UT Administration

Andaman and Nicobar Islands (ANI)

International Competitive Bidding

(Single-Stage Two-Envelope Bidding)

Process for

Development of 5-Star Eco-Tourism Resort at Smith Island, ANI

Request for Proposal (RFP)

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https://eprocure.andaman.gov.in

https://aniidco.and.nic.in/

Bidding Documents issued by:

Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)

Address: ANIIDCO Ltd., Vikas Bhawan, PB No. 180, Sri Vijaya Puram, Andaman & Nicobar Islands – 744101

Disclaimer

The information contained in this Request for Proposals document (the "**RFP**") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder or Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bidding Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses

associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

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Glossary

Term/ Abbreviation	Reference Clause in this RFP
AIF	Alternative Investment Fund
Annual Concession Fee or ACF	As defined in Clause 1.2.6
ANI Administration	As defined in Clause 1.1.1
Associate	As defined in Clause 2.2.2.1.3
Authority or ANIIDCO	As defined in Clause 1.1.1
Bank Guarantee	As defined in Clause 2.27.1
Bids	As defined in Clause 1.2.1
Bid Due Date or BDD	As defined in Clause 1.1.6
Bid Paramater	As defined in Clause 3.4.1
Bid Security	As defined in Clause 1.2.4
Bidders	As defined in Clause 1.2.1
Bidding Documents	As defined in Clause 1.1.6
Bidding Process	As defined in Clause 1.2.1
Concessionaire	As defined in Clause 1.1.2
Concession Agreement	As defined in Clause 1.1.2
Conflict of Interest	As defined in Clause 2.2.1.3
Consortium	As defined in Clause 2.2.1.1
Damages	As defined in Clause 2.2.1.3
DBFOT	As defined in Clause 1.1.1
Demand Draft	As defined in Clause 2.27.2
Developed	As defined in Clause 2.2.2.1 (c) (i)
Eligible Project(s)	As defined in Clause 2.2.2.1(ii)
EPC	Engineering Procurement Construction
Estimated Project Cost	As defined in Clause 1.1.4
Financial Bid	As defined in Clause 1.2.1
Financial Capacity	As defined in Clause 2.2.2.2
Foreign Documents	As defined in Clause 2.2.1.5
Government	Government of India
Gross Revenue Share or GRS	As defined in Clause 24.3 of Draft Concession Agreement
Highest Bidder	As defined in Clause 1.2.7
Joint Bidding Agreement	As defined in Clause 2.2.6 (g)
Lead Member	As defined in Clause 2.2.6 (c)
LOA	Letter of Award
Mandatory Development Obligations or MDO	As defined in Clause 1.1.1

Term/ Abbreviation	Reference Clause in this RFP
Member	Member of a Consortium
Net Worth	As defined in Clause 2.2.4 (ii)
O&M	Operation and Maintenance
O&M Agreement	As defined in Clause 2.2.3
O&M Member	As defined in Clause 2.2.3
PPP	Public Private Partnership
Project	As defined in Clause 1.1.1
Project COD	As defined in Clause 2.2.2.1 (c) (iii)
Qualification	As defined in Clause 1.2.1
Re. or Rs. or INR	Indian Rupee
RFP or Request for Proposal	As defined in Clause 1.2.1
Selected Bidder	As defined in Clause 3.4.1
Subject Bidder	As defined in Clause 3.4.3
Subject Person	As defined in Clause 2.2.1.3 (i)
SPV	As defined in Clause 2.2.6
Technical Bid	As defined in Clause 1.2.1
Tie Bidders	As defined in Clause 3.4.2
Technical Capacity	As defined in Clause 2.2.2.1
Technical Capacity of O&M Member	As defined in Clause 2.2.3 (i)
Total Project Cost	As defined in Clause 43.1 of Draft Concession Agreement
UT	Union Territory of India

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein above.

Invitation for Proposal

1 Introduction

1.1 Background

1.1.1 The Administrator, UT Administration of Andaman and Nicobar Islands (the "**ANI Administration**") envisaged to undertake development of sustainable Eco-tourism projects in the Union Territory (UT) of Andaman & Nicobar Islands and as part of this endeavour, the ANI Administration appointed Andaman and Nicobar Islands Integrated Development Limited as the Project Management Authority (hereinafter to be referred as the "**Authority**" or "**ANIIDCO**"). The Authority has decided to undertake development and operation & maintenance of the **Development of 5-Star Eco-Tourism Resort at Smith Island, ANI** at **Survey Nos. 96, 98 and 1/1/2, Smith Land**, Eco-tourism Resort (the "**Project**") through **PPP** model on Design, Build, Finance, Operate and Transfer (the "**DBFOT**") basis, and has, therefore, decided to carry out the Bidding Process for selection of a technically competent private entity as the Selected Bidder to whom the Project may be awarded. Brief particulars of the Project are as follows:

Name of Project	Estimated Project Cost (in INR)	Bid Security (in INR)
Development of 5-Star Eco-Tourism Resort at Smith Island, ANI	INR 93,00,00,000/- (Indian Rupees Ninety-Three Crore Ony)	INR 93,00,000/- (Indian Rupees Ninety-Three Lakh Only)

Location of the Project	Survey Nos. 96, 98 and 1/1/2, Smith Island, North and Middle Andaman (Please refer to Annex-1 of Schedule A in the DCA for further details)	
Area of the Land Parcels	25.0084 Hectare	
Threshold Capacity of Keys that can be developed as part of the Project	**70 Keys**	is understood to be the maximum number that can be developed on the identified Project Site
Mandatory No. of Keys to be developed ("Mandatory Development Obligations" or "MDO")	**35 Keys**	To be developed along with Utility Infrastructure during the Construction Period shall mean fulfillment of Mandatory Development Obligations and to achieve Project COD

1.1.2 The Selected Bidder, who is either a company incorporated under the Companies Act, 2013 or undertakes to incorporate as such prior to execution of the concession agreement (the "**Concessionaire**") shall be responsible for designing, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the concession agreement (the "**Concession Agreement**") to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

1.1.3 The scope of work will broadly include development of self-sustainable eco-tourism resort including trunk/ supporting infrastructure such as water and sewage treatment plant, levelling,

grading, boundary wall, fencing, roads, drainage, power distribution, street lighting, landscaping, RO plant, power generation facility, etc.

1.1.4 Indicative estimated cost of the Project (the "**Estimated Project Cost**") has been specified in Clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.

1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire's services and obligations (the "**Concession**").

1.1.6 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP as modified, altered, amended and clarified from time to time by the Authority (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**" or "**BDD**").

1.1.7 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

1.2 Brief description of Bidding Process

1.2.1 The Authority has adopted a single-stage two-envelope bidding process (collectively referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. The first part (the "**Technical Bid**") of the process involves qualification (the "**Qualification**") of interested parties / consortia who submit a Bid in accordance with the provisions of this RFP (the "**Bidder**", which expression shall, unless repugnant to the context, include the Members). The second part of the process involves the financial proposals (the "**Financial Bid**") of the Bidders, whose Technical Bid is found to be responsive to the requirements of this RFP and is meets the eligibility criteria. The Technical Bid and Financial Bid shall collectively be referred as Bid (the "**Bid**"). The Bidders would be required to furnish all the information specified in this RFP. The Bid shall be valid for a period of not less than **180 days (One Hundred Eighty Days)** from the Bid Due Date.

The Government of India has issued guidelines (see Appendix-VII of RFP) for Qualification of Bidders seeking to acquire stakes in any public-sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix I.

1.2.2 The Technical Bids of the Bidders would be evaluated and only those Bidders that are technically qualified by the Authority, and Financial Bids will be opened of such technically qualified bidders for evaluation and selection purpose.

1.2.3 The Bidding Documents include the draft Concession Agreement for the Project which is enclosed. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda

or corrigenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

1.2.4 A Bidder is required to deposit, along with its Bid, a Bid Security of amount as specified in the table under Clause 1.1.1 of the RFP Document (the "**Bid Security**"), refundable as per the provisions of Clause 2.27.4 of the RFP Document. The Bidders will have an option to provide Bid Security in the form of an Insurance Surety Bonds/ Account Payee Demand Draft / Fixed Deposit Receipt (FDR)/ Banker's Cheque/ Bank Guarantee (including e- Bank Guarantee) (BG) acceptable to the Authority, issued by a Scheduled Bank in India, drawn in favour of Managing Director, ANIIDCO payable at Sri Vijaya Puram, Andaman & Nicobar Islands. In case a BG is provided, its validity period shall not be less than 180 (one hundred and eighty) days from the BDD, inclusive of a claim period of 60 (sixty) days and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. Where a Demand Draft is provided, its validity shall not be less than 80 (eighty) days from the BDD, for the purposes of encashment by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.2.5 Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Project including implementation thereof.

1.2.6 Bids are invited for the annual concession fee (the "**Annual Concession Fee**" or "**ACF**") offered by the Bidder to the Authority for award of the concession. ACF shall be one component of the Concession Fee, and percentage of Gross Revenue Share shall be the second component; and both of which shall be payable annually plus applicable GST as per the provisions of the Concession Agreement. The ACF amount offered in the Financial Bid shall constitute the sole criteria for evaluation of Bids and the Project shall be awarded to the Bidder quoting the highest ACF for the first operational year of the Concession Period. Whereas the percentage of the Gross Revenue Share (GRS) will be constant throughout the O&M period of the Concession Period.

1.2.7 In this RFP, the term "**Highest Bidder**" shall mean the Bidder who is offering the highest ACF. Subject to the provisions of Clause 2.8, the Project will be awarded to the Highest Bidder.

1.2.8 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Sub-Clause 3.4.1.1 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.

1.2.9 The Concessionaire shall, in consideration of its investment and services, be entitled to levy and collect a user fee/ charges from the users.

1.2.10 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/ courier/ special messenger and by e-mail so as to reach the officer designated in Clause 1.4 by the specified date. The envelopes/ communication shall clearly bear the following identification/ title:

"Queries/ Request for Additional Information: RFP for Development of 5-Star Eco-Tourism Resort at Smith Island, ANI".

1.3 Schedule of Bidding Process

1.3.1 The Authority shall endeavour to adhere to the following schedule:

#	Event Description	Respective Date and Timing
1	**Issuance of Bidding Documents**	28-07-2025
2	**Last date for receiving queries**	11-08-2025 upto 05:00 pm Queries can be emailed to the Authority on email ID: **gmaniidco.and@nic.in**
3	**Pre-Bid Conference**	14-08-2025 at 04:00 pm
4	**Authority response to queries latest by**	21-08-2025
5	**Bid Due Date**	15-09-2025 upto 03:00 pm
6	**Opening of Technical Bids**	16-09-2025 at 03:30 pm
7	**Announcement of qualified Bidders**	To be announced later, the Authority will intimate the qualified Bidders via email.
8	**Opening of Financial Bid**	To be announced later, Authority will intimate the technically qualified Bidders via email.
9	**Letter of Award (LOA)**	Within 21 days post opening of Financial Bids
10	**Signing of Concession Agreement**	Within 30 days post issuance of LOA
11	**Validity of Bids**	180 days (One Hundred Eighty Days) days

1.4 Pre-Bid Conference

1.4.1 The pre-bid meeting will be held through Video Conferencing and the interested parties are requested to join the meeting through the link given below.

Date: 14-08-2025 I Time: 04.00 pm

Video Conferencing Link: **https://meet.google.com/rhc-gazf-znh**

Further the VC link can also be obtained from the ANIIDCO's website: **https://aniidco.and.nic.in** under announcements section.

2 Instructions to Bidders (ITB)

A. General

2.1 General Terms of Bidding

2.1.1 The Authority wishes to receive Bids under this RFP from capable Bidders. No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a Member shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.

2.1.2 An international Bidder bidding individually or as a Member shall ensure that Power of Attorney is legalised/ Apostille by appropriate authority notarised in the jurisdiction where the Power of Attorney is being issued and requirement of Indian Stamp Act, 1899 is duly fulfilled.

2.1.2.1 Any Bidder from a country which shares a land border with India will be eligible to bid, only if the Bidder is registered with the Competent Authority, specified in Annexure-I of Order (Public Procurement No. 4) issued by Procurement Policy Division; Department of Expenditure vide OM No. F.7/10/2021-PPD (1) dated 23.02.2023, which shall form an integral part of Bidding Documents (Copy enclosed).

2.1.2.2 "**Bidder from a country which shares a land border with India**" means:

(a) An entity incorporated, established or registered in such a country, or

(b) A subsidiary of an entity incorporated, established or registered in such a country; or

(c) An entity substantially controlled through entities incorporated, established or registered in such a country; or

(d) An entity whose beneficial owner is situated in such a country; or

(e) An Indian (or other) agent of such an entity; or

(f) A natural person who is a citizen of such a country; or

(g) A Consortium or joint venture where any Member or joint venture falls under any of the above.

2.1.2.3 IV. Beneficial owner for the purpose of Clause 2.1.2.2 above means:

1. In case of a company or limited liability partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more judicial person, has a controlling ownership interest or who exercises control through other means.

   Explanation:

   (a) *"**Controlling ownership interest**" means ownership of or entitlement to more than twenty-five per cent of shares or capital or profits of the company.*

   (b) *"**Control**" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholding agreements or voting agreements;*

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or one or more juridical person: has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;

3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individual;

4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

2.1.2.4 An agent is a person employed to do any act for another, or to represent another in dealings with third person.

2.1.2.5 The Selected Bidder/ Concessionaire shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. The definition of "**contractor from a country which shares a land border with India**" shall be as in Clause 2.1.2.2 above.

2.1.2.6 **Certificate regarding Compliance**: A certificate shall be required to be submitted by the bidders in the format prescribed at Appendix X. It may be noted that in case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.

2.1.2.7 **Validity of Registration**: In respect of RFP, registration should be valid at the time of submission of Bids and at the time of acceptance of Bids. If the Bidder was validly registered at the time of acceptance, registration shall not be a relevant consideration during contract execution.

2.1.3 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.

2.1.4 The Technical Bid and Financial Bid should be furnished in the format at Appendix I and Appendix II respectively along with all enclosures, duly signed by the Bidder's authorised signatory. The Financial Bid shall clearly indicate the Bid amount, in both figures and words, in Indian Rupees. The Bid shall consist of ACF, to be quoted by the Bidder. The Concession Fee comprised of ACF and GRS shall be payable by the Concessionaire to the Authority, as per the terms and conditions of this RFP and the provisions of the Concession Agreement. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.5 The Bidder shall deposit a Bid Security in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security as per instructions provided under Clause 1.2.4 of this RFP and as per format at Appendix VI.

2.1.6 If the Bidder has furnished Bid Security in form of BG, the validity period of the BG shall not be less than 180 (one hundred and eighty) days from the BDD, inclusive of a claim period of 60 (sixty) days and may be extended as may be mutually agreed between the Authority and the Bidder. Where a Demand Draft is provided, its validity shall not be less than 80 (eighty) days from the BDD, for the purposes of encashment by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 60 (sixty) days from the BDD except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement.

2.1.7 The Bidder should submit a Power of Attorney as per the format at Appendix III, authorising the signatory of the Bid to commit the Bidder.

2.1.8 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix IV.

2.1.9 Any condition or Qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.1.10 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.1.11 The documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.11 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.

2.2 Eligibility of Bidders

2.2.1 For determining the eligibility of Bidders for submission of Bids hereunder, the following shall apply:

2.2.1.1 The Bidder may be a single entity or a group of entities (the "**Consortium**"), coming together to implement the Project. However, no Bidder applying individually or as a Member, as the case may be, can be a Member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.

2.2.1.2 A Bidder may be a natural person, private entity, government-owned entity, AIF, Foreign Investment Fund or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.

2.2.1.3 A Bidder shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder's proposal (the "**Damages**"), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

i the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013, or an Alternative Investment Fund registered under SEBI (Alternative Investment Funds) Regulations, 2012 where at least 26% of the shareholding in the investment manager is held by Government of India. For the purposes of this Clause 2.2.1.3, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

ii a constituent of such Bidder is also a constituent of another Bidder; or

iii such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or

iv such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or

v such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of

them in a position to have access to each other's information about, or to influence the Bid of either or each other; or

vi such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project; or

vii Such Bidder or any Associate thereof has appointed any official of the Authority, Technical Advisors of Authority for the Project, Legal Advisors of Authority for the Project, Financial Advisors of Authority for the Project, dealing with the Project, within a period of 6 months from the date of award of the Project to that Bidder.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1.3, shall include each Member of such Consortium.

*For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "**Associate**"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) 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 by operation of law.*

2.2.1.4 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

2.2.1.5 If the Bidder has submitted any documents, created or originating from outside the Republic of India, such as work experience certificate(s), financial detail(s), power of attorney(s), undertaking(s), documentary evidence(s), qualifying document(s), etc. (collectively "**Foreign Documents**") then the Bidder, before any such Foreign Document(s) are sent to India for the purpose of applying towards this Project, shall be required to get each and every page of such Foreign Document(s), duly authenticated/ embossed/ legalized/ notarized from the Indian Embassy/Indian High Commission situated in the country from where such Foreign Document(s) were created or are originating from. Such authentication/embossment/ legalization/ notarization from the Indian Embassy/Indian High Commission shall also apply to all such document(s) that are in a language other than English, which shall compulsorily be required to be translated (as the true translated copies of the original) by a duly certified/

authorized /qualified Translator, supported by the affidavit of the said translator, certifying the correctness of the English translation. In case of any inconsistency between the original Foreign Document and its English translation, the latter shall prevail and be held binding on such Bidder.

2.2.1.6 However, in the case of Foreign Document(s) created or originating from countries that have signed, ratified and have made operational the Hague Convention abolishing the requirement of legalization for foreign public documents, 5 October 1961 - "**Hague Legalization Convention, 1961**", the Bidders may affix an "**Apostille**" sticker on each and every page of their Foreign Document(s) including all commercial document(s) duly notarized.

2.2.2 To be eligible for this RFP, a Bidder shall fulfil eligibility conditions as specified below:

2.2.2.1 **Technical Capacity:** For demonstrating technical capacity and experience (the "**Technical Capacity**"), the Bidder – Single Entity or any Member shall, **over the past 7 (seven) financial years** preceding the BDD, have:

(a) Developed OR operated, maintained, and managed (**O&M Experience**) OR Developed, operated, maintained and managed, **at least 01 (one) Eligible Project**; with **at least 28 Keys for a period of at least three (03) years**;

OR

(b) Developed OR operated, maintained, and managed (**O&M Experience**) OR Developed, operated, maintained and managed, **at least 02 (two) Eligible Projects** with **at least 18 Keys for a period of at least three (03) years**;

OR

(c) Developed OR operated, maintained, and managed (**O&M Experience**) OR Developed, operated, maintained and managed, **at least 03 (three) Eligible Projects** with **at least 14 Keys for a period of at least three (03) years**.

