any reference to Rs. or Rupees shall mean a reference to Indian Rs. or Rupees (currency of India);
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Lucknow are generally open for business;

- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) 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;
- (m) 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;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “**thousand**” means (1,000), “**lakhs**” means (100,000) and “**crore**” means (10,000,000);
- (q) “**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;
- (r) 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;
- (s) 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; provided that this sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;
- (u) 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 forth in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a paragraph of this Agreement or of the Schedule in which such reference appears; and
- (w) the damages payable by either Party to the other of them, 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**”).

- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Developer to the Authority and/or the Project Monitoring Agency shall be provided free of cost and in 3 (three) copies, and if the Authority is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain 2 (two) copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the Parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.

1.3 Measurements and Arithmetic Conventions

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

1.4 Priority of Agreements and Errors/Discrepancies

- 1.4.1 This Agreement, and all other agreements and documents forming part of 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 shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements, appendices and documents forming part hereof;
- (c) The letter of intent issued to the Developer
- (d) The written clarifications issued to the bidders
- (e) Written addenda to the RFP
- (f) The RFP
- (g) The Developer’s Bid

i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above and soon.

- 1.4.2 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 written description on the Drawings and the Specifications and Standards, the latter shall prevail;
 - (d) between the dimension scaled from the Drawings and its specific written dimension, the latter shall prevail; and
 - (e) between any value written in numerals and that in words, the latter shall prevail.

Article 2 - Scope of the Project

2.1 Scope of the Project

- 2.1.1 The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:
- (a) designing, engineering, financing and upgradation / construction of the Project in the land on the Site set forth in **Schedule-A** in accordance with the Business Plan to be submitted by Developer in terms herein and in accordance with format as specified in **Schedule-B** comprising the Project Facilities and Project Infrastructure, as specified in **Schedule-C1** and **Schedule-C2**, respectively, and in conformity with the Specifications and Standards set forth in **Schedule-D**;
 - (b) operation and maintenance of the Project in accordance with the provisions of this Agreement, UP Tourism Policy and any other applicable rules and regulations to be read along with all amendments & rules as issued by Government of India (GOI) / Government of Uttar Pradesh (GoUP) and Good Industry Practice in a professional manner ensuring maximum availability of Project Infrastructure and Project Facilities during the Operations Period; and
 - (c) performance and fulfilment of all other obligations of the Developer 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 Developer under this Agreement.
- 2.1.2 The Project shall be developed in accordance with the provisions of this Agreement. The development regulations applicable to the area will apply in addition to the norms specified in this Agreement.

Article 3 - Grant of Concession

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Developer the Concession set forth herein including the exclusive right, licence, and authority during the subsistence of this Agreement to construct, develop, operate and maintain the Project (the “**Concession**”) for the Concession Period and the Developer hereby accepts the Concession and agrees to implement the Project in accordance with the terms and conditions set forth herein. The Concession hereby granted shall be:

- (a) for a period of 30 (thirty) years, which shall commence from the Appointed Date (“**Concession Period**”).
- (b) The Concession shall include Right of First Refusal in accordance with the terms and conditions in Clause 3.2.
- (c) The Concession shall include leasehold rights with respect to the Site, which shall be granted / demised to the Developer by way of a separate Land Lease Agreement to be executed between the Authority and the Developer, substantially in the format provided in **Schedule-T (“Land Lease Agreement”)**. The Land Lease Agreement shall be executed in the manner specified in **Article 4.1.3**.

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

- (a) Right of Way and access to the Site, and grant of lease rights under Land Lease Agreement, both aforesaid rights to be exercised for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) design, finance, develop / upgrade, operate and maintain the Project on the Site in accordance with the Specifications and Standards and put to use the Project Assets for the purposes specified herein and to use such Project Assets for commercial purposes in the manner specified in **Article 3.1.4**;
- (c) manage, operate and maintain the Project and regulate the use thereof by third parties;
- (d) demand, collect and appropriate User Charges from Users and refuse a User use of the Project Infrastructure or Project Facilities if the User Charge due is not paid;
- (e) perform and fulfil all of the Developer's obligations under and in accordance with this Agreement;
- (f) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Developer under this Agreement;
- (g) not assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, license, lease or part possession therewith, save and except as expressly permitted by this Agreement or the Substitution Agreement. However, in the event of any default by the Developer under this Agreement at

any time prior to COD, as the case may be, all the rights of the Senior Lenders with respect to the Project Assets (excluding land) shall be subject to the Authority's unfettered rights under **Articles 29, 31 and 32** and the Authority may terminate this Agreement, Land Lease Agreement and all other agreements and resume / re-enter the entire Site from the Developer free from all Encumbrances, without payment of any amount/compensation to the Developer and/or to the Senior Lenders; and

(h) avail the incentives in accordance with the provisions of **Schedule-V**.

3.1.3 The Authority shall facilitate and assist the Developer in obtaining all approvals and Applicable Permits that may be required by the Developer from any Government Instrumentality for the implementation, development, construction, operation and maintenance of the Project, subject to Developer making and submitting all required applications complete in relevant details and complies fully with Applicable Laws. The Authority will provide all reasonable support and assistance to the Developer in procuring Applicable Permits as may be required from time to time, however the principal obligation for obtaining the Applicable Permits shall be that of the Developer.

3.1.4 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concession hereby granted shall, without prejudice to the provisions of **Article 3.1.1**, entitle the Developer to undertake development of the Project Assets and to use such development for commercial purposes through Project Agreements with Users.

Provided that the rights sought to be conferred in favour of the Users under such Project Agreements shall take effect only upon achievement of COD of the Project Asset in respect of which the Project Agreement is being entered into.

3.1.5 **Acceptance by Developer**

In consideration of the rights, privileges and benefits conferred upon by Authority and other good and valuable consideration expressed herein, the Developer hereby accepts and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

3.2 **Right of First Refusal**

The Developer can be given right of first refusal in the bidding process carried out for selection of developer after the completion of the term of 30 years (Concession Period) on the following conditions:

- (a) There should not be any substantial performance / contract related issues, especially during the last five years of the term;
- (b) Developer should participate in the bidding process;
- (c) Developer's bid should be within 5% of the bid of the highest bidder; and
- (d) Developer should match the highest bidder, and also pay a one-time premium, which will be shared between the Authority and the highest bidder as compensation.

Article 4 - Conditions Precedent

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in **Articles 4, 9, 10,23,24, 29, 37 and 39**, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this **Article 4.1** (the “**Conditions Precedent**”).
- 4.1.2 The Conditions Precedent required to be satisfied by the Developer within a period of 120 (one hundred and twenty) days from the Effective Date shall be deemed to have been fulfilled when the Developer shall have:
- (a) prepared the overall project development & operation plan (the “**Business Plan**”) for the Project, in accordance with **Article 4.2** and submitted to the Authority;
 - (b) procured all the Applicable Permits, clearances, no objection certificates & approvals as specified in **Schedule-E** unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
 - (c) executed the Financing Agreements and delivered to the Authority 2 (two) true copies thereof, duly attested by a Director of the Developer;
 - (d) achieved Financial Close and delivered to the Authority 2 (two) true copies of the Financial Plan, accepted by the Senior Lenders, duly attested by a Director of the Developer;
 - (e) executed and procured execution of the Project / Escrow Account/ Escrow Agreement and opened the Project / Escrow Account;
 - (f) executed and procured execution of the Substitution Agreement;
 - (g) delivered to the Authority a confirmation, in original, of the correctness of its representations and warranties set forth in Sub clauses (k), (l) and (m) of **Article 7.1** of this Agreement;
 - (h) delivered to the Authority a legal opinion from the legal counsel of the Developer with respect to the authority of the Developer to enter into this Agreement and the enforceability of the provisions thereof;
 - (i) Provided the Authority notarised true copies of its constitutional documents and board resolutions authorising the execution, delivery and performance of this Agreement by the Developer;
 - (j) Provided, subject to and in accordance with terms hereof, the unconditional, unequivocal and irrevocable Performance Security for an amount of Rs 6,30,000/- (Rupees Six Lakh Thirty Thousand only) on or before the Appointed Date;
 - (k) Paid the Concession Fee of Rs. [.....] due for the first year to the Authority, prior to or on the Appointed Date;

- (l) Undertakes to comply with the end use allowed for the Project according to rules and regulations of the Tourism Department and Tourism Policy of the Government of Uttar Pradesh and all other applicable laws/norms/regulations.

Provided that upon request in writing by the Developer, the Authority may in its sole discretion and after recording the reasons (if deemed reasonable), extend the period (subject to a maximum period of 30 days) for achieving any of the Conditions Precedent set forth in this **Article 4.1.2**.

- 4.1.3 The Developer may, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this **Article 4.1.3** within a period of 120 (one hundred and twenty) days of the notice, or such longer period as may be mutually agreed between the parties, and the Developer's obligations shall be subject to performance of obligations by the Authority hereunder, which shall be deemed to have been performed when the Authority shall have:

- (a) procured for the Developer the Right of Way to the Site in accordance with the provisions of **Article 10.3.2** and granted leasehold rights by executing the Land Lease Agreement as specified in **Schedule-T** in respect of the same; provided that the conditions set forth in this Agreement shall be satisfied on or prior to the Appointed Date; and
- (b) provide all reasonable assistance to the Developer in procuring all requisite approvals from Central Government Agencies and State Government Agencies; subject to developer making and submitting all applications complete in all relevant details and in due compliance with Applicable Laws.

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

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

4.2 Preparation of Business Plan

- 4.2.1 The Developer shall no later than 30 (thirty) days from the Effective Date, prepare and submit a project development and operation plan ("**Business Plan**") in accordance with **Schedule - B**, for review and comments from the Authority. The Business Plan for the Project shall include the Project Infrastructure and Project Facilities as given in **Schedule-C1** and **Schedule-C2**, respectively and shall also deal with inter-alia, the aspects in relation to Business Plan for Project as provided in **Schedule-B**. On receipt of the Business Plan, the Authority shall review the Business Plan for the Project submitted by the Developer and provide its comments/observations and suggestions on the same within 15 (fifteen) days from the date of the receipt of such Business Plan by the Authority.
- 4.2.2 In the event that the Authority has observed that the Business Plan is not in conformity with the Scope of the Project or proposes changes for any other reason, the Developer shall promptly and without any undue delay revise and resubmit the Business Plan or satisfy the Authority with regards to its compliance within 7 (seven) days from receipt of such comments.

- 4.2.3 It is clarified that the review and comments of the Authority hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on Business Plan shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 4.2.4 Any amendments to the Business Plan shall be with the prior written consent of the Authority.
- 4.2.5 The Developer shall not be entitled to any extension of time for developing the Project or any other relief on account of delay caused due to providing any clarification or in resubmitting the Business Plan.
- 4.2.6 Notwithstanding the review by the Authority, the Developer shall be solely responsible for any defect and/or deficiency in the Business Plan relating to the Project or any part thereof and accordingly the Developer shall at all times remain responsible for its obligations under this Agreement.
- 4.2.7 The Developer shall in no way represent to any Person that, as a result of any review by the Authority, the Authority have accepted responsibility for the technical or soundness of any work relating to the Project or part thereof carried out by the Developer and the Developer shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project or any part thereof.

4.3 Damages for delay by the Developer

In the event that (i) the Developer does not procure fulfilment of any or all of the Conditions Precedent set forth in **Article 4.1.2** within the period specified therein in respect thereof, and (ii) the delay has not occurred as a result of Authority's failure to fulfil the obligations under **Article 4.1.3** or other breach of this Agreement by the Authority, or due to Force Majeure, the Developer shall pay to the Authority Damages in an amount calculated at the rate of 0.2 % (zero point two percent) of the Performance Security or Bid Security, as the case may be, for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security or Bid Security, as the case may be; forthwith which this Agreement shall be liable for termination by Authority and in such event, the Performance Security or the Bid Security, as the case may be, shall be liable to be encashed by the Authority.

Notwithstanding anything contained herein, in the event of termination in terms above, save and except for aforesaid encashment of the Performance Security or the Bid Security, as the case may be, each party shall return to the other party any monies [other than termination payment by way of aforesaid encashment] received from such party prior to termination.

Article 5 - Obligations of the Developer

5.1 Development Obligations

- 5.1.1 The Developer will design, finance, construct / upgrade, develop, operate, manage and maintain Project Facilities on the Site within first anniversary of the Appointed Date.
- 5.1.2 The Developer will design, finance, construct/ upgrade and develop the Project on the Site. The Developer through its Tourism / Hospitality Company (whose Technical & Financial capacity were claimed for qualification at RFP stage) shall operate, manage and maintain the Project at all time during the Concession Period till 5th Anniversary of COD. In case of substitution of Tourism / Hospitality Company post 5th anniversary from COD, the Developer shall ensure that an equivalent or better (in terms of Technical & Financial capacity) Tourism / Hospitality Company has been appointed.
- 5.1.3 The Developer will spend the amount specified as investment in the Business Plan within 1 (one) year towards development of the Project from the Appointed Date. The investment obligation under this Clause 5.1.3 shall include the Upfront Premium paid by the Developer to the Authority.
- 5.1.4 The Developer shall develop the Project in accordance with this Agreement and Tourism Policy of Government of Uttar Pradesh and other applicable rules and regulations to be read along with all amendments & rules as issued by Government of Uttar Pradesh (GoUP) and Government of India (GOI) and policies, guidelines issued by GoUP.
- 5.1.5 Subject to terms hereof, the Developer shall complete the development activities on or before SCOD.

5.2 Obligations with Respect to the Project

- 5.2.1 Subject to and on the terms and conditions of this Agreement, the Developer shall at its cost and expense procure finance for and undertake the design, engineering, procurement, upgradation / construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set forth in this Agreement or arising hereunder.

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set forth elsewhere in this Agreement, the Developer shall develop, design, finance, upgrade / construct, operate, maintain and transfer the Project, including without limitation the necessary infrastructure, services and facilities, during the Concession Period in accordance with the Business Plan and the provisions of this Agreement, including the Specifications and Standards, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Developer shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.

- 5.2.2 The Developer shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.2.3 Pay all outgoing development charges, statutory deposits, Taxes, duties (including stamp duties), fees (including any license fees) rates and other user charges

(including those applicable for existing utility connections and any other dues assessment or outgoings payable in respect of implementation of the Project (including new utility connections obtained by it, if any) or in respect of materials stored there in which may be levied by an Government Instrumentalities, wherever applicable. The deposits would not be refundable after the expiry of the Concession Period.