(i) For the purpose of Technical Capacity, "**Developed**" shall mean:

- In case the Eligible Project is developed under a separate legal entity, the Bidder should have held a minimum of 26% (twenty-six per cent) of the paid up and subscribed equity of such legal entity under which that Eligible Project has been developed for the entire period for which experience is being claimed,

  OR

- In case the Eligible Project is not developed under a separated legal entity but under the Bidder itself, the Bidder should have paid more than 50% (fifty per cent) of the capital cost of the Eligible Project(s). The same shall have to be certified by a Statutory Auditor. In case the Bidder does not have a Statutory Auditor (e.g., when the Bidder is an individual entity), the same is to be certified by a CAG-empaneled Chartered Accountant.

- For the avoidance of doubt, Developed experience shall not include undertaking of construction or civil works only by the Bidder unless the Eligible Project(s) meet the criteria set out hereinabove.

(ii) For the purpose of Technically Capacity, "**Eligible Project**" shall mean:

a) For hotel/ resort located in India, said hotel/ resort must be Certified as 5-Star/ 5-Star equivalent property by Ministry of Tourism, Govt. of India. The Bidder shall have to submit the rating certificate along with this claim of experience.

b) For hotel/ resort located outside India, said hotel/resort must be Certified as 5-Star/ 5-Star equivalent property as per Star Rating Standards prescribed by relevant agency in

the country of operations of that hotel/resort. The Bidder shall have to submit the rating certificate along with this claim of experience.

c) In the event the Bidder does not have valid certification for any year during the period considered for evaluating Technical Capacity, the Bidder shall provide proof of the application submitted to the relevant certification agency for procuring 5-Star Certification for such period; along with proof of receipt of 5-Star/ 5-Star equivalent certification subsequently. In the absence of prescribed documentation for period of absence of 5-Star/ 5-Star equivalent certification; such claimed project experience of the Bidder shall not be considered for the purpose of Technical Capacity. Provided however, that the duration of absence of a valid 5-Star certification shall not, in any case, be more than 1 (one) year. In case the duration of absence of a valid 5-Star certifications is more than 1 (one) year, such experience shall not be considered irrespective of the renewal of the 5-Star certification.

(iii) Even if the Bidder (either individually or along with a Member) has taken on/executed multiple roles in an Eligible Project, the experience of such Eligible Project, for the purpose of Technical Capacity, will be counted only once. It is noted that the Bidders qualifying solely on the basis of "**Developed**" experience in Eligible Projects shall furnish an undertaking as per Annex VI of Appendix I along with the Bid, that the such Bidder, if selected, shall no later than 6 (six) months prior to the commercial operations date ("**Project COD**), enter into an definitive agreement for minimum period of at least 5 (five) years from Project COD with 5-Star/ 5-Star equivalent hotel brand/ chain/operator for operation, maintenance and management of the Project in accordance with the requirements of the Concession Agreement as per Clause 2.2.3. Experience claimed for Eligible Project(s) by such entity, must comply with provisions of Clause 2.2.2.1 (a), (b), (c) and 2.2.2.1 (ii) above, for at least 3 (three) financial years during the last 7 (seven) years. In case the Bidder fails to execute such O&M Agreement within the specified time period, the Concession Agreement shall be liable for termination.

2.2.2.2 **Financial Capacity:** The Bidder shall have a minimum Net Worth or in case the Bidder is an AIF, have a minimum Available Capital for Investment (ACI) at the close of the preceding financial year (the "**Financial Capacity**"):

Parameter	Threshold Value
Financial Capacity (Net Worth / ACI)	**INR 24,00,00,000/- (Indian Rupees Twenty-Four Crore Only)**

The Authority has invited Bids for four projects simultaneously as presented in the table below. In case, a Bidder applies for more than one of the above Projects, the Bidder shall meet the Financial Capacity for all the Projects it is applying for on a cumulative basis.

Sr. No.	Name of the Project	Financial Capacity Requirement (Net Worth / ACI Threshold Value)
1	Development of 5-Star Eco-Tourism Resort at Shaheed Dweep Island, ANI	INR 44,00,00,000/- (Indian Rupees Forty-Four Crore Only)
2	Development of 5-Star Eco-Tourism Resort at Lalaji Bay Beach, Long Island, ANI	INR 74,00,00,000/- (Indian Rupees Seventy-Four Crore Only)

Sr. No.	Name of the Project	Financial Capacity Requirement (Net Worth / ACI Threshold Value)
3	Development of 5-Star Eco-Tourism Resort at Smith Island, ANI	INR 24,00,00,000/- (Indian Rupees Twenty-Four Crore Only)
4	Development of 5-Star Eco-Tourism Resort at Aves Island, ANI	INR 12,00,00,000/- (Indian Rupees Twelve Crore Only)

For the purpose of this RFP, the following terms shall have the meaning hereinafter respectively assigned to them:

(i) "**AIF**" shall have the meaning as ascribed to the term "**Alternative Investment Fund**" under Regulation 2 (1) (b) of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (as amended);

(ii) "**Foreign Investment Fund**" shall mean any pooled investment vehicle or investment fund which is registered or recognised with a securities market/banking regulator of a 'foreign jurisdiction'; and

(iii) "**Available Capital for Investment**" or "**ACI**" shall in case of funds, mean on the basis of minimum investible funds (i.e. immediately available funds for investment and callable capital, net of estimated expenditure for administration and management of the fund) subject to the limits of investment in a single investee entity (in the relevant jurisdiction for a Foreign Investment Fund, or the maximum permissible investment limit for an AIF) (as per the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, as may be amended from time to time), as applicable.

In case of an AIF or Foreign Investment Fund using ACI, ACI would be considered as per the certificate issued by statutory auditor (or such other certificate as filed with the regulator in the relevant jurisdiction) not older than 3 (three) months prior to the Bid Due Date.

(iv) "**foreign jurisdiction**" means a country, other than India, whose securities market regulator is a signatory to International Organization of Securities Commission's Multilateral Memorandum of Understanding (IOSCO's MMOU) (Appendix A signatories) or a signatory to bilateral Memorandum of Understanding with the Securities and Exchange Board of India, and which is not identified in the public statement of Financial Action Task Force as a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply or a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

2.2.2.3 In case of a Consortium, the combined technical capacity and Net Worth of those Members, who shall have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. However, notwithstanding to the above, the O&M Member shall not be required to commit and / or hold any equity holding in the SPV (Concessionaire) and the Technical Capacity of O&M Member shall be considered for Technical Capacity of the Bidder, subject to compliance with provisions of Clause 2.2.3.

2.2.3 **O&M Experience:** In the event that the Bidder does not have the requisite O&M experience, it shall furnish an undertaking as per Annex VI of Appendix I along with the Bid, that such Bidder, if selected, shall no later than 6 (six) months prior to the the Project COD as defined under the Concession Agreement), enter into a definitive agreement for minimum period of at least 5 (five) years from Project COD with 5-Star/ 5-Star equivalent hotel brand/ chain/operator for operation, maintenance and management of the Project, in accordance with the requirements of the Concession Agreement (the "**O&M Agreement**") and in case of a Consortium, disclose details of such entity /O&M Member (in the Consortium) (the "**O&M Member**"). The undertaking shall be submitted along with the bid as per format prescribed in Annex VI of Appendix I. In case the Bidder fails to execute such O&M Agreement within the specified time period, the Concession Agreement shall be liable for termination. For the avoidance of doubt, a member can be designated as an O&M Member only for the purposes of meeting O&M experience requirement and in case such member claims Financial Capacity, as required in Clause 2.2.2, such member shall not be designated as O&M Member.

(i) **O&M Experience:** For demonstrating technical capacity and experience (the **"Technical Capacity of O&M Member"**), the O&M Member shall, over the past 7 (seven) financial years preceding the Bid Due Date, have

(a) Operated, maintained, and managed, **at least 01 (one) Eligible Project**; **with at least 28 Keys** for a period of at least three (03) years,

'OR'

(b) Operated, maintained, and managed, **at least 02 (two) Eligible Projects with at least 18 Keys** for a period of at least three (03) years,

'OR'

(c) Operated, maintained, and managed, **at least 03 (three) Eligible Project with at least 14 Keys** for a period of at least three (03) years.

(ii) For the purpose of Technically Eligibility, "**Eligible Project**" shall have the meaning set forth in Clause 2.2.2.1 (ii).

(iii) At any time after the execution of the Concession Agreement, in the event the Concessionaire intends to change the O&M Member proposed at the time of Bidding Process, the Concessionaire shall be allowed to replace such O&M Member with a newly proposed O&M Member subjected to approval of the Authority and provided the following conditions are met:

(a) the new O&M Member proposed by the Concessionaire should meet the O&M Experience defined in Clause 2.2.3 (i); and

(b) the Concessionaire shall submit the duly executed Joint Bidding Agreement or O&M Agreement, whichever is applicable.

2.2.4 The Bidder shall enclose with its Bid, to be submitted as per the format at Appendix I, complete with its Annexes, the following:

i Certificate(s) from statutory auditors[1] of the Bidder or its Associates or the concerned client(s) stating the payments made/ received or works commissioned, as the case may

[1] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.2.4. In jurisdictions that do not have

be, during the past 5 (five) financial years in respect of the hospitality property as own asset(s) or project(s) owned/ developed for other client on either EPC or PPP basis as specified in paragraph 2.2.2.1 above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

ii Certificate(s) from statutory auditors of the Bidder or its Associates specifying the Net Worth / ACI of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such Net Worth / ACI conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFP, net worth (the "**Net Worth**") shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders. For entities other than companies, AIFs and Foreign Investment Fund, the Net Worth shall mean assets net of liabilities and calculated as per applicable accounting standards.

2.2.5 The Bidder should submit a Power of Attorney as per the format at Appendix III, authorising the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-IV.

2.2.6 Where the Bidder is a single entity, it may be required to form an appropriate special purpose vehicle, incorporated under the Indian Companies Act, 2013 (the "**SPV**"), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

a. number of Members in a Consortium shall not exceed 6 (six), but information sought in the Bid may be restricted to 4 (four) members in the order of their equity contribution;

b. subject to the provisions of sub-clause (a) above, the Bid should contain the information required for each Member;

c. Members shall nominate one member as the lead member (the "**Lead Member**"), who shall have an equity share holding of at least 26% (twenty-six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-III, signed by all the other Members;

d. the Bid should include a brief description of the roles and responsibilities of individual Members, particularly with reference to financial, technical and O&M obligations;

e. an individual Bidder cannot at the same time be Member applying for Qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for Qualification;

f. the Members shall form an appropriate SPV to execute the Project, if awarded to the Consortium;

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statutory auditors, the firm of auditors which audits the annual accounts of the Bidder, or its Associate may provide the certificates required under this RFP.

g. Members shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-V (the "**Joint Bidding Agreement**"), for the purpose of making the Bid and submitting a Bid in the event of being short-listed. The Joint Bidding Agreement, to be submitted along with the Bid, shall, inter alia:

i convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;

ii clearly outline the proposed roles and responsibilities, if any, of each Member;

iii commit the minimum equity stake to be held by each Member; except the O&M Member who shall not be required to commit any equity stake; subject to compliance with provisions of Clause 2.2.3;

iv commit that each of the Members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV except the O&M Member who shall not be required to commit any equity stake, subject to compliance with provisions of Clause 2.2.3 above, and shall further commit that each such Member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;

v members of the Consortium, except O&M Member, undertake that they shall collectively hold at least 51% (fifty-one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of the Project;

vi include a statement to the effect that all Members shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and the O&M Agreement has been executed with the same O&M Member proposed at time of Bid submission, and a copy thereof has been submitted to the Authority; and

h. except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Authority.

2.2.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (PPP or otherwise), and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as Member.

2.2.8 A Bidder including any Member or Associate should, in the last 3 (three) financial years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Member or Associate. Provided, however, that where a Bidder claims that its

disqualification arising on account of any cause or event specified in this Clause 2.2.8 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

2.2.9 In computing the Technical Capacity and Net Worth/ ACI of the Bidder/ Members under Clauses 2.2.2, 2.2.4, and 3.2 the Technical Capacity and Net Worth/ ACI of their respective Associates would also be eligible hereunder.

2.2.10 The following conditions shall be adhered to while submitting a Bid:

a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexures is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;

b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Bidders whose identity and/ or constitution is identical to that at Qualification;

c) in responding to the Qualification submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and

d) in case the Bidder is a Consortium, each Member should substantially satisfy the Qualification requirements to the extent specified herein.

2.2.11 While Qualification is open to persons from any country, the following provisions shall apply:

a) Where, on the date of the Bid, 25% (twenty five percent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder, or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or

b) if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty five percent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the Qualification of such Bidder or in the event described in sub clause b) above, the continued Qualification of the Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition,

the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.2.12 Notwithstanding anything to the contrary contained herein, in the event that the BDD falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.2.13 This RFP is not transferable.

2.2.14 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.3 Change in composition of the Consortium

2.3.1 Where the Bidder is a Consortium, change in composition of the Consortium may be permitted by the Authority during the Bid Stage, only where:

a) the Lead Member continues to be the Lead Member of the Consortium;

b) the substitute is at least equal, in terms of Technical Capacity or Financial Capacity, to the Member who is sought to be substituted and the modified Consortium shall continue to meet the Qualification and shortlisting criteria for Bidders; and

c) the new Member(s) expressly adopt(s) the Bid already made on behalf of the Consortium as if it were a party to it originally and is not a Bidder/Member/ Associate of any other Consortium bidding for this Project.

2.3.2 The modified/ reconstituted Consortium shall submit a revised Joint Bidding Agreement and a Power of Attorney, substantially in the form at Appendix V, prior to the BDD.

2.3.3 The option of change in composition of the Consortium which is available under Clause 2.3.1 of this RFP may be exercised by any Bidder who is either a Consortium or a single entity. In the case of a single entity Bidder adding a Member at the Bid stage, the single entity Bidder shall be the Lead Member of the Consortium. Provided, however, that no Member of such Consortium shall be a Bidder or the member of a Consortium which has been pre-qualified.

2.4 Change in Ownership

2.4.1 By submitting the Bid, the Bidder acknowledges and undertakes that it was prequalified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, until the 2nd (second) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall,

notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder.

For the avoidance of doubt, the provisions of this Clause 2.4.1 shall apply only when the Bidder is a Consortium and the O&M Member shall not be required to commit and / or hold any equity holding in the SPV (Concessionaire) and the Technical Capacity of O&M Member shall be considered for Technical Capacity of the Bidder, subject to compliance with provisions of Clause 2.2.3.

2.4.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of Qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

2.5 Number of Bids and costs thereof

2.5.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a Member shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.

2.5.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.6 Site visit and verification of information

2.6.1 The Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.7 Acknowledgement by Bidder

2.7.1 It shall be deemed that by submitting a Bid, the Bidder has:

a) made a complete and careful examination of the Bidding Documents;

b) received all relevant information requested from the Authority;

c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.6 above;

d) satisfied itself about all matters, things and information including matters referred to in Clause 2.6 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;

e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.6 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;

f) acknowledged that it does not have a Conflict of Interest; and

g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.7.2 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

2.8 Right to accept or reject any or all Bids

2.8.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all applications/ Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefore. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.8.2 The Authority reserves the right to reject any Bid if:

a) at any time, a material misrepresentation is made or uncovered, or

b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

If the Bidder/ Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the Authority reserves the right to take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process and initiate fresh Bidding Process.

2.8.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the Qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the

Concession Agreement, and if the Bidder/SPV has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Bidder, without the Authority being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which the Authority may have under this RFP, the Bidding Documents, the Concession Agreement or under applicable law.

2.8.4 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.8.5 The Authority may, in its sole discretion and on grounds of reciprocity, disqualify a Bidder, if any or all of its constituents are entities incorporated in a country where an entity incorporated in India does not have similar rights of bidding for contracts contemplated hereunder.

B. Documents

2.9 Contents of the RFP

2.9.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any addenda or corrigenda issued in accordance with Clause 2.11.

- **Invitation for Proposals**
  - Section 1. - Introduction
  - Section 2. - Instructions to Bidders
  - Section 3. - Evaluation of Bids
  - Section 4. - Fraud and Corrupt Practices
  - Section 5. - Pre-Bid Conference
  - Section 6. - Miscellaneous
- **Appendices**
  - Appendix I: Technical Bid for Qualification
    - Annex I: Particulars of the Bidder
    - Annex II: Technical Capacity of the Bidder
    - Annex III: Financial Capacity of the Bidder
    - Annex IV: Details of Eligible Projects
    - Annex V: Statement of Legal Capacity
    - Annex VI: O&M Undertaking

- Appendix II: Financial Bid for Selection of Bidder
  - Annex I: Template of BOQ
- Appendix III: Power of Attorney for signing of Bid
- Appendix IV: Power of Attorney for Lead Member of Consortium
- Appendix V: Joint Bidding Agreement
- Appendix VI: Bank Guarantee for Bid Security
- Appendix VII: Guidelines of the Department of Disinvestment
- Appendix VIII: Clearances Required for the Project
- Appendix IX: Compliance Certificate
- Appendix X: Instructions for Online Bid Submission
- Appendix XI: Instructions for Bidder(s) from Country sharing Land Borders with India
- Appendix XII: Surety Bond For Bid Security

2.9.2 The draft Concession Agreement (DCA) provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

2.10 Clarifications

2.10.1 Bidders requiring any clarification on the RFP may notify the Authority in writing by speed post/ courier/ special messenger and by e-mail in accordance with Clause 1.2.10. They should send in their queries on or before the date mentioned in the schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the BDD. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

2.10.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause 2.10 shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

2.10.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by the Authority, or its employees or representatives shall not in any way or manner be binding on the Authority.

2.10.4 The Authority shall publish the clarifications on the e-procurement portal - https://eprocure.andaman.gov.in/; and its website - https://aniidco.and.nic.in/.

2.11 Amendment of RFP

2.11.1 At any time prior to the BDD, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of addenda or corrigenda.

2.11.2 Any addenda or corrigenda issued hereunder will be in writing and shall be publish the clarifications on the e-procurement portal - https://eprocure.andaman.gov.in/; and its website - https://aniidco.and.nic.in/.

2.11.3 In order to afford the Bidders a reasonable time for taking an addenda or corrigenda into account, or for any other reason, the Authority may, in its sole discretion, extend the BDD.

C. Preparation and Submission of Bid

2.12 Language

2.12.1 The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

2.13 Format and Signing of Bid

2.13.1 The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.

2.13.2 The Bid and its copy shall be typed or written in indelible ink and signed by the authorised signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

2.14 Submission of Bid

2.14.1 The Bidder shall submit the Bid in the format specified at Appendix I to Appendix VI, together with the documents specified in Clauses 2.14.3 and 2.14.4. The Bidder shall submit the Bid no later than the date and time specified as the BDD, on the e-procurement portal - https://eprocure.andaman.gov.in/, duly signed in digital form by the authorised signatory of the Bidder, by uploading the complete and legible scanned/digital copies of the Technical Bids and Financial Bids in pdf/ digital format (i.e. scanned copy of original signed documents and the supporting documents). The documents submitted in the Bid should be scanned in at least 100 dpi with black and white option.

2.14.2 The Bid is to be submitted on the document downloaded from official website as above, the Bidder shall be responsible for its accuracy and correctness as per the version uploaded by the Authority and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the document used for submission by the Bidder and the version uploaded by the Authority, the latter shall prevail.