- 5.2.4 Subject to Article 5.2.6 (h), the Developer shall ensure that the revenues (rent, upfront payment, deposits, etc.) received from the Project be utilized towards prepayment / repayment of the Debt Due / debt availed from the Senior Lenders for execution of the Project.
- 5.2.5 The Developer shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.2.6 The Developer shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set forth in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits, other than those set forth in **Article 4.1.2**, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Developer's obligations under this Agreement;
 - (f) ensure optimal operation and maintenance of the Project throughout the Concession Period, either by performing the operation and maintenance itself, or by making durable, effective and permanent arrangements for due performance of the operation and maintenance obligations by third party(s);
 - (g) 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;
 - (h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (i) transfer the Project to the Authority upon expiry of the Concession Period or upon the Termination of this Agreement occurring prior to COD, or termination of the Land Lease Agreement, in accordance with the provisions thereof;
 - (j) transfer the Project to the Authority upon Termination of the Concession, if such Termination takes place after the COD, and prior to the expiry of the Concession Period as provided under **Articles 29** and **31** hereof;

- (k) deposit the revenue, accrued by subleasing of retail space, in the Escrow Account, till the Transfer Date;
- (l) during the Concession Period, the Developer shall provide and maintain an internet website for the Project and appropriately disclose information relating to Project Infrastructure and Project Facilities available in the Project and events proposed to be organised using the Project Infrastructure and Project Facilities;
- (m) pay all dues (Upfront Premium, Lease Rent & Concession Fee) payable under this Agreement and/or Land Lease Agreement to the Authority in a time bound manner and the failure to obtain the benefits under the Tourism Policy of GoUP shall not in any manner whatsoever absolve the Developer from any of its obligations, including payment obligations, under this Agreement; and
- (n) The Stamp Duty and the registration charges/fees including other incidental charges, on and in relation to the lease of the land under Land Lease Agreement shall be paid by the Developer in accordance with the provisions of applicable rules and regulations to be read with all its amendments issued by the State Government from time to time.

5.3 Obligations Relating to Project Agreements

- 5.3.1 It is expressly agreed that the Developer shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Developer from its obligations or liability hereunder.
- 5.3.2 The Developer shall submit to the Authority the drafts of all Project Agreements including a template for sub-lease, license, etc. of the components of the Project to a third party, 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 Developer within 30 (thirty) days of the receipt of such drafts. Within 15 (fifteen) days of execution of any Project Agreement or amendment thereto, the Developer shall submit to the Authority a true copy thereof, duly attested by a Director of the Developer, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.3.3 The Developer shall not make any replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such 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 Developer 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 Due.

- 5.3.4 The Developer shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in substitution of the Developer in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution, the Project Agreements shall cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Developer 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(s) of each of the Project Agreements, where under such counter party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.3.5 The Developer shall pay Upfront Premium, Lease Rental and Concession Fee to the Authority in accordance with **Article 24** of this Agreement.
- 5.3.6 The Developer shall prepare a standard format of the sub-lease/sub-license agreement and shall furnish such draft to the Authority for approval and shall incorporate all modifications, suggestions and amendments as may be intimated by the Authority to the Developer (“**Licence / Sub-Lease Agreement Template**”). The Developer shall enter into Sub-Lease/License arrangements as per the Licence / Sub-Lease Agreement Template and the Developer shall not alter or change any Clauses in the Licence / Sub-Lease Agreement Template without the prior written consent of the Authority. Notwithstanding anything to the contrary that may be contained in the Licence / Sub-Lease Agreement Template, the Developer shall at all times retain overall responsibility, obligation and liability in relation to the maintenance of the Project. It is clarified that the Developer shall remain solely liable and responsible for any acts, omissions or defaults of any Sub-Lessee or Licensee and shall at all times indemnify and keep indemnified the Authority in respect thereof.

The Developer shall provide to the Authority a list of the sub lessees/licensees in the Project on yearly basis, which shall be certified by the Statutory Auditor of the Developer.

5.4 Obligations Relating to Change in Ownership

- 5.4.1 The Developer shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority.
- 5.4.2 Notwithstanding anything to the contrary contained in this Agreement, the Developer agrees and acknowledges that:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen percent) of the total Equity of the Developer; or
 - (b) acquisition of any control directly or indirectly of the Board of Directors of the Developer by any person either by himself or together with any person or persons acting in concert with him;
- shall be subject to prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being

final, conclusive and binding on the Developer, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Developer without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously stating the reasons of denial. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Developer from any liability or obligation under this Agreement.

For the purposes of this **Article 5.4.2:**

- (i) the indirect transfer of 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 Developer; and
- (ii) 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 Developer, not less than half of the directors on the Board of Directors of the Developer or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Developer shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Developer.

5.5 Employment of Foreign Nationals

The Developer acknowledges, agrees and undertakes that employment of foreign personnel by the Developer 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 Developer and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Developer or any of its Contractors or Sub-Contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Developer from the performance and discharge of its obligations and liabilities under this Agreement.

5.6 Employment of Local Personnel

The Developer shall make best efforts and endeavour that the staff shall be U.P. residents.

5.7 Sole purpose of the Developer

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

5.8 Share Holding Pattern in the SPV

- a. The Developer has been incorporated on [●] and its shareholding as on the Effective Date is as follows:

Names of Shareholders (Successful Bidder)	Description of Shareholding (%)

- b. The Developer having been set up for the sole purpose to exercise the rights and observing and performing its obligations and liabilities under this Agreement, the Developer hereby undertakes and agrees to comply with the following conditions:

(i) Shareholding obligation for Single Entity

The Selected Bidder shall directly hold 51% (fifty one percent) of subscribed and paid up equity share capital of the Developer to implement the Project from the Effective Date till 2nd anniversary of COD. Thereafter, the Selected Bidder shall hold at least 26% (twenty six percent) in the SPV till 5th anniversary of COD during Concession Period.

(ii) Shareholding obligation for Consortium

Further, in case the Selected Bidder is a Consortium, besides the aforesaid shareholding obligations, each member of the Consortium whose Technical or Financial experience has been evaluated in RFP stage, shall subscribe at least 26% (twenty six per cent) or more of the paid up and subscribed equity of the Developer (SPV) until Effective Date. Thereafter, the members of the Consortium shall directly and collectively hold at least 51% (fifty one percent) of the subscribed and paid up equity of the SPV at all times until the 2nd anniversary of the COD; wherein Lead Member shall hold 51% (fifty one percent) of the subscribed and paid up equity of the SPV. Thereafter, the Consortium through its Lead Member shall hold at least 26% (twenty six percent) of the subscribed and paid up equity share capital of the Project SPV until 5th anniversary of COD.

- c. In the event of non-compliance of the shareholding conditions as stated above, the same shall constitute an event of default by the Developer and the Authority shall be entitled to terminate this Agreement in accordance with **Article 31.1**.

5.9 Minimum Development Obligations

5.9.1 Obligations during Construction Period

The Developer will have to fulfil the following obligations during the Construction Period:

- Developer will have to undertake upgradation and get the property operational by the end of Construction Period;
- Developer will have to invest a minimum of 75% of the Estimated Project Cost during the Construction Period in project development activities;
- Developer will have to ensure availability of utility connections viz. electricity and water supply as required during the Construction Period; and

- d. Developer will have to ensure that public amenities viz. parking, toilets, etc. are made functional during the Construction Period.

5.9.2 Obligations after Construction Period

- a. Developer will have to spend a minimum of 100% of the Estimated Project Cost on project development activities within first five years of Concession Period; and
- b. Developer will have to ensure adequate maintenance of public amenities during the Concession Period.

Article 6 - Obligations of the Authority

6.1 General 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 Tourism policy of the Centre or State:

The Authority shall use its best efforts in ensuring that the provisions, benefits and entitlements as set forth in the duly notified Tourism policy of the State of Uttar Pradesh shall be made available to the Project/ Developer and the Persons claiming through or under the Developer for the propose of implementation of the Project.

6.1.3 Applicable Permits

a) The Authority shall, upon written request, grant all Applicable Permits or ensure procurement thereof, with reasonable promptness that are required for the implementation of the Project at the appropriate stages of the Project and which are in its authority to grant, subject to the Developer or the relevant applicant complying with the eligibility criteria for the grant of such Applicable Permits and making the requisite payments, if any;

Provided that nothing contained in this sub-section (a) shall relieve the Developer of its obligation under this Agreement to obtain the Applicable Permits and of being in compliance with the requirements thereof; provided further that the Developer (i) shall be required to provide the relevant details and such other information to the Authority as the Authority may reasonably require and (ii) keep the Applicable Permits in force and effect throughout the Concession Period.

b) The Authority shall, upon written request, facilitate procurement to the Developer and the persons claiming through or under it, all the Applicable Permits from Government Authorities (Government of Uttar Pradesh and / or Government of India), including licenses to import equipment and materials required for the Project and immigration clearances, employment and residential permits for any foreign personnel, and as applicable their dependants, engaged or employed by the Developer /such persons in connection with the implementation of the Project, including renewals thereof.

c) Upon written request from the Developer, assist the Developer in obtaining access to all necessary infrastructure facilities and utilities, including water, power and telecommunication facilities at rates and on terms no less favourable to the Developer than those generally available to commercial customers receiving substantially equivalent facilities/utilities.

6.1.4 In the event of any action or suit to prevent, prohibit or otherwise challenge the Project by any Government Agency, trade union, environmental group or any other Person or organization, which might reasonably be expected to materially and adversely affect the Project Assets, the implementation of the Project or the enjoyment by the Developer of its rights and benefits under the Concession granted herein, the Authority shall, if requested by the Developer in writing, on a best effort basis, take such reasonable action as is available to it to remedy the challenge and to mitigate such effects.

- 6.1.5 The Authority shall assist the Developer in obtaining police assistance against payment of prescribed costs and charges, if any, for maintaining law and order within the Site, patrolling and provision of security at the Site.
- 6.1.6 The Authority agrees to provide support to the Developer and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) 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;
 - (b) support, cooperate with and facilitate the Developer in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (c) upon written request from the Developer and subject to the provisions of **Article 5.5**, provide reasonable assistance to the Developer and any expatriate personnel of the Developer or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Developer or its Contractors their obligations under this Agreement and the Project Agreements.

6.2 Project Monitoring Committee (PMC)

Authority shall form a “**Project Monitoring Committee**” (PMC) which shall be headed by Director General and will have the members from concerned departments. The PMC shall facilitate the Developer in obtaining all the applicable approvals and permits. However, it shall be the responsibility of the Developer to furnish complete information and particulars and comply with Applicable Laws as required for the relevant Applicable Permit.

Article 7 - Representations and Warranties

7.1 Representations and Warranties of the Developer

The Developer 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 there under including any obligation, liability or responsibility hereunder;
- (f) 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, where applicable, those of any member of the Consortium or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it's any of its properties or assets is bound or affected;
- (g) 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;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;

- (j) that the [Selected Bidder/Consortium], holds not less than 100% (one hundred percent) of the Developer's issued and paid up Equity as on the date of this Agreement and shall continue to hold 51% (fifty one percent) issued and paid-up equity till 2th anniversary of the COD, and thereafter, the [Selected Bidder/Consortium] shall hold subject to terms of this Agreement, not less than 26% (twenty six percent) of the Developer's issued and paid up Equity till 5th anniversary of COD during the Concession Period;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of **Article 5.4**;
- (l) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be retained by it, save and except as expressly provided in this Agreement;
- (m) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality 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; and
- (n) no sums, in cash or kind, have been paid or will be paid unlawfully, 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 the Authority in connection therewith.

7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Developer that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) there are no actions, suits or proceedings 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 default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- (f) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;

- (g) it has complied with Applicable Laws in all material respects;
- (h) it has the right, power and authority to grant Right of Way, access and possession of the Site for the Project in accordance with the terms of this Agreement; and
- (i) it has good and substantial right over the Site, and has the power and authority to grant a lease in respect thereto to the Developer.

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 obligation of either Party under this Agreement.

Article 8 - Disclaimer

8.1 Disclaimer

- 8.1.1 The Developer acknowledges that prior to the execution of this Agreement, the Developer has, after a complete and careful examination, made an independent evaluation of the RFP, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority or obtained 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. Save as provided in **Article 7.2**, 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 Developer confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Developer acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in **Article 8.1.1** above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Developer, the [Selected Bidder/Consortium] together with its Associate or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in **Article 8.1.1** above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in **Article 8.1.1** above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this **Article 8.1.4** shall not prejudice the disclaimer of the Authority contained in **Article 8.1.1** and shall not in any manner shift to the Authority any risks assumed by the Developer 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 Developer and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Article 9 - Performance Security

9.1 Performance Security

9.1.1 The Developer shall, for securing the performance of its obligations during the **Construction Period**, provide to the Authority before Appointed Date, an unequivocal, irrevocable and unconditional bank guarantee from a Scheduled Bank for a sum equivalent to Rs 6,30,000/- (Rupees Six Lakh Thirty Thousand only) in the form set forth in **Schedule-F** to be valid till COD or submission of Performance Security for **Operation Period** in terms below, whichever is later.

9.1.2 The Developer shall, for the performance of its obligation during the **Operation Period**, provide to the Authority 30 days before the **COD**, an unequivocal, irrevocable, revolving and unconditional bank guarantee from a Scheduled Bank for a sum equivalent to Rs 3,10,000/- (Rupees Three Lakh Ten Thousand only) in the form set forth in **Schedule-F** to be valid throughout the Concession Period.

The amount of operation performance security will be escalated by five percent every year.

Any applicable damages / claims for any event of default shall be calculated by the Authority on Performance Security valid and subsisting on date of occurrence of the event. The claimed amount shall be recovered from the Performance Security, which is in force at the time of recovery.

For the purposes of this Agreement, the capitalized term “**Performance Security**” shall mean the construction performance security or the operation performance security, as the case may be, as the context/reference shall admit.