2.14.3 **Technical Bid** - The documents comprising the Bid referred to in Clause 2.14.1 shall include:

i. Bid in the prescribed format (Appendix I) along with Annexes and supporting documents;

ii Power of Attorney for signing the Bid as per the format at Appendix III;

iii if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;

iv copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format at Appendix V;

v Bid Security in the format at Appendix VI or a copy of Demand Draft towards the Bid Security as required under Clause 1.2.4 or as per Clause 2.27 Copy of Insurance Surety Bond as per Appendix XII or Banker's Cheque;

vi Compliance Certificate in the format at Appendix X;

vii Undertaking for execution of O&M Agreement in the format at Annex VI of Appendix I;

viii copy of Memorandum of Association and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;

ix copies of Bidder's duly audited balance sheet and profit and loss account for the preceding 3 (three) years;

x If applicable, Copy of Registration from the Competent Authority as defined in Public Procurement Order No. F.7/10/2021-PPD (1) dated 23.02.2023 or Appendix XI; and

xi Copy of Bidding Documents (RFP, DCA, response to pre-bid queries, and addendum(s)/ corrigendum(s), if any) with initials of the Authorised Signatory on all the pages to be uploaded along with Technical Bid.

2.14.4 **Financial Bid** - The documents comprising the Bid referred to in Clause 2.14.1 shall include:

i Bid in the format specified at Appendix II; and

ii Commercial Offer in the prescribed BOQ (excel file) to be uploaded on the e-procurement portal.

2.14.5 The Bidders shall submit the original copy of the following documents physically on or before 5 pm of the 3rd (third) working day from the Bid Due Date at address mentioned below, failing which the Bid shall be rejected:

i Power of Attorney for signing the Bid as per the format at Appendix III;

ii if applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;

iii copy of the Joint Bidding Agreement, in case of a Consortium, substantially in the format at Appendix V; and

iv Bid Security in the format at Appendix VI or a copy of Demand Draft towards the Bid Security as required under Clause 1.2.4 and or as per Clause 2.27 Copy of Insurance Surety Bond as per Appendix XII or Banker's Cheque.

Nodal Officer to whom the documents listed above needs to be submitted in original copy	:	**Office of General Manager (Projects)** Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO) Vikas Bhawan, PB No. 180, Sri Vijaya Puram, Andaman & Nicobar Islands – 744101 Landline No.: +91 03192-232098 Email ID: **gmaniidco.and@nic.in**

2.14.6 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.15 Bid Due Date

2.15.1 Bids should be submitted before the specified time on the Bid Due Date as specified in Clause 1.3 on the e-procurement portal specified in this RFP, in the manner and form as detailed in this RFP.

2.15.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.11 uniformly for all Bidders.

2.15.3 Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.16 Contents of the Bid

2.16.1 The Technical Bid shall be furnished in the format at Appendix I. The Financial Bid shall be furnished in the format at Appendix II and shall consist of Annual Concession Fee, to be quoted by the Bidder. The Bidder shall specify (in Indian Rupees) the Annual Concession Fee offered by him, to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement.

2.16.2 The Project will be awarded to the Highest Bidder.

2.16.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.

2.16.4 The proposed Concession Agreement shall be deemed to be part of the Bid.

2.17 Modifications/ Substitution/ Withdrawal of Bids

2.17.1 The Bidder may modify, substitute or withdraw its e-Bid after submission, prior to the BDD. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the BDD. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the closing time on the BDD.

2.17.2 Any alteration/modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought by the Authority, may be disregarded.

D. Evaluation Process

2.18 Opening and Evaluation of Bids

2.18.1 The Authority shall open the Technical Bids on the BDD, at the place specified in Clause 1.4 on time specified in Clause 1.3 in the presence of the Bidders who choose to attend.

2.18.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.17 shall not be opened.

2.18.3 The Authority will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 3.

2.18.4 Bidders are advised that selection of Bidders will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

2.18.5 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

2.18.6 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

2.18.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant project from computation of the Technical Capacity of the Bidder.

2.18.8 In the event that a Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Technical Capacity, and may also, while computing the aggregate Technical Capacity of the Bidder, make a further deduction equivalent to the claim rejected hereunder. Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the or Bid in accordance with the provisions of Clause 2.8.

2.19 Confidentiality

2.19.1 Information relating to the examination, clarification, evaluation, and recommendation of the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

2.20 Tests of responsiveness

2.20.1 Prior to evaluation of Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of the RFP. A Technical Bid shall be considered responsive if:

i it is received as per format at Appendix I;

ii it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.15.2;

iii it is signed, sealed, bound together in hard cover, and marked as stipulated in Clauses 2.14;

iv it is accompanied by the Bid Security as specified in Clauses 2.1.5, and 2.27;

v it is accompanied by the Power of Attorney as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);

vi it contains all the information and documents (complete in all respects) as requested in this RFP;

vii it contains information in formats same as those specified in this RFP;

viii it contains certificates from its statutory auditors in the formats specified at Appendix I of the RFP for each Eligible Project;

ix it is accompanied by the Joint Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6 (g);

x it does not contain any condition or Qualification; and

xi it is not non-responsive in terms hereof.

2.20.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid. Provided, however, that the Authority may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

2.21 Clarifications

2.21.1 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

2.21.2 If a Bidder does not provide clarifications sought under Clause 2.21.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

2.22 Qualification and notification

2.22.1 After the evaluation of Technical Bids, the Authority would announce a list of qualified Bidders who will be eligible for opening of their Financial Bids. At the same time, the Authority would notify the other Bidders that they have not been short-listed. The Authority will not entertain any query or clarification from Bidders who fail to prequalify.

2.23 Proprietary Data

2.23.1 All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. Bidders are to treat all

information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid, or any information provided along therewith.

2.24 Correspondence with the Bidder

2.24.1 Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

2.25 Rejection of Bids

2.25.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the Bids, it shall initiate fresh Bidding Process for the proposed Project.

2.25.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.26 Validity of Bids

2.26.1 The Bids shall be valid for a period of not less than 180 (One Hundred and Eighty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

E. Bid Security

2.27 Bid Security

2.27.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.5 and 2.1.6 hereinabove in the form of a bank guarantee issued by a nationalised bank, or a scheduled bank in India having a net worth of at least INR 1,000 Crore (Indian Rupee One Thousand Crore), in favour of the Authority in the format at Appendix VI (the "**Bank Guarantee**") and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, scheduled bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

2.27.2 Bid Security can also be in the form of a Demand Draft issued by a scheduled bank in India, drawn in favour of the Authority and payable at Sri Vijaya Puram (the "**Demand Draft**") or insurance surety bonds as per Appendix XII or banker's cheque. The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.

2.27.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.

2.27.4 The Bid Security will be returned by the Authority, without any interest, as promptly as possible as per provisions of this Clause in following manner:

i. Save and except as provided in Clauses 2.1.5 and 2.1.6 above, the Bid Security of unsuccessful Bidders or Bidders who do not fulfill the test of responsiveness as per Clause 2.20.1, refundable not later than 30 (thirty) days from the declaration of the list of qualified Bidders as per Clause 2.22.1; or

ii. within 30 (thirty) days post formal announcement of cancellation of the Bidding Process; or

iii. not later than 60 days from the date of Financial Bid opening or last date of the extended validity of Bid Security, whichever is later, for all the qualified Bidders. The Authority may request the qualified Bidders to extend their Bid Security validity, if need be due to reasonable time requirements for selection and award of the proposed Projects in accordance with provision of Clauses 3.4.1.1, 3.4.1.2 and 3.4.3 of the RFP Document; and

where the Bid Security has been paid by Demand Draft or Bankers Cheque, the refund thereof shall be in the form of an account payee Demand Draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said Demand Draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

2.27.5 The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.

2.27.6 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.27.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.27.7 The Authority shall appropriate the Bid Security, as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, if:

a) a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;

b) a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;

c) the Selected Bidder fails within the specified time limit –

i to sign and return the duplicate copy of LOA; or
ii to sign the Concession Agreement; or
iii to furnish the Performance Security within the period prescribed therefor in the Concession Agreement.

d) the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

3 Criteria for Evaluation

3.1 Evaluation of Bids

3.1.1 Only those Bidders who meet the eligibility criteria specified in Clauses 2.2.2 and 2.2.3 shall qualify for evaluation under this Section 3. Bids of firms/ Consortium who do not meet these criteria shall be rejected.

3.1.2 The Bidder's competence and capability is proposed to be established by Technical Capacity and Financial Capacity.

3.1.3 A Bidder's competence and capability is proposed to be established by following conditions as specified :

(a) Technical Capacity; and

(b) Financial Capacity.

3.1.4 To facilitate evaluation of Bids, the Authority may, at its sole direction, seek clarification in writing from any Bidder regarding its Bid.

3.2 Technical Experience for purposes of Evaluation

3.2.1 The Bidder should furnish the details of Eligible Projects for the last 7 (seven) financial years immediately preceding the BDD.

3.2.2 The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex II of Appendix I.

3.2.3 The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex IV of Appendix I.

3.3 Financial information for purposes of Evaluation

3.3.1 The Bid must be accompanied by the audited annual reports of the Bidder (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.

3.3.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the audited annual reports for 3 (three) financial years preceding the financial year for which the audited annual report is not being provided.

3.3.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2 and provide details as per format at Annex III of Appendix I.

3.4 Selection of Bidder

3.4.1 The bid parameter shall comprise Annual Concession Fee to be quoted by the Bidder ("**Bid Parameter**") in accordance with the provisions of the Concession Agreement. Subject to the provisions of Clause 2.8.1, the Bidder whose Bid is adjudged as responsive in terms of Clause

2.20 and who is the Highest Bidder , shall ordinarily be declared as the selected Bidder (the "**Selected Bidder**").

3.4.1.1 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance, the Authority may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Highest Bidder. If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.

3.4.1.2 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Sub-Clause 3.4.1.1, the Authority may, in its discretion, invite fresh Bids from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.

3.4.2 In the event that two or more Bidders quote the same amount of Annual Concession Fee (the "**Tie Bidders**"), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.

3.4.3 The Authority has invited Bids for following four PPP projects simultaneously.

Sr. No.	Name of the Project
1	Development of 5-Star Eco-Tourism Resort at Shaheed Dweep Island, ANI
2	Development of 5-Star Eco-Tourism Resort at Lalaji Bay Beach, Long Island, ANI
3	Development of 5-Star Eco-Tourism Resort at Smith Island, ANI
4	Development of 5-Star Eco-Tourism Resort at Aves Island, ANI

- Bids of all the projects as specified above shall be opened simultaneously.
- If it is found that 1 (one) Bidder ("**Subject Bidder**") is the Highest Bidder in more than 1 (one) but up to 2 (two) of the above projects, then such Bidder shall be awarded such projects.
- If it is found that Subject Bidder is Highest Bidder in more than 2 (two) of the above projects, the procedure to be followed to determine the Selected Bidder shall be as follows:
    - The projects shall be ranked (in descending order) as per the amount of Annual Concession Fee quoted by the Subject Bidder. The 1st (first) and the 2nd (second) ranked projects will be awarded to the Subject Bidder. The 3rd (third) ranked project shall be offered to the second Highest Bidder for such project at the Annual Concession Fee quoted by the Subject Bidder. If the 2nd (second) Highest Bidder matches Annual

Concession Fee of the Subject Bidder, it will become the Selected Bidder for the 3rd (third) ranked project.

- If the 2nd (second) Highest Bidder refuses to match the Annual Concession Fee of the Subject Bidder for the 3rd (third) project, then the 3rd (third) project shall be awarded to the Subject Bidder at the Annual Concession Fee it has quoted. The Subject Bidder will not have option to refuse the Project.

- The same procedure shall be repeated for the 4th (fourth) ranked project, if required.

3.4.4 After selection, a LOA shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

3.4.5 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.5 Contacts during Bid Evaluation

3.5.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

3.6 Bid Parameter

3.6.1 The Bid shall comprise an Annual Concession Fee, to be quoted by the Bidder in accordance with the provisions of the Concession Agreement. The Bidder who offers the highest Annual Concession Fee, shall ordinarily be the Selected Bidder. The Annual Concession Fee comprising the Bid shall be offered in accordance with the provisions of Clause 3.6.2.

3.6.2 The Annual Concession Fee payable shall be due and payable within 15 (fifteen) days of the commencement of an Accounting Year. Provided that the Annual Concession Fee for the first Accounting Year shall be paid within 15 (fifteen) days of occurrence of the COD.

4 Fraud and Corrupt Practices

4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.

4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:

a) "**corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.2.1.4 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

b) "**fraudulent practice**" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

c) "**coercive practice**" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

d) "**undesirable practice**" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

e) "**restrictive practice**" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5 Pre-Bid Conference

5.1 Pre-Bid Conference(s) of the Bidders shall be convened at the designated date, time and place. A maximum of five representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.

5.2 During Pre-Bid Conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6 Miscellaneous

6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in the UT in which the Authority has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

b) consult with any Bidder in order to receive clarification or further information;

c) qualify or not to qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information

d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or

e) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

6.2 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

6.3 The Concession Agreement and RFP are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them the priority shall be in the following order:

a) the Concession Agreement;

b) the RFP.

i.e. the Concession Agreement at (a) above shall prevail over the RFP at (b) above.

Appendices

Appendix I : Technical Bid for Qualification

Letter Comprising the Bid

(Refer Clause 2.14.3)

Dated:

To,

Managing Director,

Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)

Vikas Bhawan,

PB No. 180,

Sri Vijaya Puram, Andaman & Nicobar Islands – 744101

Subject: Bid for **Development of 5-Star Eco-Tourism Resort at Smith Island, ANI**

Dear Madam,

1. With reference to your RFP document dated ……., I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.
2. I/We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Bidder for the aforesaid project, and we certify that all information provided in the Bid and in Annexes I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require supplementing or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we/ any of the Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
    a. I/ We have examined and have no reservations to the Bidding documents, including any Addendum issued by the Authority;
    b. I/ We do not have any conflict of interest in accordance with Clauses 2.2.1 of the RFP document;
    c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and

d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

e. the undertakings given by us along with the Bid in response to the RFP for the Project were true and correct as on the date of making the Bid and are also true and correct as on the Bid Due Date and I/We shall continue to abide by them.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.8 and 2.25 of the RFP document.

9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth/ ACI criteria and meet(s) all the requirements as specified in the RFP document and am/ are qualified to submit a Bid.

10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.

11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.

13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees[2].

14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for Qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at Appendix-VII thereof.

15. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government/ State Government or any entity controlled by it, from participating in any project (PPP or otherwise), and no bar subsists as on the date of Bid.

16. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.

17. The Statement of Legal Capacity as per format provided at Annex V in Appendix I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of a Bid and

[2] In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule …….hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

the power of attorney for Lead Member of Consortium, as per format provided at Appendix III and Appendix IV respectively of the RFP, are also enclosed.

18. [I/We hereby confirm that we are in compliance of/ shall comply with the O&M requirements specified in Clause 2.2.3 of the RFP Document.][3]

19. I/ We acknowledge and undertake that our Consortium was qualified/eligible on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for a period of 1 (one) year from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.

20. I/ We acknowledge and agree that in the event of a change in control of a Member whose Financial Capacity was taken into consideration for the purposes of Qualification under and in accordance with the RFP, I/we shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/we further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to commencement of the Appointed Date under the Concession Agreement , it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall, at the sole discretion of the Authority, be liable to be terminated under and in accordance with Clause 2.4.2 of the RFP without the Authority being liable to us in any manner whatsoever.

21. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/ 2013, or shall incorporate as such prior to execution of the Concession Agreement.

22. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.

23. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above-mentioned Project and the terms and implementation thereof.

24. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

25. I/ We have studied all the Bidding Documents carefully and also surveyed the Project as mentioned in the Subject line. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Project.

[3] Strikeout whichever is not applicable

26. I/ We offer a Bid Security of **INR _____/- (Indian Rupees _____ Only)** to the Authority in accordance with the RFP Document.
27. The Bid Security in the form of a {Demand Draft/Fixed Deposit Receipt/Bank Guarantee/e-Bank Guarantee/Insurance Surety Bond}[4] is attached.
28. The documents accompanying the Technical Bid, as specified in Clause 2.14.3 of the RFP, have been submitted in the Technical Bid.
29. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/ We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
30. The Annual Concession Fee has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs, revenue and project-specific projections, and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
31. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
32. {We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.}[5]
33. I/ We certify that in terms of the RFP, my/ our Net Worth/ ACI (*strikeout whichever is not applicable*) is INR …….. (Indian Rupees …….. Only).
34. I/ We shall keep this offer valid for 180 (One Hundred and Eighty) days from the BDD specified in the RFP.
35. I/ We hereby undertake to submit this Technical Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the draft Concession Agreement.

In witness thereof, I/ we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorized Signatory)

Place: Name and seal of the Bidder/ Lead Member

[4] strikeout whichever is not applicable

[5] This Paragraph shall be omitted if the Bidder is not a Consortium

Annex I: Particulars of the Bidder

Sr. No.	Particulars	Description
1.	**Particulars of Bidder**	
a.	Name	
b.	Country of incorporation	
c.	Address of the corporate headquarters and its branch office(s), if any, in India:	
d.	Date of incorporation and/ or commencement of business:	
2.	**Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:**	
3.	**Particulars of individual(s) who will serve as the point of contact/ communication for the Bidder**	
a.	Name:	
b.	Designation:	
c.	Company:	
d.	Address:	
e.	Telephone:	
f.	E-Mail:	
4.	**Particulars of the Authorised Signatory of the Bidder:**	
a.	Name:	
b.	Designation:	
c.	Address:	
d.	Phone Number	
e.	Fax Number	
5.	**In case of a Consortium**	
a.	The information above (1-4) should be provided for all the Members of the Consortium.	

<table>
<tr><th>Sr. No.</th><th>Particulars</th><th>Description</th></tr>
<tr><td>b.</td><td>A copy of the Joint Bidding Agreement, as envisaged in Clause 2.2.6 (g) should be attached to the Bid.</td><td></td></tr>
<tr><td>c.</td><td colspan="2">Information regarding the role of each Member should be provided as per table below:
<table>
<tr><th>Sl. No.</th><th>Name of Member</th><th>Role[$]</th><th>Percentage of equity in the Consortium[$$]</th></tr>
<tr><td>1</td><td></td><td></td><td></td></tr>
<tr><td>2</td><td></td><td></td><td></td></tr>
<tr><td>3</td><td></td><td></td><td></td></tr>
<tr><td>4</td><td></td><td></td><td></td></tr>
</table>
[$]The role of each Member, as may be determined by the Bidder, should be indicated in accordance with Clause 2.2.6 (d) and instruction 4 at Annex IV.
[$$]The percentage of equity should be in accordance with Clause 2.2.6 (a), (c) and (g).</td></tr>
<tr><td>6.</td><td colspan="2">The following information shall also be provided for the Bidder, including each Member of the Consortium:
Name of Bidder/ member of Consortium:
<table>
<tr><th>No.</th><th>Criteria</th><th>Yes</th><th>No</th></tr>
<tr><td>1.</td><td>Has the Bidder/ constituent of the Consortium been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (PPP or otherwise)?</td><td></td><td></td></tr>
<tr><td>2.</td><td>If the answer to 1 is yes, does the bar subsist as on the date of Bid?</td><td></td><td></td></tr>
<tr><td>3.</td><td>Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last three years?</td><td></td><td></td></tr>
</table></td></tr>
<tr><td>7.</td><td colspan="2">A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary).</td></tr>
</table>

Annex II: Technical Capacity of the Bidder[6]

(Refer to Clauses 2.2.2, 3.1, and 3.2 of the RFP)

Bidder Type[#]	Member Code[¥]	Project Code[¥¥]	Experience (number of Keys)
(1)	(2)	(3)	(4)
Single Entity Bidder		a	
		b	
		c	
		d	
Consortium Member 1		1a	
		1b	
		1c	
		1d	
Consortium Member 2		2a	
		2b	
		2c	
		2d	
Consortium Member 3		3a	
		3b	
		3c	
		3d	

Note:

- [#]*A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, in terms of Clause 2.2.9, shall be provided.*

[6] Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.2.9. In case the Bid Due Date falls within 3(three) months of the close of the latest financial year, refer to Clause 2.2.12.

- *¥Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.*
- *¥¥Refer Annex-IV of this Appendix-I. Add more rows if necessary.*

Annex III: Financial Capacity of the Bidder

(Refer to Clauses 2.2.2, 2.2.4, and 3.3 of the RFP)

(**In Rs. Crore**[$])

Bidder Type [$$]	Member Code[£]	Net Cash Accruals			Proposed Equity Shareholding in Consortium (%)	Net Worth/ ACI[££]
		Year 1	Year 2	Year 3		Year 1
(1)	(2)	(4)	(5)	(6)	(7)	(8)
Single Entity Bidder						
Consortium Member 1						
Consortium Member 2						
Consortium Member 3						
Consortium Member 4						
TOTAL						

Name & address of Bidder's Bankers:

- [$]In case of the international Bidder, or Lead Member of the Consortium being international entity, all the financial figures to be converted to INR. For conversion of US Dollars to Rupees, the rate of conversion shall be Indian Rupees [83 (Eighty-Three)][7] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.
- [$$]A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

[7] Conversion Rate that shall be considered for evaluation purposes shall be the one prevailing on the 01-04-2025.

- £For Member Code, see instruction 4 at Annex IV of this Appendix I.
- ££The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.9.
- Computation to calculate ACI to be considered will be [ACI = Immediately Available Funds + Callable Capital]
- Balance Sheet extracts to furnish for Net Worth in prescribed format as presented below.

Sr. No.	In Rupee, at the end of concerned Financial Year	Financial Year 1	Financial Year 2	Financial Year 3
1	Paid up Equity (A)			
2	Contributions (B)			
3	Reserves (C)			
4	Revaluation Reserves (D)			
5	Miscellaneous Expenditure not written off (E)			
6	Accrued Liabilities (F)			
	Net Worth = (A+B+C-D-E-F)			

- Net Cash Accruals to be provided to be supported with computation in prescribed format as presented below.

Sr. No.	In Rupee, at the end of concerned Financial Year	Financial Year 1	Financial Year 2	Financial Year 3
1	Turnover /Income from operations			
2	Operations/Revenue (A)			
3	Operating Cost (B) =(C+D+E)			
4	Employees cost (C)			
5	Admin and General Cost (D)			
6	Other Costs (E)			
7	Depreciation (F)			
8	Interest (G)			
9	Provisions (H)			
	Profit Before Tax I = (A-B-F-G-H)			
10	Tax Paid (J)			
	Profit After Tax K (I – J)			
	Net Cash Accruals (K+F)			

- Net Cash Accruals computation for the Bidder if it is a AIF/ Foreign Investment Fund shall be as follows.

Sr. No.	In Rupee, at the end of concerned Financial Year	Financial Year 1	Financial Year 2	Financial Year 3
1	Net Income (A)			
2	Depreciation (B)			
3	Amortisation (C)			
4	Changes in Working Capital (D)			
	Net Cash Accruals (A+B+C-D)			

Instructions:

1. *The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the BDD. The financial statements shall:*

a. *reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;*

b. *be audited by a statutory auditor;*

c. *be complete, including all notes to the financial statements; and*

d. *correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).*

2. *Net Cash Accruals shall mean Profit After Tax + Depreciation.*

3. *Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders)*[8]*.*

4. *Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.*

5. *In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFP document.*

6. *The Bidder shall provide an Auditor's Certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.2.4 of the RFP document.*

[8] To further explain, Net worth is aggregate value of the paid-up share capital and all reserves created out of the profits and securities, premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Annex IV: Details of Eligible Projects

(Refer to Clauses 2.2.2, 3.1, and 3.2 of the RFP)

Project Code: **Member Code:**

<table>
<tr><th>Item

(1)</th><th>Refer Instruction

(2)</th><th>Particulars of the Project

(3)</th></tr>
<tr><td>Title of the Project</td><td>5</td><td></td></tr>
<tr><td>Eligible Project Category</td><td>5</td><td>{Bidder/ Member of Consortium claiming experience under Clause 2.2.2.1}</td></tr>
<tr><td>Location and address of the Hotel</td><td>5</td><td></td></tr>
<tr><td>Date of commencement of Hotel</td><td>8</td><td></td></tr>
<tr><td>Date of completion, if applicable</td><td>8</td><td></td></tr>
<tr><td>Year-wise Number of Operational Keys in the Hotel</td><td>6</td><td>
<table>
<tr><th>Year</th><th>Number of Operational Keys</th></tr>
<tr><td>Year 1</td><td></td></tr>
<tr><td>Year 2</td><td></td></tr>
<tr><td>Year 3</td><td></td></tr>
<tr><td>Year 4</td><td></td></tr>
<tr><td>Year 5</td><td></td></tr>
<tr><td>Year 6</td><td></td></tr>
<tr><td>Year 7</td><td></td></tr>
</table>
</td></tr>
<tr><td>Star Category of the Hotel (Star Rating for each of the last 7 years)</td><td>8</td><td>
<table>
<tr><th>Year</th><th>Star Rating</th></tr>
<tr><td>Year 1</td><td></td></tr>
<tr><td>Year 2</td><td></td></tr>
<tr><td>Year 3</td><td></td></tr>
<tr><td>Year 4</td><td></td></tr>
<tr><td>Year 5</td><td></td></tr>
<tr><td>Year 6</td><td></td></tr>
<tr><td>Year 7</td><td></td></tr>
</table>
</td></tr>
</table>

<table>
<tr><th>Item

(1)</th><th>Refer Instruction

(2)</th><th>Particulars of the Project

(3)</th></tr>
<tr><td>Equity shareholding
(with period during which equity was held)</td><td>9</td><td>
<table>
<tr><th>Year</th><th>Equity Shareholding</th></tr>
<tr><td>Year 1</td><td></td></tr>
<tr><td>Year 2</td><td></td></tr>
<tr><td>Year 3</td><td></td></tr>
<tr><td>Year 4</td><td></td></tr>
<tr><td>Year 5</td><td></td></tr>
<tr><td>Year 6</td><td></td></tr>
<tr><td>Year 7</td><td></td></tr>
</table>
</td></tr>
<tr><td>Whether credit is being taken for the Eligible Project of an Associate (Yes/ No)</td><td>12</td><td></td></tr>
</table>

Instructions:

1. *Bidders are expected to provide information in respect of each Eligible Project in this Annex. Information provided in this section is intended to serve as a back-up for information provided in the Bid. Bidders should also refer to the Instructions below.*

2. *For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.*

3. *A separate sheet should be filled for each Eligible Project.*

4. *Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write "**Associate**" along with Member Code.*

5. *Each Eligible Project Category must be specified as per Clause 2.2.2.1 for which experience is being claimed.*

6. *The average number of operational Keys for each Eligible Projects for any consecutive 3 (three) financial years over the past 7 (seven) years should be more than or equal to as per the threshold values defined under respective Sub-Clause (a), or (b) or (c) of Clause 2.2.2.1; and is to be stated in Annex-II of this Appendix-I. The figures to be provided here should indicate the break-up for the past 7 (seven) financial years. Year 1 refers to the financial year immediately preceding the BDD; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on (Refer Clause 2.2.12)*

7. *Particulars such as name, address and contact details of owner may be provided for all Eligible Projects.*

8. *The date of commissioning and completion, if applicable of the project should be indicated for all Eligible Projects.*

9. *For all Eligible Projects, the equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Projects is claimed, needs to be given. In case the project is owned/ operated, maintained and managed by the Bidder or its Associate, please indicate accordingly.*

10. *Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.*

11. *Certificate from the Bidder's statutory auditor[9] or its respective entity issuing the star categorization certificate must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.*

12. *The Bidder shall provide a certificate from the statutory auditor of the Bidder, or its Associate, in the format below:*

Certificate from the Statutory Auditor regarding Hotels & Resorts[10]

Based on its books of accounts and other published information authenticated by it, this is to certify that ……..*(name of the Bidder/ Associate/ Member of the Consortium)* is/ was an equity shareholder in ……..*(title of the Name of the claimed project)* and holds/ held INR …… Crore. (Indian Rupees …….. Crore) of equity (which constitutes ……..%[11] of the total paid up and subscribed equity capital) of the project company from ……... *(date)* to …….. *(date)*[12]. The project was/is likely to be commissioned on ……. *(date of commissioning of the project)*.

We certify that …….. (title of the project company) {owned/ operated, maintained and managed} a …….(insert name of the hotel) having a capacity of …….(insert number) residential Keys and the total number of residential Keys {owned/ operated, maintained and managed} by them works out to ……(insert number of residential Keys in words and figure) during the past seven financial years as per yearwise details noted below: *(Give year wise details)*

[9] In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary.

[10] Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant or its Associate may provide the certificates required under this RFP.

[11] Refer instruction no. 10 in this Annex-IV

[12] In case the project is owned by the Applicant company, this language may be suitably modified to read: "It is certified that …….. (name of Applicant) owned/ operated/ managed the …….. (name of project) from …….. (date) to …… (date)."

……

……

We certify that the star category of the project is ……. As per the following certification process method: …….. . We also certify that the project is in operation from …… and presently functional.

Name of the audit firm:

Seal of the audit firm:(Signature, name and designation of the authorized signatory)

Date:

13. In the event that credit is being taken for the Eligible Project of an Associate, as defined in Clause 2.2.9, the Bidder should also provide a certificate in the format below:

Certificate from the Statutory Auditor/ Company Secretary regarding Associate[13]

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of …… (*Bidder/ Associate/ Member of the Consortium*) is held, directly or indirectly[14], by …….. (*name of Bidder/ Associate/ Member of the Consortium*). By virtue of the aforesaid shareholding, the latter exercises control over the former, who is an Associate in terms of Clause 2.2.9 of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

{*Describe the shareholding of the Bidder/ Consortium Member and the Associate. In the event the Associate is under common control with the Bidder/ Consortium Member, the relationship may be suitably described and similarly certified herein.*}

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of the authorised signatory).

Date:

[13] In the event that the Bidder/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

[14] In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of "control" is not broken.

14. *It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and may lead to exclusion of the relevant project in computation and requisite for Technical Capacity purposes.*

Annex V: Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)

Ref. Date:

To,

Managing Director,

Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)

Vikas Bhawan,

PB No. 180,

Sri Vijaya Puram, Andaman & Nicobar Islands – 744101

Dear Madam,

We hereby confirm that we/ our Members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that ……(insert Member's name) will act as the Lead Member of our Consortium[15].

We have agreed that ……..(insert individual's name) will act as our representative/ will act as the representative of the consortium on its behalf and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of……..

[15] Please strike out whichever is not applicable.

Annex VI: O&M Undertaking

(As per Clauses 2.2.2.1 (iii) and 2.2.3)

(Affidavit on Non-Judicial Stamp Paper duly Notarised)

I/ We, the undersigned, do hereby declare and undertake that I / We shall in the event of getting selected to undertake the Project, shall; no later than 6 (six) months prior to the Commercial Operations Date ("**COD**" as defined under the Concession Agreement); enter into an definitive agreement with [name of the O&M Member/Entity proposed at time of bid submission] for minimum period of at least 5 (five) years from COD with 5-Star/ 5-Star Equivalent Hotel Brand/ Chain/Operator possessing necessary experience and qualified personnel for operation, maintenance and management of the Project and discharging all O&M obligations, in accordance with the requirements of the Concession Agreement, failing which the Concession Agreement shall be liable for termination.

Signature of Bidder with Seal

Date:

Location:

Appendix II: Financial Bid for Selection

Letter comprising the Commercial Offer

(Refer Clauses 2.1.4 and 2.14)

(Not to be submitted in the Technical Bid)

Dated:

To,

Managing Director,

Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)

Vikas Bhawan,

PB No. 180,

Sri Vijaya Puram, Andaman & Nicobar Islands – 744101

Subject: Submission of our Offer for the **Development of 5-Star Eco-Tourism Resort at Smith Island, ANI**

Dear Madam,

1 With reference to your RFP document dated …….., I/we, having examined the Bidding Documents and understood their contents, hereby submit my/ our Offer for the aforesaid Project.

2 We offer an Annual Concession Fee of **(INR_____ Crore) (Indian Rupees _____ Only)** for first Operational Year from the date of COD of the Project, which shall be increased @ 05% every year as specified in the draft Concession Agreement.

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised signatory)

Place: Name and seal of Bidder/Lead Member

Annex I: Template of BOQ

(Not to be filled, it is for reference purposes)

A BOQ file in excel format has been uploaded on the e-procurement portal: https://eprocure.andaman.gov.in/; which needs to be downloaded and filled in and uploaded on the portal under the Financial Envelope. Same is not required to be provided as part of the Technical Bid.

Validate | Print | Help

Item Rate BoQ

Tender Inviting Authority: Andaman and Nicobar Islands Integrated Development Corporation Limited (ANIIDCO Ltd.)

Name of Work: Development of 5-Star Eco-Tourism Resort at Smith Island, A&N Islands

Contract No: 1-1748/ANIIDCO/Projects/2022-23/Vol-IV/..... Dt. .....

Name of the Bidder/ Bidding Firm / Company :		

PRICE SCHEDULE

(This BOQ template must not be modified/replaced by the bidder and the same should be uploaded after filling the relevent columns, else the bidder is liable to be rejected for this tender. Bidders are allowed to enter the Bidder Name and Values only)

NUMBER #	TEXT #	NUMBER #	NUMBER #	TEXT #
Sl. No.	Item Description	Annual Concession fee for 1st operational year post COD in Rupees (Without GST and all other taxes) (In figures to be entered by the Bidder) Rs. P	TOTAL AMOUNT (Without Taxes)	TOTAL AMOUNT (In Words)
1	2	13	53	55
1	Particular			
1.01	Development of 5-Star Eco-Tourism Resort at Smith Island, A&N Islands		0.00	INR Zero Only
Total in Figures			0.00	INR Zero Only
Quoted Rate in Words		INR Zero Only		

"Note: The quote of Annual Concession Fee (ACF) shall be exclusive of GST and other applicable taxes. The liability of payment of GST and other applicable taxes shall be of the Concessionaire in addition to the ACF amount payable as per the provision of the Concession Agreement."

Appendix III : Power of Attorney for signing of Bid[16]

(Refer Clause 2.2.5)

Know all men by these presents, We…….. (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms. (name), …… son/daughter/wife of …… and presently residing at ……., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ……., as our true and lawful attorney (hereinafter referred to as the "**Attorney**") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for Qualification and submission of our Bid for the Project o**f Development of 5-Star Eco-Tourism Resort at Smith Island, ANI** (the "**Project**") proposed or being developed by the **Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)** (the "**Authority**") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Bids and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

AND, we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,……., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS …… DAY OF ……2025.

For ……..,

(Signature, name, designation and address) Witnesses:

1.

(Notarised)

2.

Accepted

…… (Signature)

(Name, Title and Address of the Attorney)

Notes:

[16] To be submitted in original.

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

Appendix IV : Power of Attorney for Lead Member of Consortium[17]

(Refer Clause 2.2.5)

Whereas the **Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)** (the "**Authority**") has invited applications from interested parties for the Project of **Development of 5-Star Eco-Tourism Resort at Smith Island, ANI** (the "**Project**").

Whereas, ……..., ……..., ……, and …….. (collectively the "**Consortium**") being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, M/s. ……..having our registered office at…….., M/s. ……..having our registered office at…….., M/s. ……..having our registered office at …….., and M/s. ……..having our registered office at……..,(hereinafter collectively referred to as the "**Principals**") do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s. ……..having its registered office at……..,being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "**Attorney**"). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the Qualification of the Consortium and submission of its Bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in Bidders' and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the Bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium's Bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

AND; hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

[17] To be submitted in original.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS …… DAY OF …….2025.

For, ……..
(Signature)
……..
(Name & Title)

For, ……..
(Signature)

……..
(Name & Title)

For, ……..
(Signature)

……..
(Name & Title)

Witnesses:
1.
2.
……
(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

Appendix V : Joint Bidding Agreement

(Refer Clause 2.2.6 (g))

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the …… day of …… 2025

AMONGST

1. …… Limited, a company incorporated under the Companies Act, 1956/ 2013 and having its registered office at …… (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. …… Limited, a company incorporated under the Companies Act, 1956/ 2013 and having its registered office at …… (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {…… Limited, a company incorporated under the Companies Act, 1956/ 2013 and having its registered office at …… (hereinafter referred to as the "**Third Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. {…… Limited, a company incorporated under the Companies Act, 1956/ 2013 and having its registered office at …… (hereinafter referred to as the "**Fourth Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)}[18]

The above mentioned parties of the FIRST, SECOND, {THIRD and FOURTH} PART are collectively referred to as the "**Parties**" and each is individually referred to as a "**Party**"

WHEREAS,

a. **UT Administration of Andaman and Nicobar Islands**, under the aegis of Ministry of Home Affairs, represented by its **Managing Director of Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)** and having its principal offices at **ANIIDCO Ltd., Vikas Bhawan, PB No. 180, Sri Vijaya Puram, Andaman & Nicobar Islands – 744101** (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the "**Bids**") by its Request for Proposal No. …… dated ……

[18] In case as permissible under Clause 2.2.6 (a), if the Bidder participating as Consortium with more than four members, to add the details and information for the other Members as well as Fifth and/or Sixth Part. And appropriate details of such members as other places in this Agreement as well.

(the "**RFP**") for Qualification of Bidders for development, operation and maintenance for the Project of **Development of 5-Star Eco-Tourism Resort at Smith Island, ANI** (the "**Project**") through public private partnership.

b. The Parties are interested in jointly bidding for the Project as Members of a Consortium and in accordance with the terms and conditions of the RFP document and other Bid documents in respect of the Project, and

c. It is a necessary condition under the RFP document that the Members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

I. The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Bidding Process for the Project.

II. The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the "**SPV**") under the Indian Companies Act, 2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

a. Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;

b. Party of the Second Part shall be {the Technical Member of the Consortium;}

c. {Party of the Third Part shall be the Financial Member of the Consortium; and}

d. {Party of the Fourth Part shall be the Operation and Maintenance Member/ Other Member of the Consortium.}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP, RFP and the

Concession Agreement, till such time as the Project COD for the Project is achieved under and in accordance with the Concession Agreement and the O&M Agreement has been executed with the same O&M Member proposed at time of Bid Submission, and a copy thereof has been submitted to the Authority.