9.2 Appropriation / Forfeiture of Performance Security

Upon occurrence of a Developer Default or failure to meet any Condition Precedent in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash, invoke and appropriate the relevant amounts from the Performance Security as Damages for such Developer Default or failure to meet any Condition Precedent or failure to make any payment to the Authority in accordance with this Agreement, as the case may be. Upon such encashment, invocation and appropriation from the Performance Security, the Developer shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security, provide a fresh Performance Security, as the case may be. If the Developer fails, within the time so granted, to replenish or furnish fresh Performance Security as aforesaid, the Authority shall be entitled to terminate this Agreement in accordance with **Article 31**. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Developer shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Developer Default, and in the event of the Developer not curing its default within such Cure Period, the Authority shall be entitled to encash, invoke and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with **Article 31**.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period as provided under Article 9.1.1. The Performance Security for **Construction Period** shall be released by the Authority on submission of Performance Security for **Operation Period** as set forth in this **Article 9.1** and the Performance Security for **Operation Period** shall be released to the Developer upon expiry of the Concession Period.

Article 10 - Right of Way

10.1 The Site

The Site shall comprise of land and built-up structure at the Rahi TRC Mathura on an “**as-is where is basis**”, as described in **Schedule-A** and in respect of which the Right of Way shall be provided and granted by the Authority to the Developer as a lease under and in accordance with this Agreement (the “**Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the Rahi TRC Mathura as set forth in **Schedule-A**.

10.2 Lease, Access and Right of Way prior to Appointed Date

10.2.1 During the Development Period, the Authority grants to the Developer access to the Site only for the limited purposes of carrying out any surveys, investigations, soil tests, study, design, engineering, procurement, financing, and all such activities that the Developer may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of any survey, investigations and tests carried out or work undertaken by the Developer on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Lease Rent, and the covenants and warranties on the part of the Developer herein, the Authority, in accordance with the terms and conditions set forth herein, and subject to provisions of **Article 10.3**, hereby agrees to grant to the Developer under separate Land Lease Agreement, commencing from the lease commencement date set out thereunder, for the duration of the Concession Period, lease hold rights in respect of the land comprising the Site which is described, delineated and shown in **Schedule-A** hereto (the “**Leased Premises**”), on an “**as is where is basis**”, free of any Encumbrances, to operate and maintain the said Leased Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Leased Premises, hereditaments or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The access and Right of Way granted or agreed to be granted by this Agreement to the Developer shall always be subject to Developer performing its duties and responsibilities at all times during the Concession Period as per the terms and conditions of this Agreement.

10.2.4 It is expressly agreed that the Right of Way granted hereunder or lease agreed to be granted under the Land Lease Agreement 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. Further, the Developer irrevocably authorises the Authority to execute such other documents as may be required to give effect to the termination of this Agreement and/or the Land Lease Agreement.

10.2.5 The Developer hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Developer a transfer or surrender of the lease granted under the Land Lease Agreement at any time after

the Concession Period has expired or this Agreement has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration by any duly authorised officer of the Authority, and the Developer consents to it being registered for this purpose.

10.2.6 It is expressly agreed that:

- (a) trees on the Site are property of the Authority except that the Developer shall be entitled to exercise usufructory rights thereon during the Concession Period;
- (b) any archaeological discoveries shall belong to and vest in the Authority and the Developer shall promptly report the discovery thereof to the Authority and follow its instructions for safe removal thereof;
- (c) mining rights do not form part of the Concession granted to the Developer under this Agreement and the Developer hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Site. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein; and
- (d) Lease granted under the provision of this Agreement in favour of the Developer shall not be permanent grant in any circumstances whatsoever.

10.3 Procurement of the Site

10.3.1 The Site shall be handed over to the Developer during the Development Period before the Appointed Date as per terms under the Land Lease Agreement;

10.3.2 Pursuant to the notice specified in **Article 4.1.3**, the Authority and the Developer shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, building ruins, cultural and historical monuments, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the land parcel comprising the Site to which vacant access and Right of Way has not been granted to the Developer. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid Right of Way to the Site. Notwithstanding anything to the contrary contained herein, it is hereby recorded between the Parties that only upon the execution of the Land Lease Agreement, the Developer shall be entitled to free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. The Authority shall execute or cause to be executed, the Land Lease Agreement for the said purposes subject to and in accordance with terms of this Agreement.

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

10.3.4 The Authority shall make best efforts to provide and grant, before the Appointed Date, the Right of Way to the Developer in respect of all land included in the Appendix.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix and execution of Land Lease Agreement, the Developer shall complete the Construction/upgradation Works thereon within COD.

10.4 Site to be Free from Encumbrances

Subject to the provisions of **Article 10.3**, the Site shall be made available by the Authority to the Developer pursuant hereto free from all Encumbrances and occupations and without the Developer 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. For the avoidance of doubt, it is agreed that existing Rights of Way, easements, privileges, liberties and appurtenances to the Leased Premises shall not be deemed to be Encumbrances.

10.5 Protection of Site from Encroachments

During the Concession Period, the Developer shall protect the Site that has been handed over to the Developer pursuant to **Article 10.3**, from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Developer to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Developer therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Special/Temporary Right of Way

The Developer shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Developer 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.

10.7 Access to the Authority and Project Monitoring Agency

The Right of Way and right to the Site granted to the Developer hereunder shall always be subject to the right of access of the Authority and the Project Monitoring Agency and other employees and agents of the Authority for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological Finds

It is expressly agreed that, without prejudice to **Article 10.2.6 (b) & (c)**, mining or geological rights do not form part of the Right of Way granted to the Developer under this Agreement and the Developer hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest. Such rights, interest and property shall vest in and belong to the Authority or the concerned Government Instrumentality. The Developer 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 may reasonably give for the removal of such property.

10.9 No Permanent Grant in Leased Premises

Notwithstanding anything contrary contained herein, it is expressly agreed by the Developer that the lease granted in favour of the Developer according to the provisions of this Agreement and the Land Lease Agreement shall not be treated / deemed as a permanent grant of any kind whatsoever and the Developer shall not be entitled to claim it as a permanent grant and such lease shall be governed by the terms hereof and of the Land Lease Agreement.

Article 11 - Utilities on the Site and Trees

11.1 Existing Utilities and Roads

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

11.2 Shifting of Obstructing Utilities

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

11.3 New Utilities

11.3.1 The Developer shall approach the appropriate authorities for laying telephone lines, water pipes, sewage system, electric cables and other public utilities and shall bear the cost for the same. The Developer shall proceed to obtain the Applicable Permits as specified in **Schedule-E** and the Authority shall assist the Developer in obtaining the Applicable Permits. For the avoidance of doubt, it is agreed that use of the Site under this Article shall not in any manner relieve the Developer 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 Developer shall interconnect the Project and all other Project Facilities and support systems on the Site through paved roads, as per the Business Plan including the lay out drawings, and such connecting roads shall be constructed and maintained by the Developer during the term of this Agreement in accordance with Good Industry Practice

11.4 Felling of Trees

The Authority shall assist the Developer in obtaining the Applicable Permits for felling of trees identified for felling under the Business Plan and subject to the condition that felling of such trees is essential for the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Developer. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may deem appropriate.

Article 12–Construction/Upgradation

12.1 Obligations Prior to Commencement of Construction/Upgradation

Prior to commencement of Construction Works, the Developer shall:

- (a) submit to the Authority, its lay out drawings, detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in **Schedule-G** for its review and comments;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) obtain all requisite approvals of the Drawings from the competent authorities;
- (d) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits;
- (e) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits; and
- (f) have requisite organisation and designate and appoint suitable officers / representatives as it may deem appropriate to execute the Project.

12.2 Maintenance during Construction Period

During the Construction Period, the Developer shall maintain, at its cost, the Site and shall undertake the necessary maintenance works for this purpose;

12.3 Drawings

In respect of the Developer's obligations with respect to the Drawings of the Project Infrastructure and Project Facilities as set forth in **Schedule-H**, the following shall apply:

- (a) The Developer shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Authority and Project Monitoring Agency for review and comments;
- (b) By submitting the Drawings for review, the Developer shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Authority shall review the same and convey its observations to the Developer with particular reference to their conformity or otherwise with the Scope of the Project, the Specifications and Standards, and the Business Plan. For the avoidance of doubt, the Developer shall be obliged to await the observations of the Authority on the Drawings submitted pursuant hereto and the Authority shall not unreasonably withhold its observations beyond 21 (twenty one) days period and

the Developer may begin or continue Construction Works at its own discretion and risk;

- (d) If the aforesaid observations of the Authority indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, and the Business Plan, such Drawings shall be revised by the Developer and resubmitted to the Authority for review. The Authority shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any Drawings shall relieve the Developer of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner;
- (f) Within 30 (thirty) days of the COD, the Developer shall furnish to the Authority a complete set of as built Drawings, in 2 (two) hard copies and in soft form or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including the built up area illustrating the layout of the Project and setback lines, forming part of Project Infrastructure; and
- (g) Any submission of Drawings by the Developer to the Authority under this Agreement or any other contractual arrangement, shall not amount to submission and/or fulfilment of the requirement as laid down under Applicable Law. For avoidance of doubt, it is made clear that the Developer shall comply with statutory requirements.

12.4 Scheduled Completion Date

12.4.1 On or after the Appointed Date, the Developer shall undertake construction of the Project including the Project Infrastructure and arrangement of Project Facilities as specified in **Schedule-C1** and **Schedule-C2**, respectively and in conformity with the Specifications and Standards set forth in **Schedule-D**.

12.4.2 1 (one) year(s) from the Appointed Date shall be the SCOD, comprising of the Project Infrastructure and Project Facilities as described in **Schedule-C1** and **Schedule-C2** respectively and the Developer agrees and undertakes that the construction shall be completed on or before the SCOD.

12.4.3 The Developer agrees and undertakes that the construction of the Project shall be completed on or before the SCOD.

12.4.4 The Developer shall construct the Project Infrastructure and Project Facilities in accordance with the Project Completion Schedule set forth in **Schedule-G**. In the event that the Developer fails to achieve COD within a period of 30 (thirty) days from SCOD, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1 % (zero point one percent) of the amount of Performance Security (subject to a maximum of 10% of Performance Security) for delay of each day until COD is achieved; provided that if SCOD is extended in accordance with the provisions of this Agreement, the COD shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if the Project Completion Schedule has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this **Article 12.4.4** shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 12.4.5 In the event construction of the Development Activities is not completed or it becomes apparent to the Authority that the Developer will not be in position to complete Development Activities within 120 (one hundred and twenty) days from the SCOD, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement and forfeit the entire Performance Security.
- 12.4.6 Stoppage or suspension of construction of the Project or any part thereof, for any reason other than Force Majeure or reasons solely attributable to the Authority, for a period of not less than 3 (three) months, or the reduction in the pace of the construction to a level where it becomes apparent to the Authority that the Developer will not be in position to complete the Project in accordance with the Project Completion Schedule set forth in **Schedule-G** as extended by the relevant extension period specified in **Article 12.4.4**, shall constitute an event of default and the Authority shall be entitled to terminate this Agreement in accordance with **Article 33**.

Article 13 - Monitoring of Construction

13.1 Progress Reports

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

13.2 Inspection

During the Concession Period, the Project Monitoring Agency shall inspect the Project Infrastructure and Project Facilities at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. The Project Monitoring Agency shall send a copy of the Inspection Report to the Authority and the Developer within 7 (seven) days of such inspection and upon receipt thereof, the Developer shall rectify and remedy any defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Project Monitoring Agency shall not relieve or absolve the Developer of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction Works with respect to the Project shall conform to the Specifications and Standards, the Project Monitoring Agency shall require the Developer 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 Project Monitoring Agency 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 percent) of the quantity and/or number of tests prescribed by the Authority for the construction works undertaken by the Developer through their contractors. The Developer shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Project Monitoring Agency and furnish the results thereof to the Project Monitoring Agency. The costs incurred on such tests, and to the extent certified by the Project Monitoring Agency as reasonable, shall be 50% reimbursed by the Authority to the Developer and balance 50% of the cost shall be borne by the Developer. 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 Developer.

13.3.2 In the event that results of any tests conducted under this **Article 13.3** establish any defects or deficiencies in the Construction Works with respect to the Project Infrastructure and the Project Facilities, the Developer shall carry out remedial measures and furnish a report to the Project Monitoring Agency in this behalf. The Project Monitoring Agency shall require the Developer to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works with respect to the Project Infrastructure and the Project Facilities into compliance with the Specifications and Standards, and the procedure set forth in

this **Article 13.3** shall be repeated until such Construction Works with respect to the Project Infrastructure and the Project Facilities conform to the Specifications and Standards. The cost to be incurred on any such Test shall be borne by the Developer. For the avoidance of doubt, it is agreed that tests pursuant to this **Article 13.3** shall be undertaken in addition to and independent of the tests that shall be carried out by the Developer 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 Developer to the Project Monitoring Agency forthwith.

13.4 Delays During Construction

If the Developer does not achieve SCOD, or the Authority shall have reasonably determined that the rate of progress of Construction Works is such that the Project Infrastructure or Project Facilities are not likely to be completed by SCOD, it shall notify the Developer to this effect, and the Developer shall, within 15 (fifteen) days of such notice, by a communication inform the Authority in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the COD.

13.5 Suspension of Unsafe Construction Works

13.5.1 Upon recommendation of the Project Monitoring Agency to this effect, the Authority may by notice require the Developer to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users, workers and the general public.

13.5.2 The Developer shall, pursuant to the notice under **Article 13.5.1**, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Developer may by notice require the Project Monitoring Agency 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 Project Monitoring Agency, the Authority shall either revoke such suspension or instruct the Developer to carry out such remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this **Article 13.5** shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of **Article 29.7**, 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 Developer; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Developer, the Project Monitoring Agency shall determine any extension of the dates set forth in the Project Completion Schedule to which the Developer 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 Project Monitoring Agency. In the event that the Scheduled Completion Date 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 Completion Date.

13.6 Video Recording

During the Construction Period of the Project, the Developer shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three) hour compact disc or digital video disc, as the case may be, covering the status and progress of the 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.

Article 14 - Completion Certificate

14.1 Tests

- 14.1.1 At least 30 (thirty) days prior to the likely completion of development activities, the Developer shall notify to the Authority / Project Monitoring Agency of its intent to subject the Project Infrastructure and Project Facilities to Tests. The date and time of each of the Tests shall be determined by the Project Monitoring Agency in consultation with the Developer, and notified to the Authority who may designate its representative to witness the Tests. The Developer shall provide such assistance as the Project Monitoring Agency may reasonably require for conducting the Tests. In the event of the Developer and the Project Monitoring Agency failing to mutually agree on the dates for conducting the Tests, the Project Monitoring Agency shall fix the dates by not less than 10 (ten) days' notice to the Developer.
- 14.1.2 All Tests shall be conducted in accordance with **Schedule-I**. The Project Monitoring Agency shall observe, monitor and review the results of the Tests to determine compliance of the Project Infrastructure and Project Facilities with Specifications and Standards and if it is reasonably anticipated or determined by the Project Monitoring Agency during the course of any Test that the performance of the Project Infrastructure and Project Facilities or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Developer to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Project Monitoring Agency shall certify the Test results, which shall be provided by the Developer to the Authority along with copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Project Monitoring Agency may require the Developer to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Infrastructure and Project Facilities with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Development Activities and the Developer submitting the occupancy certificate from the competent Government Agency, the Authority shall direct Project Monitoring Agency to forthwith issue to the Developer a certificate substantially in the form set forth in **Schedule-J** (the “**Completion Certificate**”).

14.3 Withholding of Completion Certificates

- 14.3.1 If the Project Monitoring Agency determines that the Project Infrastructure or Project 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 Developer. Upon receipt of such a report from the Project Monitoring Agency and after conducting its own inspection, if the Authority is of the opinion that the Project Infrastructure or Project Facilities is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Developer of the defects and deficiencies in the Project Infrastructure or Project Facilities and direct the Project Monitoring Agency to withhold issuance of the Completion Certificate. Upon receipt of such notice, the Developer shall remedy and rectify such defects or deficiencies and

thereupon Tests shall be undertaken in accordance with this **Article 14**. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified. After removal of defects and deficiencies, the Authority may direct the Project Monitoring Agency to issue a Provisional Certificate under **Article 14.2**, and such direction shall be complied forthwith.

14.4 Rescheduling of Tests

If the Project Monitoring Agency certifies to the Authority and the Developer that it is unable to issue the Completion Certificate as ascribed in **Article 14.3**, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Developer shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

Article 15 - Entry into Commercial Service

15.1 Commercial Operation Date (COD)

15.1.1 The Development Activities or any part thereof shall be deemed to be complete when the Completion Certificate is issued under the provisions of **Article 14.2**, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate is issued (the “**COD**”).

15.1.2 The Project shall enter into commercial service on COD or on issue of Completion Certificate, as the case may be, whereupon the Users shall be entitled to use, occupy and possess any part or whole of the Project Infrastructure or Project Facilities, provided, however, that the entry of the Project into commercial service shall always be subject to compliance with the provisions of Applicable Laws.

15.2 Damages for Delay

Subject to the provisions of **Article 12.4**, if COD does not occur on or before the SCOD, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Developer shall pay Damages to the Authority in a sum calculated at the rate of 0.1 % (zero point one percent) of the amount of Performance Security (subject to a maximum of 10% of Performance Security) for delay of each day until COD is achieved. The Authority may terminate this Agreement in-case the Developer fails to achieve SCOD in accordance with the provision of Article 12.

Article 16 - Change of Scope

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project with respect to the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this **Article 16**.
- 16.1.2 If the Developer determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, or inform the Developer in writing of its reasons for not accepting such Change of Scope. All costs arising out of any Change of Scope under this Clause during the Construction Period shall be borne by the Developer. For avoidance of doubt, the Authority shall not bear any cost due to Change of Scope under this **Article 16.1.2**.
- 16.1.3 Any works or services which are provided under and in accordance with this **Article 16** shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.
- 16.1.4 Cost of such Change of Scope shall not be more than 20% of the Project Cost under Clause 16.1.1

16.2 Procedure for Change of Scope

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

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

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

16.3 Consequences of Change of Scope

If as a result of Change of Scope, the Developer suffers an increase in costs or other financial burden, and the aggregate effect exceeds 10% (ten percent) of the Total Project Cost, the Developer may so notify the Authority and propose extension of the Concession Period subject to a maximum of 180 days, so as to place the Developer in the same position as it would have enjoyed had there been no such Change of Scope resulting due to the cost increase or other financial burden as aforesaid. Upon notice by the Developer, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of such notice and the extension of Concession Period under this **Article 16.3** shall be determined by the Project Monitoring Agency.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the same shall be settled in accordance with the Dispute Resolution Procedure.

Article 17 - Operation and Maintenance (O&M)

17.1 O&M Obligations of the Developer

17.1.1 During the Operation Period, the Developer shall operate and maintain the Project in accordance with this Agreement and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Good Industry Practice. The obligations of the Developer hereunder shall include:

- (a) ensuring optimal operation and maintenance of the Project Infrastructure and Project Facilities, in accordance with the Specifications and Standards prescribed herein, throughout the Concession Period;
- (b) collecting and appropriating the User Charges in accordance with the provisions contained herein;
- (c) complying with the Safety Requirements;
- (d) carrying out periodic preventive maintenance of the Project Infrastructure and Project Facilities;
- (e) carrying out periodic renovation as required from time to time so that the Project Infrastructure and Project Facilities are always in conformity with the Scope of the Project;
- (f) undertaking routine maintenance including prompt repairs of the Project Infrastructure and Project Facilities;
- (g) undertaking major maintenance such as resurfacing of roads, pavements, repairs to structures and buildings including repairs and refurbishment of other infrastructure and Project Infrastructure and Project Facilities;
- (h) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Site and assist the concerned law enforcement agencies to maintain law & order in the Rahi TRC Mathura;
- (i) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Site;
- (j) protection of the environment and provision of equipment and materials therefore so that the Project Infrastructure and Project Facilities is in compliance with Applicable Permits including environmental clearance(s);
- (k) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project Infrastructure and Project Facilities; and
- (l) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies.

17.1.2 The Developer shall promptly remove from the Rahi TRC Mathura all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Rahi TRC Mathura in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

17.1.3 The Developer shall maintain, in conformity with Good Industry Practice, and Standards and Specifications of all assets, facilities located on the Site and forming part of the Project Infrastructure and Project Facilities.

17.2 Maintenance Requirements

17.2.1 The Developer shall ensure those at all times during the Operation Period, the Project Infrastructure and Project Facilities conform to the maintenance requirements set forth in **Schedule-K** (the “**Maintenance Requirements**”).

17.3 Maintenance Manual

17.3.1 Not later than 60 (sixty) days prior to the SCOD, the Developer shall, in consultation with the Authority, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project Infrastructure and Project Facilities in conformity with the Maintenance Requirements, Safety Requirements, Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this **Article 17.3** shall apply, *mutatis mutandis*, to such revision.

17.3.2 Without prejudice to the provision of **Article 17.3.1**, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Infrastructure and Project Facilities and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets and Project Facilities, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

17.4.1 Not later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, the Developer shall provide to the Authority, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) of the Project Infrastructure and Project Facilities 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 Project;
- (e) intervals at which the Developer 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 15 (fifteen) days of receipt of the Maintenance Programme, the Authority shall review the same and convey its comments to the Developer with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

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

17.5 Project Branding

The Rahi TRC Mathura shall be known, promoted, displayed, advertised, and publicized by the name of “**Hotel Niranjana**” or any other name as recommended by the Authority. The Authority may prescribe its logo which shall be prominently displayed by the Developer on all the display boards, publicity material, etc. It is also agreed that the Developer shall submit the design and content of any material related to Project branding to the Authority for its prior approval. However, the Developer shall have a right to brand, promote, display, advertise and publicize different parts of the Project.

17.6 De-Commissioning Due to Emergency

17.6.1 If, in the reasonable opinion of the Developer, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Project Infrastructure and Project Facilities, the Developer shall be entitled to de-commission and close the whole or any part of the Project Infrastructure and Project Facilities to Users for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Developer to the Authority without any delay, and the Developer shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

17.6.2 The Developer shall re-commission the Project Infrastructure and Project Facilities or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Developer to re-commission the Project Infrastructure and Project Facilities.

17.6.3 Any decommissioning or closure of any part of the Project Infrastructure and Project Facilities and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of the affected persons by means of public announcements/notice.

17.7 Damages for Breach of O&M Obligations

17.7.1 In the event that the Developer fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at 0.2 % (zero point two percent) of the cost of such repair or rectification as estimated by the Project Monitoring Agency. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.7.2 The Damages set forth in **Article 17.7.1** may be assessed and specified forthwith by the Project Monitoring Agency. The Developer shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.8 Authority’s Right to Take Remedial Measures

17.8.1 In the event the Developer does not maintain and/or repair the Project Infrastructure and Project 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 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Project Monitoring Agency, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Developer, and to recover its cost from the Developer. In addition to recovery of the aforesaid cost, a sum equal to 30% (thirty percent) of such cost shall be paid by the Developer to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this **Article 17.8.1** shall be without prejudice to its rights and remedies provided under **Article 17.7**.

17.8.2 The Authority shall have the right, and the Developer hereby expressly grants to the Authority the right, to recover the costs and Damages specified in **Article 17.7.1** and **17.8.1** directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Developer 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 **Article 17.8.2** and debit the same to O&M Expenses.

17.9 Overriding Powers of the Authority

17.9.1 If in the reasonable opinion of the Authority, the Developer is in material 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 any person or property, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Developer to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.9.2 In the event that the Developer, upon notice under **Article 17.9.1**, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this **Article 17.9.2** and take over the performance of any or all the obligations of the Developer 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 Developer in accordance with the provisions of **Article 17.8.2** along with the Damages specified therein.

17.10 Restoration of Loss or Damage to the Project Infrastructure and Project Facilities

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

17.11 Excuse from Performance of Obligations

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

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

Notwithstanding the above, the Developer shall keep available all unaffected parts of the Project Infrastructure or Project Facilities provided they can be operated safely.

Article 18 - Safety requirements

18.1 Safety Requirements

18.1.1 The Developer 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. In particular, the Developer shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Rahi TRC Mathura, and shall comply with the safety requirements set forth in **Schedule-L** (the “**Safety Requirements**”).

18.1.2 The Authority may appoint an experienced and qualified firm or organisation (the “**Safety Consultant**”) for carrying out safety audit of the Project Infrastructure and Project Facilities in accordance with the Safety Requirements any time during Concession Period, and shall take all other actions necessary for securing compliance with the Safety Requirements. One half of payment of the fee to the Safety Consultant shall be borne by the Authority and one half fees shall be borne by the Developer.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Developer to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of **Article 16**.

Article 19 - Monitoring of Operation and Maintenance

19.1 Quarterly Status Reports

During Operation Period, the Developer shall, no later than 7 (seven) days after the close of a quarter, furnish to the Authority a quarterly report stating in reasonable detail the condition of the Project Infrastructure and Project Facilities including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Authority.

19.2 Inspection

The Project Monitoring Agency shall inspect the Project Infrastructure and Project Facilities at least once in a quarter. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Developer within 7 (seven) days of such inspection.

19.3 Tests

For determining that the Project Infrastructure and Project Facilities conform to the Maintenance Requirements, the Authority shall require the Developer to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Developer shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority and furnish the results of such tests forthwith to the Authority. The cost of such Tests shall be borne by the Developer and 50% of such cost shall be reimbursed by the Authority to the Developer in accordance with **Article 13.3.1**.

19.4 Remedial Measures

19.4.1 The Developer shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in **Article 19.3** and furnish a report in respect thereof to the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Developer shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Authority shall require the Developer to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Infrastructure and Project Facilities into compliance with the Maintenance Requirements and the procedure set forth in this **Article 19.4** shall be repeated until the Project Infrastructure and Project Facilities conform to the Maintenance Requirements. In the event that remedial measures are not completed by the Developer in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Developer as provided in **Article 17.7**.

19.5 Reports of Unusual Occurrence

The Developer shall, prior to the end of each month, send to the Authority and the Project Monitoring Agency, by facsimile or e-mail, a report stating accidents and

unusual occurrences on the Project Infrastructure and Project Facilities relating to the safety and security of the Users, Project Infrastructure and Project Facilities. A quarterly summary of such reports shall also be sent within 3 (three) days of the closing of each quarter, as the case may be. For the purposes of this **Article 19.5**, accidents and unusual occurrences on the Project Infrastructure and Project Facilities shall include:

- (a) death or material injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any obstruction on the Project Infrastructure or Project Facilities, which results in slow down of the services being provided by the Developer;
- (d) disablement of any equipment during operation;
- (e) communication failure affecting the operation of the Project Infrastructure or Project Facilities;
- (f) smoke or fire;
- (g) flooding of Rahi TRC Mathura or any part thereof;
- (h) all major accidents or crime; and
- (i) such other relevant information as may be required by the Authority or the Project Monitoring Agency.

Article 20 - Developer's Management Responsibilities

20.1 Management Services

During the Concession Period, the Developer shall provide staff, administer, maintain, operate and manage the Project Infrastructure and Project Facilities in accordance with the terms of engagement and standard of performance set forth in **Schedule-K** and the other terms and conditions of this Agreement.

20.2 Emergency Maintenance

The Developer shall provide for all necessary emergency maintenance and repairs of mechanical, electrical and plumbing facilities and public areas constituting part of the Project Infrastructure and Project Facilities which directly affect the public's access to or use of the Project Infrastructure or Project Facilities, including lifts, escalators, walkways and other pedestrian areas.

20.3 Permissible and Non-Permissible Activities

20.3.1 The Developer shall not undertake or permit any Event or activity, other than those activities that constitute the Scope of the Project at the Rahi TRC Mathura except with the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Developer, and undertakes that it shall not permit any such Event without prior approval of the Authority.

For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously.

20.3.2 The Authority undertakes not to object to conduct of Events or activities that are part of the Positive List except where such objection is necessary from a national security and public interest perspective. However, it is also agreed that activities or Events that are part of the Negative List shall not be approved by the Authority.

The Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Developer from any liability or obligation under this Agreement.

Article 21 - Civil Amenities

21.1 Civil Amenities

- 21.1.1 The Developer shall during the entire term of the Concession Period, in addition to the infrastructure required to be developed, operated and maintained and provide amenities, in adequate numbers and of a quality equivalent to that of the Project Infrastructure and Project Facilities, for common use by the Users of the Project. These shall include clean drinking water facilities, sanitation facilities, toilets, etc.
- 21.1.2 The Developer shall, in conformity with the guidelines issued from time to time by the Authority or GoUP or the concerned competent authorities, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Rahi TRC Mathura.