6. Shareholding in the SPV

I. The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:

Second Party:

{Third Party:}

{Fourth Party:}

II. The Parties, {except the O&M Member}, undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation of the Project, be held by the Parties of the First, {Second and Third} Part whose experience and Net Worth/ ACI have been reckoned for the purposes of Qualification of Bidders for the Project in terms of the RFP.

III. The Parties, {except the O&M Member}, undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the commercial operation date of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost.

IV. The Parties, {except the O&M Member}, undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of the Project.

V. The Parties, {except the O&M Member}, undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

a. Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

b. The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

i require any consent or approval not already obtained;

ii violate any Applicable Law presently in effect and having applicability to it;

iii violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;

iv violate any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

v create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

vi this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

vii there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

I. This Joint Bidding Agreement shall be governed by laws of India.

II. The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED
For and on behalf of	
LEAD MEMBER by:	SECOND PART
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)

(Address) (Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THIRD PART

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
FOURTH PART

(Signature)
(Name)
(Designation)
(Address)

In the presence of:

1. 2.

Notes:

- *The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.*
- *For a Joint Bidding Agreement executed and issued overseas, the document shall be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

Appendix VI : Bank Guarantee for Bid Security

(Refer Clauses 2.1.5 and 2.27)

B.G. No. **Dated:**

In consideration of you, **Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)**, having its office at **ANIIDCO Ltd., Vikas Bhawan, PB No. 180, Sri Vijaya Puram, Andaman & Nicobar Islands – 744101**, (hereinafter referred to as the "**Authority**", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of …… (a company registered under the Companies Act, 1956/ 2013) and having its registered office at …… (and acting on behalf of its Consortium) (hereinafter referred to as the "**Bidder**" which expression shall unless it be repugnant to the subject or context thereof include its/ their executors, administrators, successors and assigns), for the Project of **Development of 5-Star Eco-Tourism Resort at Smith Island, ANI** on DBFOT basis (hereinafter referred to as the "**Project**") pursuant to the RFP Document dated …… issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as "**Bidding Documents**"), we (Name of the Bank) having our registered office at …… and one of its branches at …….. (hereinafter referred to as the "**Bank**"), at the request of the Bidder, do hereby in terms of Clause 2.1.5 with Clause 2.1.6 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of INR ……. (Indian Rupees …….. only) (hereinafter referred to as the "**Guarantee**") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.

Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.

We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding INR ……. (Indian Rupees ……. only).

This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.

The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.

It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.

The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. …… crore (Rupees ……..... crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance

with paragraph 9 hereof, on or before [……. (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by …….. Bank

By the hand of Mr./Ms …….., its …….. and authorised official.

(Signature of the Authorised Signatory) (Official Seal)

Appendix VII : Guidelines of the Department of Disinvestment[19]

(Refer Clause 1.2.1)

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex

New Delhi. Dated 13th July, 2001.

OFFICE MEMORANDUM

Subject: Guidelines for Qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for Bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like Net Worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the Qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

a. In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the Bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.

b. In regard to matters relating to the security and integrity of the country, any chargesheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

c. In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

d. Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

[19] These guidelines may be modified or substituted by the Government from time to time.

e. The disqualification criteria would come into effect immediately and would apply to all Bidders for various disinvestment transactions, which have not been completed as yet.

f. Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

g. Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The Bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

Appendix VIII : Clearances Required for the Project

A. Upfront Clearances Accorded for the Project

It is proposed that the project shall be developed in environmentally sustainable manner. Certain project specific clearances have been procured upfront by the Authority are as follows:

1. **Combined Environmental and CRZ Clearance** – MoEF&CC vide letter no. F.No. 11-5/2019-IA-III, dated 28.03.2019, granted CRZ approval for the Project.

2. **Conversion of Land Use** – The Authority has already got the Land use for the Project converted to 'Commercial' use for the purpose of development of eco-tourism resort development.

B. Other Clearances that the Concessionaire shall have to Procure

1. **License to store and serve alcohol in the Resort:** Commitment to license to store and serve alcohol shall be provided at the date of signing of agreement. Actual license shall be contingent upon compliance to fire and other approvals as per extant provisions and shall be provided after completion of construction.

2. **Other Clearances:** The following list of Applicable Permits for construction, operation and maintenance of the Eco-Tourism Resort is indicative only. The actual Applicable permits will be contingent upon the nature of construction and operation envisaged by the Concessionaire.

Sr. No.	Clearance(s)/ Permit(s)
1	Registration under A&N Shops & Commercial Establishment Regulation, 2004 by Labour Department
2	Registration under Contract Labour (Regulation and Abolition Act, 1970) by Labour Department
3	Registration of Establishment under Building & Other Construction Workers Act, 1996 by Labour Department
4	Food license issued by Food Safety Commissioner, FSSAI
5	Consent to Establish/Operate under Water (Prevention & Control of Pollution) Act, Air (Prevention & Control of Pollution) Act, 1981 by Pollution Control Committee
6	Fire clearance by Fire Service Department
7	Building plan approval under A & N Islands (Panchayat Administration Rule, 1997) by Gram Panchayat
8	GST registration issued by Goods & Service Tax Department, Deputy Commissioner Office
9	VAT registration issued by Deputy Commissioner Office
10	Registration of CA document by Deputy Commissioner Office Department

The estimated timeframe for obtaining following approvals is 30 days, subject to the Concessionaire submitting its applications complete in all respect in a timely manner. The Authority will provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project.

Appendix IX : Compliance Certificate[20]

(Certificate regarding Compliance with Restrictions under Rule 144 (xi) of the General Financial Rules (GFRs))

To,

Managing Director,

Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)

Vikas Bhawan,

PB No. 180,

Sri Vijaya Puram, Andaman & Nicobar Islands – 744101

Subject: Bid for **Development of 5-Star Eco-Tourism Resort at Smith Island, ANI**

Dear Madam,

With reference to your RFP document dated ……., I/we, having examined the Bidding Documents and understood their contents, hereby undertake and confirm as follows:

- I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries;
- I/ We certify that this Bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.

I hereby certify that this bidder fulfils all requirements in this regard and is eligible to be considered.

Yours faithfully,

Date:

(Signature of the Authorised signatory)

Place:

(Name and designation of the of the Authorised signatory)

Name and seal of Bidder/Lead Member

Notes:

- *{Where applicable, evidence of valid registration by the Competent Authority shall be attached}*
- *In case the above certification is found to be false, this would be a ground for immediate rejection of Bid/termination and further legal action in accordance with law.*

[20] Applicable only in case if the International entity participating as single entity or as Member of the Consortium

Appendix X : Instructions for Online Bid Submission

1. The Bidders are required to submit soft copies of their bids electronically on the CPP Portal, using valid Digital Signature Certificates. The instructions given below are meant to assist the Bidders in registering on the CPP Portal, prepare their Bids in accordance with the requirements and submitting their bids online on the CPP Portal.

2. More information useful for submitting online bids on the CPP Portal may be obtained at: https://eprocure.andaman.gov.in/.

A.1 Registration

1. Bidders are required to enroll on the e-Procurement module of the Central Public Procurement Portal (URL: https://eprocure.andaman.gov.in/) by clicking on the link "Online Bidder Enrollment" on the CPP Portal which is free of charge.

2. As part of the enrolment process, the Bidders will be required to choose a unique username and assign a password for their accounts.

3. Bidders are advised to register their valid email address and mobile numbers as part of the registration process. These would be used for any communication from the CPP Portal.

4. Upon enrolment, the Bidders will be required to register their valid Digital Signature Certificate (Class III Certificates with signing key usage) issued by any Certifying Authority recognized by CCA India (e.g. Sify / nCode / eMudhra etc.), with their profile.

5. Only one valid DSC should be registered by a Bidder. Please note that the Bidders are responsible to ensure that they do not lend their DSC's to others which may lead to misuse.

6. Bidder then logs in to the site through the secured log-in by entering their user ID / password and the password of the DSC / e-Token.

A.2 Searching for Tenders[21]

1. There are various search options built in the CPP Portal, to facilitate Bidders to search active tenders by several parameters. These parameters could include Tender ID, Organization Name, Location, Date, Value, etc. There is also an option of advanced search for tenders, wherein the Bidders may combine a number of search parameters such as Organisation Name, Form of Contract, Location, Date, Other keywords etc. to search for a tender published on the CPP Portal.

2. Once the Bidders have selected the tenders they are interested in, they may download the required documents / tender schedules. These tenders can be moved to the respective '**My Tenders**' folder. This would enable the CPP Portal to intimate the Bidders through SMS / email in case there is any corrigendum issued to the tender document.

[21] Tenders for the purpose of this proposed procurement shall mean Bidding Documents

3. The Bidder should make a note of the unique Tender ID assigned to each tender, in case they want to obtain any clarification / help from the Helpdesk.

A.3 Preparation of Bids

1. Bidder should take into account any corrigendum published on the tender document before submitting their bids.

2. Please go through the tender advertisement and the tender document carefully to understand the documents required to be submitted as part of the Bid. Please note the number of covers in which the Bid documents have to be submitted, the number of documents - including the names and content of each of the document that need to be submitted. Any deviations from these may lead to rejection of the bid.

3. Bidder, in advance, should get ready the Bid documents to be submitted as indicated in the tender document / schedule and generally, they can be in PDF / XLS / RAR / DWF/JPG formats. Bid documents may be scanned with 100 dpi with black and white option which helps in reducing size of the scanned document.

4. To avoid the time and effort required in uploading the same set of standard documents which are required to be submitted as a part of every bid, a provision of uploading such standard documents (e.g. PAN card copy, annual reports, auditor certificates etc.) has been provided to the Bidders. Bidders can use "**My Space**" or ''Other Important Documents'' area available to them to upload such documents. These documents may be directly submitted from the "My Space" area while submitting a bid, and need not be uploaded again and again. This will lead to a reduction in the time required for Bid submission process.

Note: *My Documents space is only a repository given to the Bidders to ease the uploading process. If Bidder has uploaded his Documents in My Documents space, this does not automatically ensure these Documents being part of Technical Bid.*

A.4 Submission of Bids

1. Bidder should log into the site well in advance for Bid submission so that they can upload the Bid in time i.e. on or before the Bid submission time. Bidder will be responsible for any delay due to other issues.

2. The Bidder has to digitally sign and upload the required Bid documents one by one as indicated in the tender document.

3. Bidder has to make payment for the Bid Security/ EMD as applicable and enter details of the instrument.

4. Bidder should prepare the EMD as per the instructions specified in the tender document. The original should be posted/couriered/given in person to the concerned official, latest by the last date of Bid submission or as specified in the tender documents. The details of the DD/any other accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered during Bid submission time. Otherwise the uploaded Bid will be rejected.

5. Bidders are requested to note that they should necessarily submit their Financial Bids in the format provided and no other format is acceptable. If the price Bid has been given as a standard BoQ format with the tender document, then the same is to be downloaded and to

be filled by all the Bidders. Bidders are required to download the BoQ file, open it and complete the white coloured (unprotected) cells with their respective financial quotes and other details (such as name of the Bidder). No other cells should be changed. Once the details have been completed, the Bidder should save it and submit it online, without changing the filename. If the BoQ file is found to be modified by the Bidder, the Bid will be rejected.

6. The server time (which is displayed on the Bidders' dashboard) will be considered as the standard time for referencing the deadlines for submission of the bids by the Bidders, opening of bids etc. The Bidders should follow this time during Bid submission.

7. All the documents being submitted by the Bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of Bid opening. The confidentiality of the bids is maintained using the secured Socket Layer 128 bit encryption technology. Data storage encryption of sensitive fields is done. Any Bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/Bid opener's public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized Bid openers.

8. The uploaded tender documents become readable only after the tender opening by the authorized Bid openers.

9. Upon the successful and timely submission of Bids (i.e. after Clicking "**Freeze Bid Submission**" in the portal), the portal will give a successful Bid submission message & a Bid summary will be displayed with the Bid no. and the date & time of submission of the Bid with all other relevant details.

10. The Bid summary has to be printed and kept as an acknowledgement of the submission of the bid. This acknowledgement may be used as an entry pass for any Bid opening meetings.

A.5 Assistance to Bidders

1. Any queries relating to the tender document and the terms and conditions contained therein should be addressed to the Tender Inviting Authority for a tender or the relevant contact person indicated in the tender.

2. Any queries relating to the process of online Bid submission or queries relating to CPP Portal in general may be directed to the 24x7 CPP Portal Helpdesk.

A.6 DSC for Foreign Bidders

1. For international Bidder(s) or Consortia, whose is participating through Lead Member whose is Foreign entity, should visit the portal – Government eProcurement System (andaman.gov.in) and follow the instructions to procure Digital Signature Certificate.

Appendix XI : Instructions for Bidder(s) from Country sharing Land Borders with India

Extract of Annexure-I of Order (Public Procurement No. 4) issued by Procurement Policy Division; Department of Expenditure vide OM No. F.7/10/2021-PPD (1) dated 23.02.2023

Competent Authority and Procedure for Registration

A. The Competent Authority for the purpose of registration under this order shall be/ continue to be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT)*. [This Committee was already constituted under Order (Public Procurement) No. 1].

B. The Registration Committee shall have the following members*:

   i. An officer, not below the rank of Joint Secretary, designated for this purpose by DPIIT, who shall be the Chairman;

   ii. Officers (ordinarily not below the rank of Joint Secretary) representing the Ministry of Home Affairs, Ministry of External Affairs, and of those Departments whose sectors are covered by applications under consideration; iii. Any other officer whose presence is deemed necessary by the Chairman of the Committee.

   iii. With effect from 01.04.2023, an officer (ordinarily not below the rank of Joint Secretary) representing the National Security Council Secretariat.

C. DPIIT shall lay down the method of application, format etc. for such bidders as covered by the Order.

D. On receipt of an application seeking registration from a bidder covered by Para 2 and 3 of this order, the Competent Authority shall first seek political and security clearances from the Ministry of External Affairs and Ministry of Home Affairs, as per guidelines issued from time to time. Registration shall not be given unless political and security clearance have both been received.

E. The Ministry of External Affairs and Ministry of Home Affairs may issue guidelines for internal use regarding the procedure for scrutiny of such applications by them.

F. The decision of the Competent Authority, to register such bidder may be for all kinds of tenders or for a specified type(s) of goods or services, and may be for a specified or unspecified duration of time, as deemed fit. The decision of the Competent Authority shall be final.

G. Registration granted by the Competent Authority of the Government of India shall be valid not only for procurement by the Central Government and its bodies specified in para 6 of this order, but also for procurement by State Governments and their agencies/ public enterprises etc. No fresh registration at the State level shall be required.

H. The Competent Authority is empowered to cancel the registration already granted if it determines that there is sufficient cause. Such cancellation by itself, however, will not affect the execution of contracts already awarded. Pending cancellation, it may also suspend the

registration of a bidder, and the bidder shall not be eligible to bid in any further tenders during the period of suspension.

I. For national security reasons, the Competent Authority shall not be required to give reasons for rejection/cancellation of registration of a bidder.

*Note:

i. In respect of application of the Order to procurement by/ under State Governments, all functions assigned to DPIIT shall be carried out by the State Government concerned through a specific department or authority designated by it. The composition of the Registration Committee shall be as decided by the State Government. However, the requirement of political and security clearance as per para D shall remain and no registration shall be granted without such clearance.

ii. Registration granted by State Governments shall be valid only for procurement by the State Government and its agencies/ public enterprises etc. and shall not be valid for procurement in other states or. by the Government of India and their agencies/ public enterprises etc.

Appendix XII : Surety Bond For Bid Security

(Refer Clauses 2.1.5 and 2.27)

Dated:

1. In consideration of you, Andaman & Nicobar Islands Integrated Development Corporation (ANIIDCO), having its office at Vikas Bhawan, PB No 180, Sri Vijaya Puram, Andaman and Nicobar Islands- 744101(hereinafter referred to as the "**Authority**", which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of …… (a Company registered under Companies Act, 1956 /2013) and having its registered office at …… (and acting on behalf of its Consortium) (hereinafter referred to as the "**Bidder**" which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for Development, Operation & Maintenance and Transfer (DBFOT) of Development of 5-Star Eco-Tourism Resort at Smith Island, ANI (hereinafter referred to as the "**Project**") pursuant to the RFP Document dated …… issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as "**Bidding Documents**"), we (Name of the Surety Insurer) having our registered office at …….. and one of its branches at …… (hereinafter referred to as the "**Surety Insurer**"), at the request of the Bidder, do hereby in terms of Clause 2.1.6 read with Clause 2.1.7 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of INR _____/- (Indian Rupees _____ only) (hereinafter referred to as the "**Surety Bond**") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Surety Insurer.

3. We, the Surety Insurer, do hereby unconditionally undertake to pay the amounts due and payable under this Surety Bond without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Surety Insurer shall be conclusive as regards amount due and payable by the Surety Insurer under this Surety Bond. However, our liability under this Surety Bond shall be restricted to an amount not exceeding INR _____/- (Indian Rupees _____ only).

4. This Surety Bond shall be irrevocable and remain in full force for a period of 180 (one hundred and twenty) days from the Bid Due Date and a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Surety Insurer, and shall continue to be enforceable till all amounts under this Surety Bond have been paid.

5. We, the Surety Insurer, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and

conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

6. The Surety Bond shall not be affected by any change in the constitution or winding up of the Bidder or the Surety Insurer or any absorption, merger or amalgamation of the Bidder or the Surety Insurer with any other person.

7. In order to give full effect to this Surety Bond, the Authority shall be entitled to treat the Surety Insurer as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Surety Insurer under this Surety Bond from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Surety Insurer shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Surety Insurer from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given in writing or made if addressed to the Surety Insurer and sent by courier or by registered post or by certified e-mail to the Surety Insurer at the address or e-mail set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Surety Insurer along with branch address] and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Surety Insurer and the Surety Bond herein contained shall be enforceable against the Surety Insurer, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Surety Insurer hereunder, be outstanding or unrealised.

11. We, the Surety Insurer, further undertake not to revoke this Surety Bond during its currency except with the previous express consent of the Authority in writing.

12. The Surety Insurer declares that it has power to issue this Surety Bond and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Surety Bond for and on behalf of the Surety Insurer.

13. For the avoidance of doubt, the Surety Insurer's liability under this Surety Bond shall be restricted to INR _____/- (Indian Rupees _____ only). The Surety Insurer shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Surety Insurer in accordance with paragraph 9 hereof, on or before *** (indicate date falling 180 days after the Bid Due Date).

14. This Surety Bond shall also be operatable at our _____ branch at _____, from whom, confirmation regarding the issue of this Surety Bond or

15. extension/renewal thereof shall be made available on demand. In the contingency of this Surety Bond being invoked and payment hereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.

16. The Insurance Surety Bond shall be verified from the specific portal created for this purpose.

Signed and Delivered by …….. Company

By the hand of Mr./Ms. …….. its, …… and authorised official

(Signature of the Authorised Signatory)

(official Seal)

UT Administration

Andaman and Nicobar Islands (ANI)

International Competitive Bidding

(Single-Stage Two-Envelope Bidding)

Process for

Development of Five-Star Eco-Tourism Resort at Smith Island, ANI

Draft Concession Agreement (DCA)

Issued on: 28 July 2025

Reference No.: File No. 1-1748/ANIIDCO/Projects/2022-23/Vol-IV/1452

https://eprocure.andaman.gov.in

https://aniidco.and.nic.in/

Bidding Documents issued by:

Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)

Address: ANIIDCO Ltd., Vikas Bhawan, PB No. 180, Sri Vijaya Puram, Andaman & Nicobar Islands – 744101

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Draft Concession Agreement

Part I: Preliminary Recitals

Concession Agreement

This **CONCESSION AGREEMENT** ("**Agreement**") is entered into on this _____, 2025 at **Sri Vijaya Puram, Andaman and Nicobar Islands**.

BETWEEN

1. **Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO) represented by the Managing Director**, with its principal office at **ANIIDCO Ltd., Vikas Bhawan, PB No. 180, Sri Vijaya Puram, Andaman & Nicobar Islands – 744101** (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns) of **One Part**;

AND

2. _____**LIMITED**, a company incorporated under the provisions of the Companies Act, 2013 with its registered office at _____, India (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the **Other Part**.

The Authority and the Concessionaire shall collectively be referred to as "**Parties**" and individually as a "**Party**".

WHEREAS:

(A). The Government of India is considering private sector participation to augment the tourism facilities at **Survey Nos. 96, 98 and 1/1/2, Smith Land** through **Development of Five-Star Eco-Tourism Resort at Smith Island, ANI** (the "**Project**"), with special emphasis on developing ecotourism resorts. For this purpose it has empowered the Authority to develop, operate and maintain the Project (*as defined hereinafter*) on a public private partnership mode.

(B). The Authority has lease rights over the land measuring 25.0084 Hectare situated at Survey Nos. 96, 98 and 1/1/2 in Smith Land and intends to develop the Project on the Project Site on a design, finance, build, operate and transfer ("**DBFOT**") basis in accordance with the terms and conditions set forth in this Agreement.

(C). The Authority had accordingly invited proposals under its Request for Proposal No. _____[1] dated _____ (the "**Request for Proposal**" or "**RFP**") for selection of bidders for undertaking the development, operation and maintenance of the Project on DBFOT basis. The Selected Bidder/ Consortium comprising _____ an_____ (collectively, the "**Consortium**") with _____ as its lead member (the "**Lead Member**") was one of the bidders who had submitted its bid for the Project (the "**Bid**").

(D). Following the evaluation of the bids submitted by the bidders, including that of the Selected Bidder, the Authority had accepted the Bid. Subsequently, the Authority had issued the letter of award no. [●] dated [●] (the "**Letter of Award**" or **"LOA**") to the Selected Bidder, *inter alia*, requiring it to incorporate a private limited company under the Companies Act (*as defined hereinafter*) and execution of this Agreement within 30 (thirty) days of the date of issue thereof.

(E). The {Selected Bidder/Consortium} has since incorporated the Concessionaire and has requested the Authority, by its letter dated _____[2], to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/Consortium} including the obligation to enter into this Agreement pursuant to the LOA. {The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder/Consortium for the purposes hereof.}

(F). The Authority, through its letter dated _____[3], had agreed to the request of the Selected Bidder, and accordingly intends to enter into this Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the adequacy of which is hereby acknowledged and confirmed, the terms and conditions of this Agreement are set out below.

[1] To be inserted upon issuance of the RFP.

[2] Relevant details to be inserted

[3] Relevant details to be inserted

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 43) 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, except where the context otherwise requires:

(a) references to any legislation or any provision thereof shall include amendment or reenactment 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 India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, 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 only for convenience of reference 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) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;

(h) any reference to any period of time shall mean a reference to such time according to Indian Standard Time;

(i) any reference to "**hour**" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;

(j) any reference to day shall mean a reference to a calendar day;

(k) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday or a statutory holiday as declared by the Union Territory of Andaman and Nicobar Islands administration on which Banks in Union Territory of Andaman and Nicobar Islands are generally open for business;

(l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(m) references to any date, period or Project Milestone(s) shall mean and include such date, period or Project Milestone(s) as may be extended pursuant to this Agreement;

(n) any reference to any period commencing 'from' a specific date or date and 'till' or 'until' a specific 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;

(o) the words importing singular shall include plural and vice versa;

(p) references to any gender shall include the other and the neutral gender;

(q) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);

(r) "**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;

(s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause 1.2.1 (s) 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 shall be in full force and effect as though they were expressly set out in the body of this Agreement;

(v) references to Recitals, Articles, Sub-Articles, Clauses provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sub-Articles, provisos and Schedules of or to this Agreement; reference to an Annexure shall, subject to anything to the contrary specified therein, be construed as a reference to an Annexure to the Schedule in which such reference occurs; and reference to a paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a paragraph of the Schedule or Annexure, as the case may be, in which such reference appears;

(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-estimate of loss

and damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and

(x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Authority shall be provided free of cost and in 3 (three) copies, and if the Authority is required to return any such documentation with their comments and/or approval, they 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 Party responsible for the drafting and preparation thereof, shall not apply.

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

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in 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, Clauses and schedules:

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

(i) the Agreement including its Schedules;

(ii) the LOA issued to the Selected Bidder;

(iii) written addenda or corrigenda to the Request for Proposal;

(iv) Request for Proposal; and

(v) Bid.

(b) Subject to the provisions of Clause 1.4 (a), in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(i) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;

(ii) between the Articles of this Agreement and the Schedules, the Articles shall prevail;

(iii) between any two Schedules, the Schedule more relevant to the issue under consideration shall prevail;

(iv) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(v) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

(vi) between any value written in numerals and that in words, the latter shall prevail.

Part II: The Concession

Article 2 Scope of the Project

2.1 The scope of the Project during the Concession Period shall mean and include the following (the "**Scope of the Project**"):

(a) to design, build, finance, and construct the Project on the Project Site set forth in Schedule A, in accordance with the provisions of this Agreement;

(b) to develop the Project as specified in Schedule B, in conformity with the Specifications and Standards set forth in Schedule C;

(c) to operate and maintain the Project in accordance with the provisions of this Agreement;

(d) to provide Ancillary Facilities in accordance with the provisions of this Agreement;

(e) to transfer the Project to the Authority upon Termination in accordance with the provisions of this Agreement; and

(f) to perform and fulfil all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

2.2 The Concessionaire shall be entitled to develop the beach, adjacent to the Project Site for providing Beach Facilities, in accordance with Applicable Laws. The Concessionaire shall be responsible for the maintenance, upkeep, and security of any such Beach Facilities developed by the Concessionaire. The Concessionaire shall ensure all activities are managed and undertaken in accordance with Applicable Laws and Applicable Permits. The Concessionaire shall also take all precautions for the safety of the Users while using Beach Facilities.

2.3 Notwithstanding anything contained in this Agreement, the Concessionaire shall not obstruct or cause to obstruct, access to the beach adjacent to the Project where the Beach Facilities have been developed by the Concessionaire, to the public, which shall be governed by the Applicable Laws and Applicable Permits.

Article 3 Grant of Concession

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority, awards to the Concessionaire the concession set forth herein including exclusive right, license and authority to construct, operate and maintain the Project and provide Hospitality Services (the "**Concession**"), for the Concession Period, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth in this Agreement.

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

(a) the Right of Way, access and leave and license rights to use the Project Site for the purpose of developing the Project, to the extent conferred by the provisions of this Agreement;

(b) design, finance, construct the Project during the Construction Period;

(c) achieve Project COD in accordance with the provisions of Clause 15.1 and subsequently, manage, operate and maintain the Resort and Project Infrastructure throughout the Concession Period;

(d) provide Hospitality Services in accordance with the standards and terms set out in this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice;

(e) demand, collect and appropriate Revenue from the Users for using the Resort and availing of the Hospitality Services in accordance with this Agreement;

(f) pay Concession Fee to the Authority in accordance with the provisions of Article 24;

(g) perform and fulfil all the obligations of the Concessionaire under and in accordance with this Agreement;

(h) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;

(i) appoint Contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Agreement in accordance with its terms;

(j) upon Termination of the Concession Period transfer the Project to the Authority in accordance with the terms of this Agreement;

(k) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Site, nor sell, transfer, exchange, lease or part possession thereof;

(l) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for safety, security, development, management, operation or maintenance of the Project and the Project Site, subject only to the terms of this

Agreement and in accordance with Applicable Permits, Applicable Laws and Good Industry Practice;

(m) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to implement, manage, operate and maintain the Project; and

(n) do all things incidental or related thereto or which the Concessionaire considers desirable and appropriate to be carried out in connection therewith during the Concession Period.

3.1.3 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, this Agreement shall, from the Appointed Date, entitle the Concessionaire to undertake designing, construction, finance, development, operation and maintenance of the additional facilities as provided in Schedule B and that may be approved and/or notified, in writing, by the Authority from time to time during the Concession Period as part of the Project (the "**Ancillary Facilities**"). Provided, however, that the Concessionaire shall not, in any event, commence the operation and/or use of the Ancillary Facilities prior to the Project COD.

3.2 Concession Period

(a) Subject to early Termination of this Agreement in accordance with its terms, the term of this Agreement is **75 (seventy-five) years** from the Appointed Date (the "**Concession Period**").

- Further, the Concession Period shall consist of **4 (four) years** as Construction Period for fulfilling the Mandatory Development Obligations as stipulated under this Agreement.

(b) The Authority shall, at any time prior to the date of expiry of the Concession Period, have the right to grant concession with respect to the Project for a period which it may determine its sole discretion, after the expiry of the Concession Period, through international competitive bidding amongst developers other than the Authority and any undertaking owned by it. The Authority further agrees that the Concessionaire shall have the right to participate in such competitive bidding and make its offer in accordance with the terms thereof.

Article 4 Conditions Precedent

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Article 4, Article 7, Article 8, Article 9, Article 10, Article 11, Article 16, Article 23, Article 26, Article 29, Article 35, Article 36, Article 41, Article 42, Article 43 and any related Schedules or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**"). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clause 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Conditions Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9 and at any time after 15 (fifteen) days from the Execution Date or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days of receipt of the notice, or such longer period not exceeding 120 (one hundred and twenty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

(a) procured for the Concessionaire the Right of Way to the Project Site in accordance with Article 10; and

(b) procured all Applicable Permits as provided in Schedule E including permits in relation to environmental protection and conservation.

Provided, that upon request in writing by the Authority, the Concessionaire may, in its discretion, waive the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 90 (ninety) days from the Execution Date shall be deemed to have been fulfilled when the Concessionaire shall have:

(a) provided the Performance Security to the Authority pursuant to Article 9;

(b) executed and procured execution of the Project Account Agreement and opened and operationalised the Project Account in accordance with Article 26;

(c) execute and procure execution of the Substitution Agreement;

(d) procured all Applicable Permits specified in Schedule E unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Applicable Permits, have been fulfilled as on date the Concessionaire claims satisfaction of all the Conditions Precedent under this Agreement;

(e) delivered to the Authority {from the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-Article (m), {(n)} and (o) of Clause 7.1;

(f) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;

(g) delivered to the Authority the copies (certified as true copies by an authorised officer of the Concessionaire) of the constitutional documents of the Concessionaire;

(h) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a director of the Concessionaire;

(i) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a director of the Concessionaire, along with copies of the Financial Model in an editable version either in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;

(j) delivered to the Authority copies (certified as true copies by a director of the Concessionaire) of all resolutions adopted by the board of directors of the Concessionaire authorising the execution, delivery and performance by the Concessionaire of the Agreement; and

(k) provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire.

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3.

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

4.1.6 The Concessionaire shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, notify the Authority of the occurrence of the Appointed Date.

4.2 Damages for delay by the Authority

In the event that: (i) the Authority does not procure fulfilment or waiver of the Condition Precedent set forth in Clause 4.1.2 within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure Event, the Authority shall pay Damages to the Concessionaire of an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.

4.3 Damages for delay by the Concessionaire

In the event that: (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Article; and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to

Force Majeure Event, the Concessionaire shall pay Damages to the Authority of an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment or waiver of such Conditions Precedent, up to the maximum amount equal to the Bid Security and upon reaching such maximum amount, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due and payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Commencement of the Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1, are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of the commencement of the Concession Period. For avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence development of the Project in accordance with the terms of this Agreement.

4.5 Termination upon Delay

Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of 180 (one hundred and eighty) days from the Execution Date or the extended period provided in accordance with this Agreement, then all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire and the Agreement may be terminated by the non-defaulting Party. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security or the Bid Security, as the case may be, of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

Article 5 Obligations of the Concessionaire

5.1 General Obligations of the Concessionaire

(a) Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project, procure finance for and undertake the development, engineering, procurement, equipping, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

(b) The Concessionaire shall arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities for the construction, development, operation and maintenance of the Project, including procuring connection for and supply of electricity, water, gas and other utilities as may be necessary or required for the operation of the Project. The Concessionaire shall obtain all Applicable Permits and comply with the conditions thereunder for the procurement and use of such infrastructure facilities and utilities.

(c) During the Concession Period, the Concessionaire shall obtain from the relevant Government Instrumentalities, the Applicable Permits (other than the Applicable Permits required to be obtained by the Authority under Clause 4.1.2) and keep in force and comply with the conditions of all Applicable Permits for the development, operation and maintenance of the Project and upon Termination, the transfer of the Project to the Authority.

(d) The Concessionaire shall comply with all Applicable Laws and conditions of all Applicable Permits (including keeping them valid and in force as required) while performing its obligations under this Agreement. Further, the Concessionaire shall ensure and procure that its Contractors, if any, comply with all Applicable Permits and Applicable Laws during their performance of any of the Concessionaire's obligations under this Agreement.

(e) Subject to the provisions of Clauses 5.1(a) and (b), the Concessionaire shall and shall procure that its Contractors, if any, shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

(f) The Concessionaire shall pay the Concession Fee to the Authority in accordance with Article 24.

(g) The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(i) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;

(ii) perform and fulfil its obligations under the Financing Agreements;

(iii) 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;

(iv) not do or omit to do any act, deed or thing which may in any manner violates any provision of this Agreement;

(v) adhere to Good Industry Practices for ensuring good quality of User experience and ensure that the Users are treated with due courtesy and consideration and provided with ready access to services and information;

(vi) ensure employment of the local population during the Concession Period in accordance with Clause 5.17;

(vii) procure registration and 5 Star /5 Star Deluxe Certification from the Department of Tourism, Government of India;

(viii) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement or Applicable Laws and Applicable Permits;

(ix) procure that all equipment and facilities comprising the Project are developed, operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice;

(x) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;

(xi) transfer the Project Assets to the Authority upon Termination in accordance with the provisions of this Agreement; and

(xii) undertake the Development Works in accordance with the international guidelines including GRIHA/ LEED/ Green Globe as provided in Schedule C.

5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement. Notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 Before finalisation, the Concessionaire shall submit to the Authority the drafts of all Project Agreements and the operation and maintenance contract (if any) 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 and observations, if any, to the Concessionaire. The Concessionaire shall appropriately consider all such comments/ observations. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For avoidance of doubt, it is agreed that the review and comments/ observations by the Authority on any Project Agreement or 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 Concessionaire of its obligations and/or liabilities under this Agreement in any manner whatsoever nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition,

replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-lease, sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.

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

5.2.6 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the Contractor and execution of the Project Agreement shall be subject to the prior approval of the Authority from national security and public interest perspective, and the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire and undertake that it shall not give effect to any such selection or contract without prior approval of the Authority. For avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

(a) The Concessionaire shall not undertake or permit any Change in Ownership except with the prior written approval of the Authority.

(b) Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that during the Concession Period:

(i) 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 25% (twenty-five per cent) or more of the total Equity of the Concessionaire; or

(ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

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

For the purposes of this Clause 5.3(b):

(i) the expression acquirer, control and person acting in concert shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the board of directors, as the case may be, of the Concessionaire;

(ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of the shares of the Concessionaire; and

(iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies, whether situated in India or abroad, the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five one per cent) of the Equity of the Concessionaire, shall constitute acquisition of control, directly or indirectly, of the board of directors of the Concessionaire.

5.4 Obligations relating to management of the Concessionaire

The Concessionaire shall not, without the prior written approval of the Authority, undertake or cause to be undertaken, any action for all or any of the following or any matter incidental or consequential thereto:

(a) to alter or add to the provisions of the memorandum of association;

(b) to alter or add to the articles of association;

(c) to change the name of the Concessionaire;

(d) to reduce the share capital;

(e) to commence any new lines of business;

(f) to consent to a director or his or her relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the Concessionaire;

(g) to make inter-corporate-loans and investments or guarantee or security (except where such security or payment is to be made to the Authority) to be given, if the aggregate amount thereof, exceeds the limit of 30% (thirty per cent) of the Concessionaire's paid-up share capital;

(h) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016;

(i) for various other matters pertaining to the winding up of the Concessionaire;

(j) any other matter which is required by the Companies Act to be passed by a special resolution of the shareholders of the Concessionaire; and

(k) to replace or terminate definitive agreement executed with O&M Member.

5.5 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Contractors and their sub-contractors shall be in accordance with Applicable Laws and subject to grant of Applicable Permits, including employment or residential visas and work permits. The Concessionaire shall obtain such Applicable Permits at its own cost and expense. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permit or approval by the Concessionaire or any of its Contractors or sub-contractors shall not constitute a Force Majeure Event, or allow any extension of time to the Concessionaire for performance of its obligations under this Agreement and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.6 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it or by its Contractors in the performance of its obligations under this Agreement are duly qualified and at all times properly trained with adequate and adequately skilled as per Good Industry Practice for their respective functions.

5.7 Obligations relating to medical aid

For providing aid and assistance in medical emergencies relating to the Resort and the Project Infrastructure, the Concessionaire shall set up and operate a medical aid post (the "**Medical Aid Post**") equipped to render first aid and to assist in accessing Emergency medical aid from hospitals in vicinity.

5.8 Obligations relating to aesthetic quality of the Resort

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Hotel Resort as per 5-star or 5-star equivalent Hotel, meeting certification standards for 5 Star/ 5 Star Equivalent Hotel or above category Hotel, as prescribed by Ministry of Tourism, Government of India. The Concessionaire shall mandatorily ensure inclusion of vernacular design elements, inclusive universal design standards and environmentally sustainable designs

in Resort and ensure integration with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements.

5.9 Sole purpose of the Concessionaire

The Concessionaire shall not, except with the prior written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than the business incidental or consequential to the provisions of this Agreement or any similar business related to eco-tourism resort and hospitality services.