Article 22 - Project Monitoring Agency

22.1 Appointment of Project Monitoring Agency

The Authority shall appoint a reputed consulting engineering / architect firm through open and transparent competitive bidding process according to the Procurement Policy of the State Government, substantially in accordance with the selection criteria set forth in **Schedule-R**, to be the Project Monitoring Agency (the “**Project Monitoring Agency**”). The appointment shall be made no later than 60 (sixty) days from the Effective Date under this Agreement and shall subsist throughout the Concession Period.

22.2 Duties and Functions

22.2.1 The Project Monitoring Agency shall discharge its duties and functions throughout the Period as mentioned in this **Article 22** with respect to the Project substantially in accordance with the terms of reference set forth in **Schedule-S**.

22.2.2 The Project Monitoring Agency shall submit regular periodic reports at least once every month during the Construction Period and every quarter during the remainder of its contract period to the Authority in respect of its duties and functions set forth in **Schedule-S**.

22.2.3 The Project Monitoring Agency shall review and provide inputs/suggestions/comments in conformity with the provisions of this Agreement on the Business Plan submitted by the Developer to the Authority.

22.2.4 The Project Monitoring Agency shall assist the Authority in finalizing the Business Plan submitted by the Developer.

22.3 Remuneration

The remuneration, cost and expenses of the Project Monitoring Agency shall be paid by the Authority and 50 % (fifty percent) of such remuneration, cost and expenses shall be reimbursed by the Developer to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

22.4 Termination of Appointment

22.4.1 The Authority may terminate the appointment of the Project Monitoring Agency at any time, but only after appointment of another Project Monitoring Agency in accordance with **Article 22.1**.

22.4.2 If the Developer has reason to believe that the Project Monitoring Agency 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 Project Monitoring Agency. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Developer and Project Monitoring Agency for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Developer remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Project Monitoring Agency is terminated hereunder, the Authority shall appoint forthwith another Project Monitoring Agency in accordance with **Article 22.1**.

22.5 Authorised Signatories

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

22.6 Dispute Resolution

If either Party disputes any advice, instruction, decision, or direction of the Project Monitoring Agency, 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.

Article 23 - Financial Close

23.1 Financial Close

- 23.1.1 The Developer hereby agrees and undertakes that it shall achieve Financial Close within 120 (one hundred and twenty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1 % (zero point one percent) of the Performance Security for each day of delay, or for a further period not exceeding 30 (thirty) days, subject to payment of Damages specified in **Article 4.3**; provided that the Damages specified herein shall be payable every week in advance and the period beyond the first mentioned 60 (sixty) 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 solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in **Article 4.1.3** or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Developer shall be in addition to the Damages, if any, due and payable under the provisions of **Article 4.3**.
- 23.1.2 The Developer shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 7 (seven) days prior to Financial Close, 3 (three) true copies of the Financial Package, Financial Plan and the Financial Model, duly attested by a Director of the Developer, along with soft copies of the Financial Model in MS Excel version, which is accepted by the Senior Lenders.

23.2 Termination Due to Failure to Achieve Financial Close

- 23.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to **Article 29.6.1**, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in **Article 23.1.1**, all rights, privileges, claims and entitlements of the Developer under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Developer, and the Development Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 23.2.2 Upon termination under **Article 23.2.1**, the Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages.
- 23.2.3 If Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations hereunder, specifically **Article 4.1.3**, Authority shall, upon Termination, forthwith return the Performance Security, Upfront Premium and Concession Fee to the Developer.

Article 24 - Upfront Premium, Lease Rent and Concession Fee

24.1 Upfront Premium

Without prejudice to the provisions of this Agreement, the Developer shall pay to the Authority Upfront Premium of Rs _____/- (Rupees _____ only) on or before the Effective Date.

24.2 Lease Rent

24.2.1 In consideration of the grant of Lease of the Site, the Developer shall pay to the Authority by way of annual Lease Rent a sum of Rs. 1/- (Rupees One only) per annum commencing from the Appointed Date for the entire Lease Period in accordance with the terms of the Land Lease Agreement (“**Lease Rent**”).

24.2.2 The Lease Rent payable under the provisions of this **Article 24** shall be due and payable annually no later than 15 (fifteen) days of the close of each Accounting Year.

24.3 Concession Fee

24.3.1 In consideration of the grant of Concession, the Developer shall pay in each Year to the Authority a concession fee (“Concession Fee”) commencing from the Appointed Date for the entire Concession Period in accordance with the terms of this Development Agreement. The Concession Fee for the first year will be Rs _____/- (Rupees _____ only) determined by the financial bid of the Selected Bidder. The Concession Fee will be escalated by Indexation Parameter every year. From sixth year onwards, Concession Fee will be the higher of the escalated Concession Fee for the year, or five percent of Gross Revenue of Developer in the relevant Year.

For the purposes of this Agreement, the capitalized term “Gross Revenue” shall mean: - all pre-tax gross revenue of Developer from Project, excluding the following: (a) payments made by Developer, if any, for the activities undertaken by Relevant Government Authorities or payments received by Developer for provision of electricity, water, Sewerage, or analogous utilities to the extent of amounts paid for such utilities to third party service providers; (b) insurance proceeds except insurance indemnification for loss of revenue; (d) payments and/or monies collected by Developer for and on behalf of any governmental authorities under Applicable Law. It is clarified that Upfront Premium payable to Authority pursuant to this Agreement shall not be deducted from Gross Revenue.

For the purposes of this Agreement, the capitalized term “Indexation Parameter” shall mean: - The Indexation Parameter shall be calculated by the following formula:

$$\text{Indexation Parameter} = \frac{\text{(Gross Revenue of the year – Gross Revenue of immediately preceding year)}}{\text{Gross Revenue of immediately preceding year}}$$

However, Indexation Parameter shall be subject to a minimum limit of 5%. Indexation Parameter will be computed from second year of operations. Up to the second year of operations, Indexation Parameter will be taken as five percent. In case of operations for partial Year, the revenue for the Year will be proportionately increased to compute the Indexation Parameter. The Concession Fee to be paid at the beginning of

the year will be determined by using an escalation of five percent. The Concession Fee will be subject to reconciliation at the end of the year according to the procedure outlined in this Agreement.

For purpose of this clause only and for payment of Concession Fee, the term “Year” shall mean a period of 12 consecutive months ending on March 31 of any year; provided however that the first Year shall mean the period commencing on the Appointed Date and ending on the immediately succeeding March 31 and the last Year shall mean the period commencing April 1 and ending on the date of expiry or termination hereof.

- 24.3.2 The Concession Fee shall be paid based on the financial bid of the Selected Bidder and the conditions specified in this Agreement. The Developer irrevocably and unconditionally agrees to pay Concession Fee, and comply with reconciliation procedure at the end of each Year in accordance with terms hereof.
- 24.3.3 The Developer shall ensure and procure (including by way of giving required instructions to Escrow Bank) that Concession Fee payable under the provisions of this **Article 24** is paid in advance annually from the Escrow Account no later than 15 (fifteen) days of the beginning of each Year.
- 24.3.4 The Concession Fee payable under the provisions of this **Article 24** shall be paid based on the Concession Fee quoted by the Selected Bidder or projected Gross Revenue in the Business Plan of the Developer post 5th anniversary of Appointed Date and will be subject to annual reconciliation as per the mechanism and terms set out hereunder:-
- I. The applicable Gross Revenue used for final verification / reconciliation of the Concession Fee shall be the Gross Revenue of the Developer as certified by the Authority or the independent auditor (“**Independent Auditor**”) to be appointed as per following process.
 - II. An Independent Auditor shall be appointed for the purposes mentioned herein. The procedure of the appointment of the Independent Auditor shall be as follows:
 - a) Authority shall nominate a panel of six (6) Chartered Accountancy Firms to the Developer. Developer shall have the right to object to one or more of such nominees but not in any circumstance exceeding three (3) nominees.
 - b) Authority shall appoint any one of the nominees to whom Developer has not objected, as the Independent Auditor.
 - c) Developer and Authority shall bear equally all costs of, including costs associated with the appointment of the Independent Auditor.
 - III. The Authority and its representatives shall be permitted to inspect at any reasonable time the books, records and other material kept by or on behalf of the Developer in order to check or audit any information (including the calculation of Gross Revenue) supplied to the Authority under this Agreement. The Developer shall make available to the Authority and its representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith.

- IV. The Developer shall from time to time cause the Escrow Bank to make payment of the Concession Fee to Authority in advance on or prior to the 15th day of commencement of each Year by cheque drawn in favour of Authority. If Authority does not receive the payment of Concession Fee due hereunder by the due date provided herein, the amount owed shall bear interest for the period starting on and including the due date for payment and ending on but excluding the date when payment is made calculated at Bank Rate + 10% p.a.
- V. In the event, pursuant to reconciliation process set out herein, in any Year the actual Gross Revenue exceeds the projected Gross Revenue, then Developer shall pay to Authority the additional revenue attributable to such difference between the actual annual Gross Revenue and the projected annual Gross Revenue within 15 days of the related finding; and (ii) in the event that the projected Gross Revenue in any Year exceeds the actual Gross Revenue, then Authority shall pay to Developer such portion of the revenue received as is attributable to the difference between the projected Gross Revenue and the actual Gross Revenue by way of an adjustment against the Concession Fee payable by the Developer to Authority immediately after such finding; provided further that in the event the actual Gross Revenue in any Year is greater than 110% of the projected Gross Revenue of such Year, the Developer shall additionally pay to Authority interest for difference between the actual Gross Revenue and the projected Gross Revenue at the rate of Bank Rate plus 300 basis points in the following manner:-
- (j) interest of six (6) months on 1/3rd of the difference between the projected Gross Revenue and the actual Gross Revenue;
 - (iii) interest of four (4) months on 1/3rd of the difference between the projected Gross Revenue and the actual Gross Revenue;
 - (iv) Interest of two (2) month on 1/3rd of the difference between the projected Gross Revenue and the actual Gross Revenue.

For the purposes of this clause 24, Bank Rate means the Bank Rate notified by Reserve Bank of India, from time to time.

Article 25 - User Charges

25.1 Collection and Appropriation of User Charges

- 25.1.1 The Developer shall be entitled to collect User Charges from the Users of the Project on mutually agreed terms.
- 25.1.2 On and from the COD and during the Operation Period, the Developer shall have the sole and exclusive right to demand and collect the User Charges in accordance with this Agreement, for the use of the Project Infrastructure and Project Facilities.
- 25.1.3 Notwithstanding **Article 25.1.2**, the entire amount of User Charges that the Developer is entitled to receive under any agreement or arrangement with the Users whether written or oral shall be deposited in the Escrow Account and shall be disbursed to the Parties as per the Escrow Agreement.
- 25.1.4 All the agreements, license, sub-lease or any other similar contract entered into by the Developer with any User shall be on '**arms-length**' basis without being affected by any other relationship between the parties thereto. The aforesaid agreements shall record and capture the full understanding between the parties thereto and no consideration, reward or benefit with respect to Project or use of any Project Infrastructure or Project Facilities shall be paid to or received by the Developer or any other person on behalf of the Developer outside the scope of the aforesaid agreements. However, any such agreement would require prior approval from the Authority.
- 25.1.5 The Developer acknowledges and agrees that upon payment of the User Charges, any User shall be entitled to use the Project Infrastructure and Project Facilities in accordance with the terms and conditions of this Agreement subject to such conditions, stipulations and restrictions on use, notified by the Developer pursuant to any provision contained under the Applicable Law, Applicable Permit or the provisions of this Agreement. The User shall at all times be bound by the terms and conditions of this Agreement and shall not create any Encumbrance on the Project Infrastructure or Project Facilities or any part thereof during the Concession Period unless such Encumbrance is specifically permitted in this Agreement.
- 25.1.6 The Developer shall within 30 (thirty) days of entering into any Project Agreement, including a sub-lease agreement(s) in respect of the Project, submit a copy of the same to the Authority. Notwithstanding anything to the contrary contained herein, any Project Agreement, including a sub-lease agreement that is inconsistent with the provisions of this Agreement shall be void to the extent of the inconsistency.

Article 26 - Escrow Account

26.1 Escrow Account

- 26.1.1 The Developer shall, on or prior to Appointed Date, open and establish the Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement. The Escrow Account shall be maintained throughout the Concession Period.
- 26.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Developer, the Authority and the Escrow Bank, which shall be substantially in the form set forth in **Schedule-Q**.

26.2 Deposits into Escrow Account

The Developer shall deposit or cause to be deposited the User Charges into the Escrow Account. Without limiting the generality of the above, the following receipts shall be deposited in the Escrow Account:

- (a) all funds constituting the Financial Package;
- (b) all the User Charges from or in respect of the Project, including the proceeds of insurance claims and advances and deposits made to the Developer with respect to the Project Infrastructure and Project Facilities.
- (c) all monies received in relation to the Project from insurance or any other person towards repair, maintenance or damages for the Project Infrastructure;
- (d) all money forming part of User Charges including, sub-lease rent / revenue, deposits and User Charges accruing, arising or received by the Developer or any other person acting through or on behalf of the Developer; and
- (e) all benefits accruing under the applicable Acts, Laws and Policies.

26.3 Withdrawals during Construction/Upgradation Period

- 26.3.1 The Developer shall, at the time of opening the Escrow Account, give irrevocable instructions 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 amounts due and payable to the Authority under the terms of this Agreement including the Lease Rent, and Concession Fee;
 - (b) all taxes due and payable by the Developer;
 - (c) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
 - (d) O&M Expenses of Project¹ & costs and damages (if any)
 - (e) monthly proportionate provision of Debt Service due in an Accounting Year;
 - (f) Debt Service in respect of Subordinated Debt;

¹Construction and O&M may be concurrent in certain properties.

- (g) any reserve requirements set forth in the Financing Agreements; and
- (h) balance, if any, in accordance with the instructions of the Developer.

26.4 Withdrawals During Operation Period

26.4.1 The Developer shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of the 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 fully 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) payment of Lease Rent and Concession Fee due and payable to the Authority as per Land Lease Agreement and this Agreement;
- (b) all taxes due and payable by the Developer for and in respect of the Project Infrastructure or Project Facilities;
- (c) O&M Expenses of the Project Infrastructure or Project Facilities in accordance with Good Industry Practice;
- (d) O&M Expenses and other costs and expenses incurred by the Authority for Project Infrastructure or Project Facilities in accordance with the provisions of this Agreement, and certified by the Project Monitoring Agency as due and payable;
- (e) monthly proportionate provision of Debt Service due in an Accounting Year;
- (f) all payments and Damages certified by the Authority as due and payable to it by the Developer pursuant to the Development Agreement;
- (g) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (h) any reserve requirements set forth in the Financing Agreements; and
- (i) balance, if any, in accordance with the instructions of the Developer.