5.10 Branding of Resort

The Concessionaire may, in its discretion, name or brand the Resort or any part thereof in accordance with the Applicable Laws and Applicable Permits.

5.11 Facilities for physically challenged and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, GOI or a substitute thereof and any policy issued by the concerned UT Administration, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Resort.

5.12 EHS Standards and L&FS Standards

5.12.1 The Concessionaire shall at all times and throughout the Concession Period (designing, development, construction, operation and maintenance) comply with Applicable Laws including the relevant Environmental, Health and Safety (the "**EHS**") rules and regulations and life and fire safety Standards (the "**L&FS Standards**").

5.12.2 The Concessionaire shall prepare and comply with the performance standards, including an environmental and sustainability plan stating how the Concessionaire intends to manage and mitigate risks in relation to EHS. Such performance standards shall take into consideration the principles set out in:

(a) National EHS regulations (http://www.moef.nic.in/ and others);

(b) Real Estate (Regulation and Development) Act, 2016;

(c) National Building Code of India published by BIS (http://www.bis.org.in/) and other statutory BIS standards applicable to projects of similar nature;

(d) L&FS Standards; and

(e) Any other relevant standards to comply with Good Industry Practices.

5.13 Obligations relating to Taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all Taxes, fees, levies, duties, cesses and all other statutory charges payable in respect of the Resort and Project Infrastructure. Provided, however, that all payments made by the Concessionaire with respect to GST levied on or in respect of any services provided by the Concessionaire to the Authority for and in respect of the Resort and the Project Infrastructure shall be paid by the Authority upon receipt of particulars thereof.

5.14 Obligations relating to Resort

(a) The Concessionaire shall at all times operate the Resort in accordance with the Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.

(b) The Concessionaire shall use the Project Site only for the development, operation and maintenance of the Resort and Project Infrastructure and any use thereof in violation of Applicable Laws or this Agreement shall constitute a Concessionaire's Event of Default.

(c) The Concessionaire shall use the open area reserved for parking for free parking of vehicles of the Users and shall not use such area for any paid parking.

(d) The Concessionaire shall complete the construction of the Resort to achieve Project COD in accordance with the provisions of Article 15.

(e) The Concessionaire shall employ trained personnel for providing Hospitality Services.

5.15 Website of the Resort

The Concessionaire shall also commission, operate and maintain a comprehensive website exclusively for the Resort (the "**Resort Website**"). The following information shall be provided on the website and updated on a real-time basis, among others:

(a) availability of the number of Keys in each category;

(b) Hospitality Services available at the Resort;

(c) tariff for the Keys of each category;

(d) availability of conference rooms and rooms for hosting events and the procedure to book them;

(e) facility for providing feedback, registering complaints etc.;

(f) address and contact information with email id and contact number; and

(g) information for tourists and activities.

5.16 Obligations relating to information

5.16.1 Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information to the Authority forthwith and in the manner and form required by the Authority.

5.16.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Authority proposes to publish, the Concessionaire shall provide such comments to the Authority in the manner and form required by the Authority.

5.17 Obligations relating to employment of locals

The Concessionaire shall make necessary efforts to employ locals to the extent possible by providing necessary skill training.

5.18 Obligations relating to other charges

The Concessionaire shall make timely payments for all utility services in respect of the Project Site, including but not limiting to water, sewage, electricity, telecommunication, internet and cable charges etc.

Article 6 Obligations of the Authority

6.1 General Obligations of the Authority

(a) The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.

(b) Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform the following:

(i) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project, subject to the Concessionaire submitting its applications complete in all respect in a timely manner. The Authority agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Concessionaire;

(ii) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;

(iii) transfer the Project Site on leave and license basis free from Encumbrance to the Concessionaire and ensure that no barriers are erected or placed on or about the Project Site and/or Resort and Project Infrastructure by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of Safety Requirements, Emergency, national security, or law and order;

(iv) not do or omit to do any act, deed or thing which may in any manner violate the provisions of this Agreement;

(v) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;

(vi) upon written request from the Concessionaire, execute the Substitution Agreement; and

(vii) upon written request from the Concessionaire and subject to the provisions of Clause 5.5, provide reasonable assistance to the Concessionaire at the Concessionaire's cost and expense and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements. No such assistance or lack thereof by the Authority shall absolve the Concessionaire of its obligations under this Agreement or amount to Force Majeure under this Agreement.

Notwithstanding anything in this Article, the Authority shall not be required to provide any financial support or financial assistance to the Concessionaire.

6.2 Obligations relating to refinancing

Without prejudice to any rights or remedies of the Authority under this Agreement or otherwise, upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government Instrumentality, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing. Provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority and subject to the condition that the refinancing shall not result in any Encumbrance on the Project Site, which consent shall not be unreasonably withheld. For avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed by no later than 1 (one) year prior to the expiry of the Concession Period.

Article 7 Representations, Warranties And Undertakings

7.1 Representations, warranties and undertakings of the Concessionaire

The Concessionaire represents, warrants and undertakes to the Authority that:

(a) it is duly organised and validly existing under the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(b) it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(c) it has duly executed O&M Agreement for a period of 5 (five) years from COD, with an entity having the requisite branding, operations and maintenance experience, relating to the performance of O&M obligations in accordance with the provisions of the Concession Agreement[4];

(d) 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;

(e) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(f) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(g) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(h) the information furnished in the Bid and as updated on or before the Execution Date is true and accurate in all respects as on the Execution Date;

(i) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(j) 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, Government Instrumentality or other authority, the outcome of which may result

[4] the text to be replaced with DELETED in case there is no O&M Member

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;

(k) 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;

(l) 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;

(m) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the Selected Bidder or Consortium Members, together with {its or their} Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement; and that no Member of the Consortium whose technical and financial capacity was evaluated; for the purpose of qualification and short-listing in response to the Request for Proposal shall, during 2 (two) years commencing from Project COD, hold less than 26% (twenty six per cent) of such Equity which shall also be no less than 5% (five per cent) of the Total Project Cost; except for O&M Member whose experience is considered for claiming O&M experience; subject to compliance with requirements for submission of undertaking and definitive O&M agreement executed with such O&M Member;

(n) the {Selected Bidder/Consortium Members} and {its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

(o) the {Selected Bidder/Consortium Members} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(p) 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 acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any Person, save and except as expressly provided in this Agreement;

(q) no representation or warranty given by it contained herein or in any other document furnished by it to the Authority, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;

(r) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering

into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;

(s) all information provided by the Selected Bidder/ Consortium Member in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;

(t) agree that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts;

(u) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings; and

(v) further representations as may be added depending on the specific circumstances of the Concessionaire.

7.2 Representations, warranties and covenants of the Authority

The Authority represents, warrants and covenants to the Concessionaire that:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

(b) it has taken all necessary actions under 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 this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement; and

(f) it has good, legal and valid right and title to the Project Site and has the power and authority to handover the Project Site to the Concessionaire for the development of the Project in accordance with the provisions of this Agreement.

7.3 Disclosure

(a) 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 it. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of a Party under this Agreement.

(b) Neither the Authority nor any of its agents or employees shall be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:

(i) any inaccuracy, omission, unfitness for any purpose of inadequacy of any kind whatsoever in the data disclosed by the Authority to the Concessionaire in relation to the Project; and/or

(ii) any failure to make available to the Concessionaire any materials, documents, drawings, plans or other information relating to the Project.

Article 8 Disclaimer

(a) The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of Users and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

(b) The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause (a) of Article 8 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, Associates or any person claiming through or under any of them.

(c) The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause (a) of Article 8 above shall not vitiate this Agreement or render it voidable.

(d) In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause (a) of Article 8 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause (d) of Article 8 shall not prejudice the disclaimer of the Authority contained in Clause (a) of Article 8 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

(e) Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III: Development and Operation

Article 9 Performance Security

9.1 Performance Security

(a) The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority within 30 (thirty) days from the Execution Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to **INR 4,65,00,000/- (Indian Rupees Four Crore Sixty-Five Lakh Only)** substantially in the format set forth in Schedule F (the "**Performance Security**"). The Concessionaire shall maintain and keep in force the Performance Security for the entire duration of the Performance Security Period in accordance with this Article 9. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

(b) Notwithstanding anything to the contrary contained in this Agreement, in the event that the Performance Security is not provided by the Concessionaire within the above specified period, the Authority shall have the right to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent or failure to make any payment which becomes due and payable to the Authority under and in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable as liquidated damages from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent or failure to pay such amounts which are due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement. Upon such encashment and appropriation of the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 32. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in in accordance with Article 32.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of 6 (six) months from the Project COD (the "**Performance Security Period**"); provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement.

Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3 and subject to the creation of Deemed Performance Security in accordance with Clause 9.4, the Authority shall release the Performance Security forthwith.

9.4 Deemed Performance Security

The Parties expressly agree that at least 15 (fifteen) days prior to release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for the same amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire remaining Concession Period (the "**Deemed Performance Security**"). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Article 26, constitute the first and exclusive charge on an equivalent balance in the Project Account and the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Authority shall have the first and exclusive charge, including to the exclusion of the Senior Lenders, and shall be entitled to appropriate any amount therefrom as if it is an appropriation from the Deemed Performance Security under Clause 9.5. For avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Project Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

Upon any amounts becoming due and payable by the Concessionaire to the Authority under and in accordance with the terms of this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the amounts due and payable. For avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6 References to Performance Security

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

Article 10 Right of Way

10.1 The Project Site

The site of the Resort and the Project Infrastructure shall comprise the land as described in Schedule A, and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire on a leave and licensee basis under and in accordance with this Agreement (the "**Project Site**").

10.2 License, Access to the Project Site

10.2.1 The Authority hereby grants access to the Project Site to the Concessionaire for carrying out surveys, investigations and soil tests of the Project Site that the Concessionaire may deem necessary prior to the Appointed Date, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of the survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Project Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and license rights in respect of all the land comprising the Project Site which is described in Schedule A. The Project Site shall be handed-over to the Concessionaire and provided on an 'as is where is' basis, free of any Encumbrances, to develop, operate and maintain the Project, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the Project Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The license, access, Right of Way and all other rights to the Project Site granted under this Agreement by the Authority to the Concessionaire shall always be subject to existing rights of way.

10.2.4 It is expressly agreed that the Concessionaire's rights to the Project Site shall terminate automatically and forthwith, without the need for any action to be taken by the Authority, upon the Termination of this Agreement for any reason whatsoever. For avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Project Site by the Concessionaire or its Contractors, the rights of the Concessionaire in respect of the Project Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the rights granted hereunder at any time after the Concession Period has expired or has been terminated in terms hereof, whichever is earlier, a sufficient proof of which shall be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

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

10.3 Procurement of the Project Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time but in any event no later than 10 (ten) days prior to the Appointed Date, inspect the Project Site and prepare a memorandum containing an inventory of the Project Site including the vacant land, buildings, structures, road works, trees and any other immovable property on or attached to the Project Site, free from any Encumbrance. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Project Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.1, be deemed to constitute a valid Right of Way to the Concessionaire for free and unrestricted use and development of the Project Site which is vacant and free from any Encumbrance during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For avoidance of doubt, it is agreed that rights, including the Right of Way with respect to the parts of the Project Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2 In case of any dispute between the Concessionaire and the Authority in relation to the survey of the Project Site and the Appendix, the decision of the Authority shall prevail and shall be binding on the Concessionaire.

10.3.3 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Project Site required and necessary for the Resort and Project Infrastructure. For avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the development of the Resort and Project Infrastructure.

10.3.4 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Project Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expense.

10.3.5 Upon receiving Right of Way to and in respect of any land included in the Appendix, the Concessionaire shall complete the Development Works in accordance with the Project Completion Schedule set forth in Schedule G.

10.3.6 The Authority shall procure any additional land that may be required for the Project or for work specified in Change of Scope Order issued under Article 16, in accordance with the provisions of this Agreement, and upon procurement thereof, such land shall form part of the Project Site; provided that no land to be acquired by the Authority hereunder shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with accordingly. For avoidance of doubt, the Parties agree that any land required for the Project, in addition to the land included in Schedule A, shall be acquired at the sole discretion of the Authority and the Concessionaire shall have no right to claim in the event the Authority declines any such acquisition in whole or in part.

10.4 Project Site to be free from Encumbrances

The Project Site shall be made available to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Project Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Project Site shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Project Site.

10.5 Protection of Project Site from encroachments

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

10.6 Special or temporary Right of Way

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

10.7 Access to the Authority, Independent Expert

The Right of Way and right to the Project Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, its representatives or authorised personnel, the Independent Expert and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological and Archaeological finds

It is expressly agreed that geological or archaeological rights do not form part of the rights granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any right or interest in the underlying fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such right, interest and property on or under the Project Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For avoidance of doubt, it is agreed that:

(a) any reasonable expense incurred by the Concessionaire hereunder shall be reimbursed by the Authority provided that prior approval has been granted by the Authority on the estimate of the expense submitted by the Concessionaire; and

(b) if required, the Authority shall, at its sole discretion, grant reasonable extension of the Project Completion Schedule for any delay caused as a direct consequence of any discovery.

10.9 Development of Project Site

The Concessionaire may landscape and develop the Project Site and regulate the use thereof in accordance with the Good Industry Practice and in conformity with the provisions of this Agreement.

10.10 Permitted Use

The Concessionaire shall use or cause to be used any or all part of the Project Site for operating, managing and maintaining the Resort and Project Infrastructure as approved for the applicable category of hotels by the Department of Tourism, Union Territory of Andaman and Nicobar Islands and in accordance with Applicable Laws and Applicable Permits. Any use of the Project Site in violation thereof shall constitute a Concessionaire Default under this Agreement.

Article 11 Utilities and Associated Roads

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the Government Instrumentalities owning the existing roads, Right of Way or utilities, on, under or above the Project 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 relevant Government Instrumentality. Further, the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any Right of Way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws, provisions of Applicable Permits and with the 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 Project Site, if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Resort and/or the Project Infrastructure. The cost of such shifting shall be borne by the Concessionaire, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 Felling of Trees

The Authority shall assist the Concessionaire in procuring the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Resort and the Project Infrastructure. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall in the sole discretion of the Authority, be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority.

Article 12 Development of Resort and Project Infrastructure

12.1 Obligations relating to Development Works

12.1.1 Prior to the commencement of Development Works, the Concessionaire shall, along with the Drawings:

(a) submit to the Authority and the Independent Expert its 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;

(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; and

(c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits.

12.1.2 The Concessionaire before commencement of Development Works, shall inform the Authority of its development plan related to the project including compliances adherence to conditions of the CRZ Clearance, pollution control board, demolition of any structure(s), if any on Project Site, safe disposal of the debris, etc. at least 10 days prior to commencement of the said work. The Concessionaire shall if deemed fit may consider reusing whole or part of the debris for levelling or ground filling purposes.

12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Resort and Project Infrastructure, the following shall apply:

(a) the Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, the copies of all Drawings to the Independent Expert for review. Such Drawings shall be prepared for a Resort of not less than **35 Keys**, taking into account the capacities envisaged under the Mandatory Development Obligation;

(b) by submitting the Drawings for review to the Independent Expert, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering are in conformity with the Scope of the Project, the Specifications and Standards, Applicable Laws and Good Industry Practice;

(c) within 15 (fifteen) days of the receipt of the Drawings, the Independent Expert shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Expert on the Drawings submitted pursuant hereto beyond the specified period and may begin or continue Development Works at its own discretion and risk;

(d) if the aforesaid observations of the Independent Expert indicate that the Drawings are not in conformity with the Scope of the Project and the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Expert

for review within 7 (seven) days. The Independent Expert shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;

(e) no review or observation of the Independent Expert and/or its failure to review or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Expert or the Authority be liable for the same in any manner;

(f) without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the location and layout of the Resort, Project Infrastructure and general arrangement drawings thereof and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply *mutatis mutandis* to the review and comments thereunder;

(g) within 90 (ninety) days of the Project COD, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and its editable digital format or in such other medium as may be acceptable to the Authority, reflecting the Resort and the Project Infrastructure, as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Resort and Project Infrastructure and setback lines, if any, of the buildings and structures forming part of the Project. It is clarified that the Concessionaire shall submit the Drawings in accordance with Schedule D.

12.3 Construction and Development of Project

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake development of the Project on the Project Site as specified in Schedule B, and in conformity with the Specifications and Standards set forth in Schedule C. The Concessionaire shall undertake the Mandatory Development Obligations, where the Development Works shall commence from the Appointed Date and shall be completed in accordance with the Project Completion Schedule as set forth in Schedule G.

With respect to development of the number of the Keys in the Project, the Concessionaire shall have the option to undertake the development of the threshold number of **70 Keys** on the Project Site, (the "**Threshold Value of Keys**") as per the provisions of this Agreement. The Concessionaire shall have to develop specified number of keys as per Clause 15.1.1 during the Construction Period as mandatory development obligations (the "**Mandatory Development Obligations**"), along with development of supporting facilities and infrastructure as specified in Schedule B. The development of the remaining number of Keys can be carried out as per the provision of Clause 12.6.1, which will be the sole decision of the Concessionaire.

12.3.2 The Concessionaire shall develop and construct the Project in accordance with the Project Completion Schedule set forth in Schedule G. In the event that the Concessionaire fails to achieve any Project Milestone within 30 (thirty) days from the date set forth for such Project Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons solely and directly attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved up to a maximum of 20% (twenty per cent) of the amount of Performance Security; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule G has been amended as above; provided further that in the event Project COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority

to the Concessionaire, but without any interest thereon. For avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, or otherwise including the right of Termination thereof.

12.3.3 In the event that the Development Works pertaining to the Mandatory Development Obligation is not completed within 180 (one hundred and eighty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement. Without prejudice to the Authority's rights under this Agreement and/or any other right that it may have under Applicable Law or equity, the Authority may in its sole discretion choose not to terminate this Agreement after the said period of 180 (one hundred and eighty) days and allow for a weekly extension beyond such period of 180 (one hundred and eighty) days; provided that the Concessionaire agrees and pays in advance, the Damages calculated in accordance with Clause 12.3.2 above, for each day of such extension. To the extent that the Authority has agreed to allow for an extension and the Concessionaire has paid the Damages in advance as stated above, the Authority shall not terminate this Agreement in accordance with the provisions of this Clause 12.3.3. Notwithstanding the foregoing, the Parties agree that this Article shall not prejudice, in any manner whatsoever, the Authority's right of Termination under any other provision of this Agreement.

12.4 Tests

12.4.1 No later than 30 (thirty) days prior to the likely completion of the Development Works, the Concessionaire shall notify the Independent Expert of its intent to subject the Resort and Project Infrastructure to Tests. The date and time of each of the Tests shall be determined by the Independent Expert in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Expert may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Expert failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates, but not less than 10 (ten) days' notice to the Independent Expert.