26.4.2 The Developer shall not in any manner modify the order of payment specified in **Article 26.4.1** except with the prior written approval of the Authority.

26.5 Withdrawals Upon Termination

26.5.1 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) payment of outstanding amount of Lease Rent and Concession Fee to the Authority as per this Agreement and Land Lease Agreement;
- (b) all taxes due and payable by the Developer for and in respect of the Project Infrastructure or Project Facilities;
- (c) Debt Due excluding Subordinated Debt;
- (d) payment of outstanding Concession Fee due to the Authority;
- (e) all payments and Damages certified by the Authority as due and payable to it by the Developer pursuant to the Development Agreement;

- (f) cost of repair and restoration of damages to the Project Infrastructure or Project Facilities on account of a Non Political Force Majeure Event;
- (g) retention and payments relating to the liability for defects and deficiencies set forth in **Article 33**;
- (h) outstanding Debt Service including the balance of Debt Due;
- (i) outstanding Subordinated Debt;
- (j) incurred or accrued O&M Expenses for the Project Infrastructure or Project Facilities;
- (k) any other payments required to be made under the Development Agreement; and
- (l) balance, if any, left on expiry of 6 (six) months from O & M obligations of the Developer shall be transferred to the Developer.

Provided that no appropriations shall be made under Sub-clause (g) to (k) of this **Article 26.5.1** until a Vesting Certificate has been issued by the Authority under the provisions of **Article 32.3**.

26.5.2 The provisions of this **Article 26** and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in **Article 26.5.1** have been discharged.

Article 27 - Insurance

27.1 Insurance During Concession Period

27.1.1 The Developer shall effect and maintain at its own cost, during the period of subsistence of the Development Agreement, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the “**Insurance Cover**”). The Developer shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Developer during the Construction Period. The Developer 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 Developer 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.

27.1.2 Without prejudice to the provisions contained in **Article 27.1.1**, the Developer shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Infrastructure or Project Facilities, including assets handed over by the Authority to the Developer, at replacement value;
- (b) Comprehensive third party liability insurance including injury to or death of personnel or any representatives of the Authority or others who may enter the Rahi TRC Mathura;
- (c) The Developer’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 Developer and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered above.

27.2 Notice to the Authority

Not later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Developer shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this **Article 27**. Within 30 (thirty) days of receipt of such notice, the Authority may require the Developer 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.

27.3 Evidence of Insurance Cover

All insurances obtained by the Developer in accordance with this **Article 27** shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15

(fifteen) days of obtaining any insurance cover, the Developer shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Developer to the Authority.

27.4 Remedy for Failure to Insure

If the Developer fails to effect and keep in force all insurances for which it is responsible hereto, the Authority may keep in force any such insurance, and pay such premia and recover the costs thereof from the Developer in accordance with the terms of this Agreement.

27.5 Waiver of Subrogation

All insurance policies in respect of the insurance obtained by the Developer pursuant to this **Article 27** shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

27.6 Developer's Waiver

The Developer hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Developer 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 Developer pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

27.7 Application of Insurance Proceeds

The proceeds from all insurance claims, except life and injury, shall be received by the Developer only by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in **Articles 26.3**, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Infrastructure or Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

Article 28 - Accounts and Audit

28.1 Audited Accounts

- 28.1.1 The Developer shall maintain books of accounts recording all its receipts (including User charges, Fee derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Developer shall provide 2 (two) copies of its audited annual financial statements, including Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain. The Authority shall have the right to inspect the records of the Developer 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.
- 28.1.2 The Developer shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form as may be agreed by the Parties in consultation with the Statutory Auditors of the Developer.

28.2 Appointment of Auditors

- 28.2.1 The Developer shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in **Schedule-N**. All fees and expenses of the Statutory Auditors shall be borne by the Developer.
- 28.2.2 The Developer may terminate the appointment of its Statutory Auditors after a notice of 90 (ninety) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants. Normally, the appointment of new Statutory Auditor shall come into force at the commencement of new financial year.
- 28.2.3 Notwithstanding anything to the contrary contained in the Agreement, and without any prejudice to appointment of Independent Auditor, 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**”) from the Panel of Chartered Accountants 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 the Agreement.

28.3 Certification of Claims by Statutory Auditors

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

28.4 Dispute Resolution

In the event of any difference between the findings of the Additional Auditors 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 recourse to the Dispute Resolution Procedure.

Article 29 - Force Majeure

29.1 Force Majeure

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

29.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Developer, 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 7 (seven) days and an aggregate period exceeding 60 (sixty) days in an Accounting Year;
- (c) any judgement or order of any court of competent jurisdiction or statutory authority made against the Developer in any proceedings for reasons other than (i) failure of the Developer to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (d) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

29.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 7 (seven) days and exceeding an aggregate period of 60 (sixty) days in an Accounting Year; or

- (c) any event or circumstances of a nature analogous to any of the foregoing.

29.4 Political Event

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

- (a) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Developer or of the Contractors;
- (b) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Developer or any of the Contractors to perform their respective obligations under this Agreement or the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Developer's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit; or
- (c) scrapping of the Project by the Authority without assigning reason.
- (d) any event or circumstance of a nature analogous to any of the foregoing.

29.5 Duty to Report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this **Article 29** with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

29.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified in accordance with **Article 29.5.1**, the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

29.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by **Article 29.5.1**, and such other information as the other Party may reasonably request the Affected Party to provide.

29.6 Effect of Force Majeure Event on the Concession

29.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in **Article 23.1.1** for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) before 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 Developer is unable to collect User Charges 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 Concession Period shall be extended by a period, equal in length to the period during which the Developer was prevented from collection of User Charges from the Users of the Project Infrastructure or Project Facilities; Provided that in the event of partial collection of User Charges, the Authority shall extend the Concession Period in proportion to the loss of User Charges on a monthly basis.

29.7 Allocation of Costs Arising out of Force Majeure

29.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date or during the Concession Period, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.

29.7.2 Save and except as expressly provided in this **Article 29**, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

29.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 365 (three hundred and sixty five) days or more within a continuous period of 2 (two) years, either Party may terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this **Article 29**, 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 30 (thirty) days' time to make a representation, and may after the expiry of such 30 (thirty) days period, whether or not it is in receipt of such representation, issue the Termination Notice.

29.9 Termination Payment for Force Majeure Event

29.9.1 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Developer of an amount that would be payable under **Article 31.3.2** as if it were an Authority's Default.

29.9.2 If Termination is on account of Indirect Political Event, the Authority shall make a payment of Termination Payment to the Developer of an amount equal to Debt Due Less Insurance Cover and 110% of Adjusted Equity

29.9.3 If Termination is on account of Non Political Event, the Authority shall make a payment of Termination Payment to the Developer of an amount equal to 90% of Debt Due less Insurance Cover.

29.10 Dispute Resolution

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

29.11 Excuse from Performance of Obligations

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

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

Article 30 - Suspension of Developer's Rights

30.1 Suspension Upon Developer Default

Upon occurrence of a Developer Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Developer under this Agreement including the Developer's right to collect User Charges pursuant hereto, and (ii) exercise such rights itself or authorise any other person to exercise 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 Developer and may extend up to a period not exceeding 12 (twelve) months from the date of issue of such notice; provided that upon written request from the Developer and the Lenders' Representative, the Authority shall extend the aforesaid period of 12 (twelve) months by a further period not exceeding 6 (six) months.

30.2 Authority to Act on behalf of Developer

30.2.1 Notwithstanding anything contained in this Agreement during the period of Suspension, the Authority shall, on behalf of the Developer, collect all User Charges under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in **Article 26.4**.

30.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Developer and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Developer 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 Developer and Authority shall recover all costs incurred during such period and an additional 30% (thirty percent) of such cost incurred as Damages and service charges from the Developer. The Developer hereby licences and authorises, the Authority or any other person authorised by Authority under **Article 30.1** to use during Suspension, all Intellectual Property belonging to or licensed to the Developer with respect to the Project Infrastructures and Project Facilities and its design, engineering, construction, operation and maintenance, and which is used or created by the Developer in performing its obligations under the Agreement.

30.3 Revocation of Suspension

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

30.4 Substitution of Developer

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Developer under and in accordance with the Substitution Agreement set forth in **Schedule-P**, and upon receipt of notice thereunder from the Lenders' Representative thereunder, the Authority shall

withhold Termination for a period not exceeding 12 (twelve) months from the date of Suspension, and any extension thereof under **Article 30.1**, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

30.5 Termination

30.5.1 At any time during the period of Suspension under this **Article 30**, the Developer 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 **Article 30.4**, the Authority shall, within 30 (thirty) days of receipt of such notice, terminate this Agreement by giving Termination Notice to the Developer.

30.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 12 (twelve) months from the date of Suspension hereunder or within the extended period, if any, set forth in **Article 30.1**, the Development 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 Developer Default.

Article 31 - Termination

31.1 Termination for Developer Default

31.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Developer 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 180 (one hundred and eighty) days, the Developer shall be deemed to be in default of this Agreement (a “**Developer Default**”), unless the default has occurred solely due to Force Majeure. The defaults referred to herein shall include:

- (a) fails to make payment in accordance with this Agreement to the Authority;
- (b) the Performance Security has been encashed, invoked, and forfeited in accordance with **Article 9** and the Developer fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (c) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with **Article 9**, the Developer fails to cure, within a Cure Period of 90 (ninety) days, the Developer Default for which whole or part of the Performance Security was appropriated;
- (d) the Developer does not achieve the latest outstanding Project Milestone due in accordance with the provisions of **Schedule-G** and continues to be in default for 90 (ninety) days;
- (e) the Developer Abandons or manifests intention to Abandon the construction or operation of the Project without the prior written consent of the Authority;
- (f) COD does not occur within the period specified in **Article 12.4**;
- (g) the Developer fails to perform its Operation and Maintenance Obligations in accordance with **Article 17** of this Agreement.
- (h) the Developer has failed to collect and/or is unable to deposit User Charges in the Escrow Account or the Developer is in breach of any other provision applicable to Escrow Account and the Developer fails to cure said default within a Cure Period of 30 (thirty) days;
- (i) upon occurrence of a Financial Default prior to COD, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Developer fails to cure the default within the Cure Period specified therein;
- (j) a breach of any of the Project Agreements by the Developer has caused a Material Adverse Effect on the Project;
- (k) the Developer creates any Encumbrance in breach of this Agreement;
- (l) the Developer repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (m) a Change in Ownership has occurred in breach of the provisions of this Agreement;

- (n) the Developer is in breach of any Applicable Law or is in breach of any Applicable Permit resulting in termination of any Project Agreements or withdrawal of any Applicable Permit and such actions causes a Material Adverse Effect on the Project;
- (o) an execution levied on any of the assets of the Developer has caused a Material Adverse Effect;
- (p) the Developer is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Developer or for the whole or material part of its assets that has a material bearing on the Project;
- (q) the Developer has been, or is in the process of being liquidated, dissolved, wound up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (r) a resolution for winding up of the Developer is passed;
- (s) any petition for winding up of the Developer is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Developer 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 Developer are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Developer under this Agreement and the Project Agreements; Provided further 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 Developer as on the Appointed Date; and
 - iii each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Developer herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Developer is at any time hereafter found to be in breach thereof;
- (u) the Developer submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (v) the Developer has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (w) the Developer commits a default in complying with the Shareholding Pattern as set forth in **Article 5.8**; or
- (x) the Developer commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Authority.

31.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Developer Default, the Authority shall be entitled to terminate this Agreement and Land Lease Agreement co-terminus by issuing a Termination Notice to the Developer.

Provided that before issuing the Termination Notice, the Authority shall by a notice inform the Developer of its intention to issue such Termination Notice and grant 30 (thirty) days to the Developer to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of **Article 31.1.3**.

31.1.3 The Authority shall, send a copy of its notice of intention to issue a Termination Notice referred to in **Article 31.1.2** to inform the Lenders' Representative and grant 30 (thirty) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Developer in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, either withhold Termination for a period not exceeding 12 (twelve) months from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 12 (twelve) months, and upon such curing thereof and payment of Damages, if any, the Authority shall withdraw its notice referred to above and restore all the rights of the Developer.

Provided further that upon written request from the Lenders' Representative and the Developer, the Authority shall extend the aforesaid period of 12 (twelve) months by such further period not exceeding 6 (six) months, as the Authority may deem appropriate.

31.1.4 If the Senior Lender does not exercise its right of substitution of the Developer within the time limit specified in the **Article 31.1.3**, the Senior Lender's right to substitution shall cease to have effect for that Developer Default.

31.2 Termination for Authority Default

31.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Developer 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 Developer; or
- (b) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

31.2.2 Without prejudice to any other right or remedy which the Developer may have under this Agreement, upon occurrence of a Authority Default, the Developer shall, subject

to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; Provided that before issuing the Termination Notice, the Developer shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 30 (thirty) days to the Authority to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

31.3 Termination Payment

31.3.1 Upon Termination on account of a Developer Default during the Concession Period, the Authority shall pay to the Developer, by way of Termination Payment, an amount equal to 90 % (ninety percent) of the Debt Due for the Project less Insurance Cover. Authority shall get the evaluation done from the independent valuers to ascertain the proportionate work done in respect to Debt Due to Lenders.

For the avoidance of doubt, no Termination Payment shall be due or payable on account of a Developer Default occurring prior to COD.

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

- (a) 100 % of Debt Due; and
- (b) 150 % (one hundred percent) of the Adjusted Equity.

31.3.3 Termination Payment shall become due and payable to the Developer within 180 (one hundred and eighty) days of a demand being made by the Developer 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 Bank Rate on the amount of Termination Payment remaining unpaid; Provided that such delay shall not exceed 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.

31.3.4 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be paid to the Developer.

31.3.5 The Developer expressly agrees that Termination Payment under this **Article 31** shall constitute a full and final settlement of all claims of the Developer on account of Termination of this Agreement for any reason whatsoever and that the Developer or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

31.4 Certain Limitations on Termination Payment

31.4.1 Termination Payment due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost 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, it is agreed that within a period of 60 (sixty) days from COD, the Developer 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, and it is further agreed that in the event such disaggregation is

not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.

31.5 Other Rights and Obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Project;
- (b) be entitled to terminate the Land Lease Agreement and re-enter the Site;
- (c) be entitled to restrain the Developer and any person claiming through or under the Developer from entering upon the Site or any part of the Project;
- (d) require the Developer to comply with the Divestment Requirements set forth in **Article 32.1**; and
- (e) succeed upon election by the Authority but without any obligation to do so, without the necessity of any further action by the Developer, to the interests of the Developer under such of the Project Agreements as the Authority may 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 Developer. For the avoidance of doubt, 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 Developer and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that if the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose is recoverable from the Developer.

31.6 Survival of Rights

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

Article 32 - Divestment of Rights and Interests

32.1 Divestment Requirements

32.1.1 Upon Termination, the Developer shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all the relevant Project Assets;
- (b) if Termination occurs prior to COD, deliver forthwith the actual and constructive possession of the Project and the Site, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) if Termination occurs after COD, deliver forthwith the actual and constructive possession of the Rahi TRC Mathura free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (d) cure all Project Assets, including the Project Infrastructure and Project Facilities 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 Infrastructure and Project Facilities shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (e) deliver relevant records and reports pertaining to the Project and its design, engineering, finance, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date;
- (f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (g) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Developer in the Project, Project Facilities, Project Infrastructure and Project Assets, including the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Developer in the Project, Project Facilities, Project Infrastructure and Project Assets, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

32.2 Inspection and Cure

Not earlier than 90 (ninety) days before Termination but not later than 90 (ninety) days after the effective date of such Termination, the Authority shall verify, after giving due notice to the Developer of the time, date and venue of such verification, compliance by the Developer with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Developer's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Developer at its cost and the provisions of **Article 33** shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this **Article 32**.

32.3 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-O** (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Developer 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 Developer.

32.4 Cooperation and Assistance on Transfer of Project

32.4.1 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.

32.4.2 The Parties shall provide to each other, 9 (nine) 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 Developer shall further provide such reasonable advice and assistance as the Authority, its Developer or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

32.5 Divestment Costs, etc.

32.5.1 The Developer shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Developer in the Project, Project Facilities, Project Infrastructure and 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 Developer in connection with such divestment shall be borne by the Authority.

32.5.2 In the event of any dispute relating to matters covered by and under this **Article 32**, the Dispute Resolution Procedure shall apply.

32.5.3 The Authority shall have the option to purchase or hire from the Developer 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

Project Assets 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.

32.5.4 The provisions of **Article 32** shall be construed in a manner that it meets the requirement of an event and is reasonable in the context.

Article 33 - Defects Liability After Termination

33.1 Liability for Defects after Termination

The Developer shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) 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 / Project Monitoring Agency in the Project during the aforesaid period. In the event that the Developer fails to repair or rectify such defect or deficiency within a period of 30 (thirty) 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 Developer's risk and cost so as to make the Project Infrastructure and Project Facilities conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Developer to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall notwithstanding anything contained in **Article 26**, be entitled to recover the same from the Escrow Account.

33.2 Retention in Escrow Account

33.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of **Article 33.2.2**, a sum equal to 25 % (twenty five percent) of User Charges for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 180 (one hundred and eighty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of **Article 33.1**.

33.2.2 Without prejudice to the provisions of **Article 33.2.1**, the Authority /Project Monitoring Agency shall carry out an inspection of the Project Infrastructure and Project Facilities not later than 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project Infrastructure is such that a sum larger than the amount stipulated in **Article 33.2.1** should be retained in the Escrow Account and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount recommended by the Authority / Project Monitoring Agency shall be retained in the Escrow Account for the period specified by it.

Article 34 - Assignment and Charges

34.1 Restrictions on Assignment and Charges

34.1.1 Subject to **Article 34.2** and **34.3**, this Agreement shall not be assigned by the Developer to any person.

34.1.2 Subject to the provisions of **Article 34.2**, the Developer shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement with respect to the Project to which the Developer is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.2 Permitted Assignment and Charges

The restraints set forth in **Article 34.1** 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) license, sub-lease in favour of licensees, Sub-lessees ;
- (c) mortgages/pledges/hypothecation of goods/assets other than Project Assets, and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements;
- (d) assignment of rights, interest and obligations of the Developer to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (e) liens or encumbrances required by any Applicable Law.

34.3 Substitution Agreement

34.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Developer in accordance with the agreement for substitution of the Developer (the "**Substitution Agreement**") to be entered into amongst the Developer, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in **Schedule-P**.

34.3.2 Upon substitution of the Developer under and in accordance with the Substitution Agreement, the Nominated Company substituting the Developer shall be deemed to be the Developer under this Agreement and shall enjoy all rights and be responsible for all obligations of the Developer under this Agreement as if it were the Developer; Provided that where the Developer is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 180 (one hundred and eighty) days to the Nominated Company for curing such breach.

34.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Developer, assign and/ or transfer any

of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

Article 35 - Liability and Indemnity

35.1 General Indemnity

35.1.1 The Developer will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities/enterprises, (“the **Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Developer of any of its obligations under this Agreement or the Project Agreements or any related agreement or on account of any defect or deficiency in the provision of services by the Developer to any User, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Authority Indemnified Persons.

35.1.2 The Authority will indemnify, defend, save and hold harmless the Developer against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of defect in title and/or the rights of the Authority in the land comprised in the Site, 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 Developer, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Developer.

35.2 Indemnity by the Developer

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

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

35.2.2 Without limiting the generality of the provisions of this **Article 35**, the Developer 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 Developer or by the Developer’s Contractors in performing the Developer’s obligations or in any way incorporated in or related to the Project. 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 Developer 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 Developer is unable to secure such licence within a reasonable time, the Developer 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 **Article 35** (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

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 **Article 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 **Article 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 unreasonably withheld or delayed).
- 35.4.3 If the Indemnifying Party exercises its rights under **Article 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 by such party has been authorised in writing by the Indemnifying Party; or

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

Provided that if Sub-clauses (b), (c) or (d) of this **Article 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 **Article 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 **Article 35** shall survive Termination.

Article 36 - Rights and Title over the Site

36.1 Lease Rights

For the purpose of this Agreement, the Developer shall have the right to use the Site as sole lessee subject to and in accordance with this Agreement, and to this end; it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

36.2 Transfer of Site on Lease Basis

36.2.1 The Site, subject to payment in accordance with **Article 24**, shall be transferred on lease basis through execution of lease agreement (“**Land Lease Agreement**”) in the form attached hereto in Schedule T, for undertaking Development Activities.

36.2.2 The Authority shall bear all the costs of handing over the Site to the Developer and be liable to remove/resettle at its cost all Persons that may have to be displaced / relocated from the Site, including the payment of compensation, if any, to such Persons and the Developer shall not be liable in this behalf.

36.2.3 In consideration for the lease of the Site, the Developer shall pay the Authority, the Upfront Premium and Lease Rental specified in **Article 24** hereof.

36.2.4 The Land Lease Agreement shall be duly registered with the relevant Government Authority as soon as practicable, but in any case within 1 (one) month of the date of execution thereof. The stamp duty and registration charges for the execution and registration of the Land Lease Agreement shall be borne by the Developer.

36.3 Sub-Lease

36.3.1 The Developer shall have the right to sub-lease with prior written approval from the Authority as follows:-

- a) Subleasing of the construction and / or operation of the Retail Space;
- b) Subleasing of the construction and / or operation of the Kitchen / Restaurant; and
- c) Subleasing provision of additional services and amenities for the Project which is not part of Core Operations for the Project.

36.3.2 The Developer shall in accordance with the provisions of **Article 36.3.1**, be entitled with requiring the prior approval of the Authority to grant sub-leases over Retail Space, Kitchen / Restaurant, Banquet Hall, Utility Rooms, etc. in favour of Tenants / Sub - Lessees in order to fulfil its obligations pursuant to this Agreement and to develop, establish, operate and maintain the Project, establish, install, equip, operate and maintain the Project Infrastructure and Project Facilities and to determine, demand, collect, retain and appropriate User Charges in lieu thereof; Provided that

- a) such sub-lessees shall be by way of a Sub-Lease Agreement, on term and conditions that are mutually agreed between the Developer and the Sub-lessees; Provided the provisions thereof are not inconsistent with or in derogation of any terms or provisions of this Agreement or the Land Lease Agreement;

- b) such sub-leases shall be transferable upon payment of transfer charges to the concerned Government Agency at the rates prescribed in this behalf from time to time;
- c) each Sub-Lease Agreement shall include provisions to the effect that in case of a conflict, direct or indirect, between the provision of this Agreement or the Land Lease Agreement on the one hand and the Sub-Lease Deed on the other hand, the provisions of this Agreement or the Land Lease Agreement, as the case may be, shall prevail and such Sub-Lease Agreement shall stand modified to that extent;
- d) the terms and conditions of this Agreement and the Land Lease Agreement are complied with and as applicable, form part of such sub-leases;
- e) the duration of such sub-leases shall be limited to and be co-terminus with the Concession Period. Provided that upon the expiration or prior termination of this Agreement and the Land Lease Agreement for any reason whatsoever, the Authority may extend the duration of the Sub-Lease Agreement and the sub-leases pursuant thereto beyond the Concession Period/the term of this Agreement and of the Land Lease Agreement on the same terms and conditions and if necessary execute supplementary agreements/additional documentation in this behalf;
- f) The Sub-Lease Agreements shall contain provisions relating to the construction, establishment, commissioning, operation and maintenance of the Project Facilities within the stipulated time specified therein and in compliance with the provisions hereof;
- g) subject to sub-section (e) above, all such sub-leases/licenses shall be determined and terminated on the expiry, determination or termination of this Agreement/Concession Period, as the case may be; and
- h) the Authority shall not be liable in any manner whatsoever to any Person in respect of such sub-leases.

36.3.3 The Developer shall ensure that the Sub-Lease Deeds contain provisions for establishment of the Project Infrastructure & Project Facilities over the subleased land/Plots/built up area/units by the Tenants / Sub-lessees / their agents within the time period prescribed in this behalf in such agreements along with the provisions for levy and payment of damages by such persons for delays in the development and establishment of the Project Infrastructure & Project Facilities or breach of the provisions of such agreements, and for the rights of forfeiture of the sub-leased land/Plots/built up area/units by the Developer or Authority, as the case may be, in the event the sub-lessee fails to establish the Project Infrastructure & Project Facilities within the prescribed time period, including any sanctioned extension thereof upon payment of the prescribed damages in this behalf.

36.3.4 The Developer agrees and undertakes that it shall ensure that each sub -lessee performs its obligations under the Sub-Lease Agreement relating to it and this Agreement and that the Developer shall be liable for all acts or omissions of a tenant there under.

36.3.5 The Developer agrees that it shall ensure that the Sub-Lease Agreement executed with the tenants are duly stamped and registered at its/Sub - Lessee' costs in a timely manner. The Developer/sub-lessees of leasehold rights etc. shall, within three months

of sub-lease/transfer provide to the Authority notarised true copies of the duly stamped and registered Sub-Lease Agreement evidencing such transfer.

36.4 Access Rights of the Authority and Others

36.4.1 The Developer shall allow to the extent required under this Agreement, free access to the Site at all times for the authorised representatives of the Authority and Senior Lenders and the Project Monitoring Agency and for the persons duly authorised by any Government Instrumentality to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Developer shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

36.4.2 The Developer shall, for the purpose of operation and maintenance of any utility specified in **Article 11**, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility.

36.5 Property Taxes

The Developer shall pay property taxes for the Site as per Applicable Law.

36.6 Restriction on Sub-Letting

The Developer shall not license, sub-lease or sub-let the whole or any part of the Site except as fully developed plots / developed infrastructure for setting up of facilities expressly permitted under this Agreement.

Provided that the Developer shall at no time be allowed to sub-lease or licence Core Operations except or otherwise to the Associate (whose Technical & Financial Capacity has been claimed for Qualification at RFP stage).

Article 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 **Article 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

In the event of any Dispute between the Parties, either Party may call upon a mediator to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the mediator or without the intervention of the mediator, either Party may require such Dispute to be referred to Principal Secretary (or above rank Officer as appointed), Government of Uttar Pradesh and any director of the Developer for amicable settlement, and upon such reference, the said persons shall meet no later than 15 (fifteen) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 15 (fifteen) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 45 (forty five) days of the notice in writing referred to in **Article 37.1.1** or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of **Article 37.3**.

37.3 Arbitration

37.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in **Article 37.2**, shall be finally decided by reference to arbitration by a Arbitral Tribunal appointed in accordance with **Article 37.3.2**. Such arbitration shall be held in accordance with the Arbitration Rules. The venue of such arbitration shall be Lucknow, and the language of arbitration proceedings shall be English.

37.3.2 Arbitral Tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator, and the third arbitrator shall be appointed by the two arbitrators so appointed and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the provisions of Arbitration and Conciliation Act, 1996.

37.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this **Article 37** shall be final and binding on the Parties as from the date it is made, and the Developer and the Authority agree and undertake to carry out such Award without delay.

37.3.4 The Developer and the Authority agree that an Award may be enforced against the Developer and/or the Authority, as the case may be, and their respective assets wherever situated.

37.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

Article 38 - Change in Law

38.1 In the event of a Change in Law results in a Material Adverse Effect, the Authority or the Developer may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Developer and the Authority shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure described under Article 37 of this Agreement.

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax and decrease in the benefits stipulated in any policy issued by GoI and GoUP, and revocation or amendment of any other policy applicable to the Project as on the date of this Agreement shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

Article 39 - Miscellaneous

39.1 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 Lucknow shall have jurisdiction over matters arising out of or relating to this Agreement.

39.2 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 from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

39.3 Depreciation

For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Developer in the Project shall be deemed to be acquired and owned by the Developer. 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 Developer under the Applicable Laws.

39.4 Delayed Payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 0.5 % (zero point five percent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

39.5 Waiver

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

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

39.5.2 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 thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

39.6 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 of any Project Agreement, Document or Drawing submitted by the Developer 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 Developer from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority is not liable to the Developer by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

39.7 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.

39.8 Survival

39.8.1 Termination shall:

- (a) not relieve the Developer 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.

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

39.9 Entire Agreement

This Agreement, the Schedules and Appendices 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.

39.10 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.

39.11 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.

39.12 Third Parties

The Agreement is intended solely for the benefit of the Parties and their respective successors, and nothing in the 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 the Agreement.

39.13 Successors

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

39.14 Confidentiality

39.14.1 All non-public information and, in particular, any information provided by either Party to the other or which is identified by the disclosing Party in writing as confidential or proprietary information shall be treated in a confidential manner and shall not be disclosed to any third party without the prior written consent of the non-disclosing Party, which consent shall not be unreasonably withheld. Notwithstanding the preceding, this Article and the restrictions herein contained shall not apply to any data or documentation which is:

- (a) required to be disclosed pursuant to State or Central law, an order or requirements of a regulatory body or a court, after 7 (seven) days' notice of such intended disclosure is given by the disclosing Party to the non-disclosing Party or if 7 (seven) days' notice is not practical, then such shorter notice as is practical;
- (b) disclosed by a Party in connection with an assignment permitted under this Agreement; or
- (c) is, as of the time of disclosure, public knowledge without the fault of the disclosing Party.

39.15 Publicity

39.15.1 The Parties agree that the Authority will, from time-to-time, issue press releases regarding the Project and that the Developer shall cooperate with Authority in connection with the issuance of such releases.

39.15.2 The Developer agrees that it shall not issue any press release regarding the Project without the prior written consent of Authority and such consent shall not be unduly or unreasonably withheld. For the avoidance of doubt, it is clarified that Authority shall not require any consent of the Developer for issuing any press release regarding the Project.

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

{ *****

Tel:
Fax:
Email: }

The copy of the notice shall be sent to the Project Monitoring Agency or such other person as the Authority may from time to time designate by notice to the Developer; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

39.17 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 Hindi / English language.

39.18 Counterparts

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

Article 40 - Definitions

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

“**Abandon**” means, to the extent not caused by a Force Majeure Event or material failure by Authority to perform its obligations:

- (a) the performance of the Developer in discharging its duties and/or obligations under this Agreement has been so inadequate; or
- (b) the level and/or quality of resources applied by Developer has been materially deficient; or
- (c) the Developer has evidenced a disregard for its duties and/or obligations under this Agreement to such an extent,

in each case to either:

- (a) reasonably demonstrate the intention of Developer to no longer properly and diligently carry out and fulfil substantially the Developer’s duties and obligations as set forth in this Agreement; or
- (b) reasonably amount to a declaration by Developer’s conduct that Developer will not properly and diligently perform substantially its duties and obligations as set forth in this Agreement;

“**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;

“**Adjusted Equity**” means the Equity funded in Indian 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 WPI, and for any Reference Date occurring:

(a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

(b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.08% (zero point zero eight per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

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

“**Agreement**” or “**Development Agreement**” means this Agreement, its Recitals, the Schedules and Appendices hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**Applicable Laws**” means all laws, brought into force and effect by the GOI or the GoUP including rules, regulations, policies and notifications made there under, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

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

“**Appointed Date**” means the date on which all Conditions Precedents required for Project including Financial Close are achieved or any of the Conditions Precedents are waived off by the Authority in writing, or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period;

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

“**Authority**” means Directorate of Tourism, Government of Uttar Pradesh or any other Government Agency designated by the State Government from time to time;

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

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) 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, 1934 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 Security**” means unconditional, unequivocal and irrevocable security provided by the Selected Bidder to the Authority along with the Bid in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

“**Business Day**” means a day on which banks are generally open in Lucknow for transaction of normal banking business.

“**Business Plan**” means the plan for the Project Tourism Business, updated periodically from time to time, that sets out how it is intended to operate, manage and develop the Project Property over a planning horizon and will include financial projections for the plan period.

“**Change in Law**” means occurrence of any of the following events after the execution of this Agreement:

(a) enactment of any new Applicable Law;

- (b) the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Law;
- (c) the change in interpretation or application of any Applicable Law;
- (d) the imposition of a requirement for an Applicable Permit(s) (other than for cause) not required on the date of this Agreement;
- (e) after the date of grant of any Applicable Permit(s), a change in the terms and conditions attaching to such Applicable Permit(s) (other than for cause) or the attachment of any new terms and conditions to an Applicable Permit(s) (other than for cause); or
- (f) any Applicable Permit(s) previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a party (including a failure to renew), or if granted for a limited period, not being renewed on a timely basis on an application therefore having been duly made in good time.
- (g) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (h) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax and change in the benefits stipulated in any policy/guidelines issued by GoI and GoUP, reduction in interest subsidy if applicable, shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

“**Change in Ownership**” shall have the meaning set forth in **Article 5.4**;

“**COD**” shall have the meaning set forth in **Article 15.1**;

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

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

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

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

“**Developer Default**” shall have the meaning set forth in **Article 31.1.1**;

“**Conditions Precedent**” shall have the meaning set forth in **Article 4.1.1**;

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

“**Construction Works**” means all works and things necessary to complete the Project in accordance with this Agreement;

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

“**Core Operations**” shall mean to consist of, but not limited to operations of the tourism property pertaining to basic services viz. room booking, housekeeping, room services, etc.

“**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 Developer requires any reasonable action by the Developer that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

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

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

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “**Principal**”) but excluding any part of the Principal that had fallen due for repayment 3 (three) months prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due 3 (three) months 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; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Developer, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“**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;

“**Development Period**” means the period from the date of this Agreement until the Appointed Date;

“**Dispute**” shall have the meaning set forth in **Article 37.1.1**;

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

“**Divestment Requirements**” means the obligations of the Developer for and in respect of Termination as set forth in **Article 32.1**;

“**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 of the drawings, calculations and documents pertaining to the Project Infrastructure and Project Facilities as set forth in **Schedule-H**, and shall include ‘**as built**’ drawings of the Project Infrastructure and Project Facilities;

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

“**Emergency**” means a condition or situation that is likely to endanger the security of the individuals in or around the Project, including Users of the Project Infrastructure, or which poses an immediate threat of material damage to any of the Project Assets;

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

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

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

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

“**Escrow Account**” means an Account which the Developer shall open and maintain under provisions of **Article 26**, with the Escrow 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 **Article 26.1.2**;

“**Escrow Bank**” shall have the meaning ascribed to it in **Article 26.1.1**;

“**Estimated Project Cost**” means the capital cost (indicative) of the Project as mentioned in the RFP;

“**Event**” means each convention, training programme, presentation, meetings, conferences, workshops, award ceremony, or other similar function using the Project Infrastructure or Project Facilities;

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

“**Financial Default**” shall have the meaning set forth in **Schedule-P**;

“**Financial Model**” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a

description of the assumptions and parameters used for making calculations and projections therein;

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

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

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

“Good Industry Practice” means the best 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 abiding to international standards 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 Developer in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“Government” means the Government of India or Government of Uttar Pradesh, as the case may be;

“Government Agency” means any department, division or sub-division of the GoUP and includes any commission, board, authority, agency or municipal and other local authority or statutory body under the control of the Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Developer under or pursuant to this Agreement;

“GOI” means Government of India

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to **Article 35**;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to **Article 35**;

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

“Indexation Parameter” shall have the meaning set forth in **Article 24.3.1**;

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

“Project” means Development Activities and includes the Project Facilities to be developed, constructed, finance, maintained, managed and operated on the Site in accordance with the Business Plan and the provisions of this Agreement, and shall include the Project Infrastructure and the Project Facilities and also the infrastructure and facilities that may be

created on the Site by the Users in accordance with provisions of Applicable Laws, Acts, Policies, Guidelines, etc.;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Developer pursuant to **Article 27**, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums 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;

“**Land Lease Agreement**” means the lease deed entered into between the Developer and the Authority for the Site for the Project in the form set out in **Schedule-T**;

“**LOI**” or “**Letter of Intent**” means the Letter of Intent referred to in **Recital-F**;

“**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;

“**Maintenance Manual**” shall have the meaning ascribed to it in **Article 17.3**;

“**Maintenance Programme**” shall have the meaning ascribed to it in **Article 17.4.1**;

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

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

“**Negative List**” means the following activities and Events, which are not allowed to be undertaken in the Project:

- (a) is incompatible or conflicting in nature with the Use of the Project;
- (b) Gambling;
- (c) Prostitution; and
- (d) Any other activity that is in violation of Applicable Laws.

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

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

“**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 User Charges in accordance with the provisions of this Agreement;

“**O&M Contract**” means the operation and maintenance contract that may be entered into between the Developer and the O&M Contractor for performance of all or any of the O&M obligations;

“**O&M Contractor**” means a person, if any, with whom the Developer has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Developer;

“**O&M Expenses**” means expenses incurred by or on behalf of the Developer 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) insurance premium, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract, or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement.

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

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

“**Panel of Chartered Accountants**” shall have the meaning set forth in **Article 28.2.1**;

“**Associate**” means, in relation to the Selected Bidder, a Person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression “**control**” means, with respect to a Person which is a company or corporation, the ownership, directly, of more than 50 % (fifty percent) of the voting shares of such Person, and with respect to a Person which is not a company or corporation, the power to direct the management and policies of such Person, whether by operation of law or by contract or otherwise);

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

“**Person**” means any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or governmental authority or agency or any other legal entity.

“**Performance Security**” means the unequivocal, unconditional and irrevocable bank guarantee to be provided by the Developer and shall have the meaning set forth in **Article 9.1**;

“**Development Activities**” shall have the meaning as set forth in **Article 2.1.3**;

“**Scheduled Commercial Operation Date**” or “**SCOD**” shall be the day of 1st anniversary from the Appointed Date;

“**Plot**” means a plot / area of land at the Site demarcated by the Developer for sub-lease to the Tenants for commercial consideration;

“**Positive List**” means the following activities and Events, which are allowed to be undertaken in the Project:

- (a) Educational workshop, awareness fairs, job or recruitment fairs, etc.;
- (b) Corporate training programmes;
- (c) Sports events;
- (d) Health and wellness programmes;
- (e) Medical programmes;
- (f) Meditation programmes;
- (g) Physical health exercise, etc.; and
- (h) Any other activity as approved by the Authority.

"Project" includes the design, financing, development, sub-leasing, marketing, construction, establishment, management, provision, operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement and all activities incidental thereto, including, engineering, testing, completion, commissioning and insurance along with the determination, demand, collection, retention and appropriation of User Charges and the transfer of the Project and the Project Assets to the Authority or its nominated agency at the end of the Concession Period.

"Project Agreements" means this Agreement, the Financing Agreement, EPC Contract, O&M Contract, sub lease, sub-licence agreements, relating to the Project or any part thereof and any other agreements or contracts that may be entered into by the Developer 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 the Substitution Agreement;

"Project Assets" means all physical and other assets relating to and forming part of the Site including:

- (a) rights over the Site in the form of lease, Right of Way or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, drainage works, electrical systems, communication systems, rest areas and administrative offices;
- (c) Project Infrastructure and Project Facilities situated on the Site;
- (d) all rights of the Developer under the Project Agreements;
- (e) financial assets, such as receivables, security deposits, etc.;
- (f) insurance proceeds; and
- (g) Applicable Permits and authorisations relating to or in respect of the Project.

"Project Completion Date" means the date on which the Completion Certificate is issued under the provisions of **Article 14**;

"Project Completion Schedule" means the progressive Project Milestones set forth in **Schedule-G** for completion of Development Activities on or before the respective Scheduled Completion Date;

"Project Facilities" means all the amenities and facilities to be constructed on the Site, as described in **Schedule-C2**;

"Project Infrastructure" means the infrastructure to be developed, built, constructed and operated by the Developer on the Site as specified in **Schedule-C1**;

"Project Milestones" means the project milestones set forth in **Schedule-G**;

"RBI" means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

"Re.", **"Rs."** or **"Rupees"** or "Indian Rupees" means the lawful currency of the Republic of India;

"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 Delhi by the Reserve Bank of India (RBI);

"Right of Way" means the legal and constructive possession of the Site under and in terms of this Agreement and the Land Lease Agreement, together with all way leaves, easements,

unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;

“**Safety Requirements**” shall have the meaning set forth in **Article 18.1.1**;

“**Scheduled Completion Date**” shall have the meaning set forth in **Article 12.4.2**;

“**Scheduled Project Completion Date**” shall have the meaning set forth in **Article 12.4.3**;

“**Scope of the Project**” shall have the meaning set forth in **Article 2.1**;

“**Senior Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Developer 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 interests of the Developer;

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

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in **Schedule-D**, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Developer to, and expressly approved by, the Authority;

“**State**” means the State of Uttar Pradesh;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the Statutory Auditors of the Developer under the provisions of the Companies Act including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with **Article 28.2.1**;

“**Subordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Developer 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 the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter-Bank Offer Rate) plus 2 % (two percent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Developer, 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;

“**Substitution Agreement**” shall have the meaning set forth in **Article 34.3**;

“**Suspension**” shall have the meaning set forth in **Article 30.1**;

“**Taxes**” means any taxes applicable in India including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties

and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” means the expiry or earlier termination of this Agreement and the Concession hereunder or expiry or earlier termination of the Land Lease Agreement, as the case may be;

“**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 Developer upon Termination and may consist of payments on account of and restricted to the specified percentages of Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost 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, it is agreed that within a period of 60 (sixty) days from COD, the Developer shall notify to the Authority, the Total Project Cost, and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost;

“**Tests**” means the tests set forth in **Schedule-I** to determine the completion of Project in accordance with the provisions of this Agreement;

“**Total Project Cost**” means the lowest of the following:

- (a) the capital cost (indicative) of the Project as mentioned in the RFP;
- (b) the capital cost of the Project, as set forth in the Financing Agreements; and
- (c) the actual capital cost of the Projects certified by Independent Auditors of the Authority;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Reference Exchange Rate occurring in respect of Debt Due in accordance with the provisions of this Agreement;

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

“**Upfront Premium**” means the amount of Rs _____/- (Rupees _____ only) payable in accordance with **Article 24.1**;

“**User**” means, *inter alia*, Sub-lessees, room guests, banquet / party hall uses, restaurant patrons, conference room users, and any person who uses the Project Infrastructures, Project Facilities or any part thereof;

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

“Vesting Certificate” shall have the meaning set forth in **Article 32.3;**

In witness whereof the parties have executed and delivered this agreement as of the day, month and year first above written

SIGNED, SEALED AND
DELIVERED
For and on behalf of
**Directorate of Tourism,
Government of Uttar
Pradesh** by:

SIGNED, SEALED
AND DELIVERED
For and on behalf of
Developer by:

SIGNED, SEALED
AND DELIVERED
For and on behalf of
Confirming Party by:

In the presence of:

- | | |
|----|----|
| 1. | 2. |
| 3. | 4. |