12.4.2 All Tests shall be conducted in accordance with Schedule H at the cost and expense of the Concessionaire. The Independent Expert shall observe, monitor and review the results of the Tests to determine compliance of the Resort and Project Infrastructure with the Specifications and Standards and if it is reasonably anticipated or determined by the Independent Expert during the course of any Test that the performance of the Resort and/or Project Infrastructure or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Expert shall provide to the Concessionaire and the Authority, copies of all Test data including detailed Test results. For avoidance of doubt, it is expressly agreed that the Independent Expert may require the Concessionaire to carry out or cause to carry out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Resort and Project Infrastructure with the Specifications and Standards.

12.5 Safety certification prior to Project COD

The Concessionaire shall, not later than 15 (fifteen) days prior to the likely Project COD, notify the Authority and the Independent Expert of the compliance or Safety Requirements and invite them to observe any or all the Tests that may be specified by the Independent Expert in accordance with Applicable Laws, Applicable Permits and Good Industry Practice to determine that the Resort and Project Infrastructure is safe for entering into commercial service, and the costs of such Tests shall be shared equally between the Concessionaire and the Authority;

provided that in case of failure in any Test requiring repetition thereof, the cost of such second or subsequent Test shall be borne entirely by the Concessionaire.

12.6 Optional Development Obligation

12.6.1 The Concessionaire shall have the right but not the obligation to develop any unutilised land which forms part of the Project Site for developing remaining number of the Keys[5], additional amenities/ ancillary facility for enhancing hospitality service provision, which may include permanent and temporary structures, permissible as per applicable building regulations, and is over and above development qualifying as Mandatory Development Obligations under this Agreement. Such development can be carried out any time after the Project COD during the period up to 5 (five) years prior to the expiry of the Concession Period (the "**Optional Development Obligation**"). In the event that the Concessionaire exercises its right to undertake the Optional Development Obligation, it shall do so at its own risk, cost and expense provided that such obligation does not affect the existing Resort and the Project Infrastructure. All the terms, conditions, rights and obligations of the Concessionaire in relation to construction and operation of the Mandatory Development Obligation including submission of Drawings in accordance with Clause 12.2 shall apply *mutatis mutandis* for the construction, development and operation of any facility as part of the Optional Development Obligation including, submission of periodic reports and other relevant documents to the Independent Expert under Article 13, Article 14, and Article 15.

(a) The Concessionaire shall also submit a copy of revised Financial Model with projected additional year on year Revenue from the Optional Development Obligations. The projected additional year on year Revenue shall be duly examined and certified by the Independent Expert.

(b) After completion of Optional Development Obligations, and for avoidance of doubt, the Concessionaire shall pay commensurate additional Revenue on yearly basis in compliance with Concession Fee payment obligations prescribed under Clause 24.1 of this Agreement in case of development of remaining number of Keys. The additional Revenue shall be deemed to be part of the Concession Fee for each year of the Concession Period starting from operationalization of the Optional Development Obligations.

12.6.2 It is clarified that in the event that the Authority approves the construction and development of any Optional Development Obligation proposed to be developed by the Concessionaire in accordance with Clause 12.6.1, the Authority shall be bound to perform all its obligations under this Agreement with respect to such Optional Development Obligation, including its obligations to pay Termination Payments to the Concessionaire in accordance with the provisions of this Agreement.

12.6.3 Further, it is clarified that in the event the Concessionaire exercises Optional Development Obligation, the Concessionaire will procure all necessary approvals/ permits including CRZ Clearances and Environmental Clearance, as applicable, for the additional build up area it wishes to develop under Optional Development Obligations, at its own cost and risk.

[5] Remaining number of Keys = Threshold number of Keys – Keys developed as MDO

Article 13 Monitoring of Development Works

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, within 7 (seven) days after the close of each month, furnish to the Authority and the Independent Expert a monthly report on progress of the Development Works and shall promptly give such other relevant information as may be required by the Authority and/or Independent Expert. The provisions of this Article 13 shall apply *mutatis mutandis* to the Development Works undertaken for the Mandatory Development Obligation and the Optional Development Obligation.

13.2 Inspection

During the construction of Development Works, the Independent Expert shall inspect the Resort and Project Infrastructure, at least once in 3 (three) months 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 Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Notwithstanding the foregoing, such inspection or submission of Inspection Report by the Independent Expert shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Development Works conform to the Agreement and Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out or cause to be carried out Tests, at such time and frequency and in such manner as may be specified by the Independent Expert from time to time in accordance with Good Industry Practice for quality assurance. The size of sample for such Tests shall, to the extent possible not exceed 10% (ten per cent) of the quantity and/or number of Tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the Tests in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. One half of the costs incurred on such Tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire. Provided however, that the Independent Expert may, instead of carrying out the Tests specified hereunder, at its option decide to witness, or participate in, any of the Tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Expert for discharging its functions hereunder. For avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

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

the Tests carried out by the Concessionaire for its own quality assurance in accordance with Applicable Laws, Applicable Permits and Good Industry Practice. It is also agreed that a copy of the results of such Test shall be sent by the Concessionaire to the Independent Expert forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.1, if the rate of progress of Development Works is such that the Mandatory Development Obligation is not likely to be completed within the time period stipulated, the Concessionaire shall inform the Independent Expert and the Authority at fortnight intervals, in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project COD.

Article 14 Completion Certificate

14.1 Provisional Certificate

If the Project is complete and the Concessionaire certifies in writing that the Tests are successful and all the facilities required for rendering Hospitality Services, can be safely and reliably placed in commercial operation, even though certain works or things forming part thereof which do not affect the use and safety of the Project, or any part of the Project, for their intended purpose, are outstanding and are to be completed (the "**Punch List**"), the Independent Expert may, at the request of the Concessionaire, issue a provisional completion certificate, specifying the details of the Punch List which the Concessionaire shall be required to complete before issuance of a Completion Certificate (the "**Provisional Certificate**"). Upon issuance of such Provisional Certificate the Concessionaire shall be entitled to demand and collect the Revenue for rendering such Hospitality Services in accordance with this Agreement.

14.2 Completion Certificate

14.2.1 List of all Punch List items appended to the Provisional Certificate, if any, shall be completed by the Concessionaire within 180 (one hundred and eighty) days of the date of issue of such Provisional Certificate. When Concessionaire considers it has achieved completion of Punch List, it must request the Independent Expert for issuance of the Completion Certificate.

14.2.2 Within 30 (thirty) days after receiving the request and upon being satisfied by the documents provided by the Concessionaire, the Independent Expert shall inspect the Project for Punch List items and either:

(a) issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule I (the "**Completion Certificate**"), if the Punch List items as provided under the Provisional Certificate have been completed; or

(b) issue a written notice to Concessionaire listing the Punch List items remaining to be completed along with the timelines to complete them.

14.2.3 In the event the Concessionaire fails to complete the Punch List items within the timeline mentioned in this Clause, then the Authority without prejudice to any of its rights under this Agreement including Termination thereof, may waive of completion of such Punch List items. Authority's decision in this regard shall be at its discretion and shall be final and binding.

14.3 Deemed Completion Certificate

In the event that upon successful determination by the Independent Expert of the successful completion of all Tests in accordance with Clause 12.4 above, the Independent Expert fails to issue the Completion Certificate to the Authority and the Concessionaire within the time specified in Clause 14.2, at the end of such period, such Completion Certificate shall be deemed to have been issued to the Authority and the Concessionaire in accordance with the provisions of this Clause 14.2 (the "**Deemed Completion Certificate**").

14.4 Rescheduling of Tests

If the Independent Expert certifies to the Authority and the Concessionaire that it is unable to certify the completion of the facilities required for rendering Hospitality Services or issue the Completion Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire at its own cost

and expense, shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable. The provisions of this Clause 14.2 shall apply *mutatis mutandis* to such re-scheduled Tests.

Article 15 Entry into Commercial Service

15.1 Commercial Operation Date

15.1.1 The Mandatory Development Obligations shall be deemed to be complete when the Resort with **35 Keys** have been completed and Completion Certificate or the Deemed Completion Certificate, as the case may be, in respect of the Resort, is issued under the provisions of Article 14, and accordingly the commercial operation date, shall be the date on which such Completion Certificate or the Deemed Completion Certificate, as the case may be, is issued (the "**Project COD**"). The Mandatory Development Obligations shall enter into commercial service on Project COD whereupon the Concessionaire shall be entitled to provide Hospitality Services and charge Revenue from the Users, subject to compliance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement.

15.1.2 In the event the Concessionaire undertakes development of additional Keys in the Project pursuant to the Project COD, such additional Keys developed as per provision of Clauses 12.6.1 and/or 21.3, shall enter into commercial operations upon issuance of the Completion Certificate or the Deemed Completion Certificate, as the case may be, and the Concessionaire shall be entitled to provide Hospitality Services and charge Revenue from the Users for such Keys from the date of the Completion Certificate or the Deemed Completion Certificate, subject to compliance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement.

15.1.3 Notwithstanding anything to the contrary contained in this Article 15, Project COD shall always be subject to receipt of 5-Star or equivalent certification issued by Ministry of Tourism, Government of India and in case such certification is not received, for whatsoever reason, Project COD shall not be declared.

Article 16 Change of Scope

16.1 Change of Scope

(a) If the Concessionaire determines at any time that any additional works or services necessary for providing safer or improved Hospitality Services are required and which are not included in the Scope of the Project as contemplated by this Agreement, it shall by notice in writing require the Authority to consider such additional works or services (the "**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, and initiate proceedings therefore in accordance with this Article 16 or inform the Concessionaire in writing the rejection of such Change of Scope.

(b) Any works or services which are carried or provided by and under and in accordance with this Article 16 shall form part of the Resort and Project Infrastructure and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

16.2.1 Upon receipt of a request for Change of Scope (the "**Change of Scope Request**"), from the Concessionaire, the Authority may request from the Concessionaire such information as is necessary, together with preliminary Documents 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) its likely impact on the Gross Revenue and profitability of the Project.

16.2.2 Upon receipt of information set forth in Clause 16.2.1, if the Authority decides to approve the Change of Scope, it shall convey its approval to the Concessionaire (the "**Change of Scope Order**").

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

16.3 Restrictions on certain works

16.3.1 Notwithstanding anything to the contrary contained in this Article 16, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay the Project COD.

16.4 Financing by the Concessionaire

Notwithstanding anything to the contrary contained in this Agreement, any Change of Scope by the Concessionaire and its subsequent implementation shall be without any financial liability towards the Authority and the Concessionaire shall be solely responsible for all costs and expenses incurred as a result of carrying or implementing any such Change in Scope.

Article 17 Operation and Maintenance

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Resort and the Project Infrastructure in accordance with this Agreement either by itself, and/or through O&M Member and if required, modify, repair or otherwise make improvements to the Resort and the Project Infrastructure to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

(a) ensuring safe, hygienic and efficient Hospitality Services and maintaining a high standard of cleanliness and hygiene in the Resort;
(b) undertaking operation and maintenance of the Resort in an efficient, coordinated and economical manner, in compliance with the Specification and Standards;
(c) undertaking operation and maintenance of the Project Infrastructure in accordance with the Specification and Standards, operation and maintenance manual provided by the OEMs and the terms of this Agreement to ensure that the Concessionaire is able to optimally use the Project Infrastructure during the Operation Period such that the Project is self-sustained;
(d) carrying out periodic preventive maintenance of the Resort and Project Infrastructure;
(e) undertaking routine maintenance including prompt repairs of all elements and components of the Resort and Project Infrastructure so as to ensure compliance with the Maintenance Requirements and the Specification and Standards;
(f) undertaking major maintenance, replacement of components and parts, repairs to structures, and repairs and development of associated facilities, including the Project Infrastructure;
(g) providing round-the-clock security at the Project Site and preventing with the assistance of the concerned law enforcement agencies, any encroachments on or authorised entry on the Project Site;
(h) protection of environment and provision of equipment and materials therefor in accordance with the Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice;
(i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Resort and Project Infrastructure and for providing Hospitality Services in conformity with Good Industry Practice;
(j) maintaining a public relations unit to interface with and attend to suggestions from the Users, Government Instrumentality, media and other agencies;
(k) complying with the Safety Requirements; and
(l) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement.

17.1.2 The Concessionaire shall remove promptly from the Project Site 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 Resort and Project Infrastructure in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice and Applicable Laws and Applicable Permits, all stretches of approach roads, or other structures situated on the Project Site.

17.1.4 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Authority. For avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to and independent of the Damages payable under this Agreement. In the event the Authority is required to pay any penalty to the Government Instrumentality under any Applicable Laws then the Authority shall be entitled to be indemnified by the Concessionaire under Article 37.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Resort and the Project Infrastructure are maintained in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the "**Maintenance Requirements**"), as more specifically set out in Schedule J.

17.3 Safety, breakdowns and accidents

17.3.1 The Concessionaire shall ensure safe conditions at the Project Site for the Users and Authority, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures in conformity with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In the event of the occurrence of any damage, breakdowns and/or accidents, the Concessionaire shall undertake removal of obstruction and debris without delay.

17.3.2 The Concessionaire's responsibility for rescue operations in the Resort and Project Infrastructure shall include safe evacuation of all Users, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction, which may endanger or interrupt the Hospitality Services.

17.4 Authority's right to take remedial measures

In the event the Concessionaire does not maintain, repair and/or rectify any defects and deficiencies in the Resort and/or the Project Infrastructure or any part thereof in conformity with the Maintenance Requirements and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or notice in this behalf from the Authority or the Independent Expert, including any extension provided by Authority at its own discretion; as the case may be, the Authority, 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 Concessionaire, and to recover its cost from Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For avoidance of doubt, the rights of the Authority under this Clause 17.4 shall be without prejudice to its rights and remedies under Clause 17.3.

17.5 Overriding powers of the Authority

17.5.1 If in the opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and in particular, the Maintenance Requirements, and such breach is causing or is 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 Concessionaire to take reasonable measures immediately for removing such hardship or danger as the case may be.

17.5.2 In the event the Concessionaire, upon notice under Clause 17.5.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for 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 in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Article 17 along with the Damages specified therein.

17.6 Restoration of loss or damage to the Resort and Project Infrastructure

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

17.7 Modifications to the Resort and Project Infrastructure

The Concessionaire shall not carry out any material modifications to the Resort and the Project Infrastructure, save and except where such modifications are necessary for the Resort and the Project infrastructure to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Expert of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions which the Independent Expert may make within 15 (fifteen) days of receiving Concessionaire's proposal. This Clause 17.7 shall also apply to Development Works undertaken as Optional Development Obligations. For avoidance of doubt if the modification has a Material Adverse Effect on the safety thereof or the safety of Users and other persons, the same shall be subjected to Tests and certification specified in Clause 13.3. For avoidance of doubt all modifications hereunder shall comply with the safety requirements, Specifications and Standards, Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice.

17.8 Excuse from performance of obligations

17.8.1 The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Resort is not available to Users, or the Project Infrastructure is not available for the use of the Resort on account of any of the following for the duration thereof:

(a) a Force Majeure Event;

(b) measures taken to ensure the safe use of the Resort and Project Infrastructure, except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

(c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Resort or Project Infrastructure.

17.8.2 Provided, that any such event and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Expert without any delay.

17.8.3 Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Resorts open to Users provided that Hospitality Services can be provided safely.

Article 18 Safety Requirements

18.1 Safety Requirements

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice for securing the safety of the Resort, Project Infrastructure, safety of the Users and other persons present in the premises. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Resort and the Project Infrastructure and shall comply with the safety requirement set forth in Schedule K (the "**Safety Requirements**").

18.2 Expenditure on Safety Requirements

Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

Article 19 Monitoring of Operation and Maintenance

19.1 Annual Status Reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of every Accounting Year, furnish to the Authority and the Independent Expert an annual report, in a mutually agreed format, stating in reasonable detail the condition of the Resort and Project Infrastructure, including its compliance or otherwise with the Maintenance Requirements and the Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Expert. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Inspection

The Independent Expert shall inspect the Resort and the Project Infrastructure at least once a year. 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 and Safety Requirements and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.3 Tests

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

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause19.3 and furnish a report in respect thereof to the Independent Expert and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Resort and Project Infrastructure into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4.2 shall be repeated until the Resort and the Project Infrastructure conforms to the Maintenance Requirements.

Article 20 Safety and Security

20.1 Security obligations of the Concessionaire

20.1.1 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Resort and the Project Infrastructure and shall be responsible for the security arrangements for the Resort in order to maintain safe and orderly conduct of its business and the security thereof.

20.1.2 The Concessionaire shall install and operate a closed circuit television system to monitor the Resort and such other parts of the Resort as may be necessary and expedient for safe operations of the Resort in accordance with Good Industry Practice.

20.1.3 The Concessionaire shall engage and depute trained personnel for maintaining the security and safety of Users inside the Project Site in accordance with Good Industry Practice.

20.1.4 The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority's actions or the actions of any organization authorised by the Authority other than those resulting from willful or grossly negligent acts and omissions of the Authority. The Authority agrees that it shall cause the relevant organization to take such actions as reasonably deemed necessary by them for the security of the Resort, without unduly disrupting the operations of the Resort or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organization authorised by the Government in discharge of their obligations for and in respect to the security of the Resort and the Project Infrastructure.

20.1.5 The Concessionaire shall abide by and implement any instructions of the Authority and the Independent Expert for enhancing the security within and around the Resort and Project Infrastructure. The Concessionaire shall not be entitled to any compensation for the disruption of its operations or loss or damage resulting from the implementation of any instruction of the Authority or the Independent Expert.

Article 21 Hospitality Services

21.1 Quality of Hospitality Services

(a) The Concessionaire shall ensure that all Users in the Resort receive quality services in accordance with the provisions of this Agreement and Good Industry Practices.

(b) The Concessionaire shall procure and ensure that all personnel engaged in the provision of Hospitality Services including lifeguards, are suitably qualified and receive sufficient training and instructions in accordance with Good Industry Practice and standards of their relevant professional body, if any, for execution of their duties, which shall at a minimum, be compliant with the performance standards set out at Schedule C. The Concessionaire shall regularly supervise and monitor the performance of the personnel to ensure that they comply with this Agreement, Applicable Laws and Good Industry Practice.

(c) The Concessionaire shall address to any complaints received by the Users in a prompt and effective manner and take all reasonable efforts to accommodate the requests of the Users.

21.2 Special Services

The Concessionaire agrees and undertakes to develop special services as follows (**Specialties**), as per 5-Star hotel standards and Good Industry Practice:

(a) arranging pickups and drops to and from the Resort;

(b) maintaining boats to be used by the Users to the extend allowed under the Applicable Laws;

(c) maintaining laundry services;

(d) maintaining a gymnasium for the Users with high end equipment as per Good Industry Practice;

(e) maintaining a swimming pool for the Users; and

(f) maintaining spa facility, saloon, retail stores and recreational activities.

For the avoidance of doubt, it is clarified that the Specialties specified in Clause 21.2 are the minimum Specialties to be provided and the Concessionaire may, at its sole discretion, cost and expense, provide any other additional services in accordance with the terms of this Agreement. Revenue from provision of such services shall be considered part of the Gross Revenue from the Project. Revenue from provision of such services shall considered part of the Gross Revenue from the Project.

21.3 Additional Services

21.3.1 Notwithstanding anything to the contrary contained herein, the Concessionaire shall be entitled to undertake any services which become permissible by any Change in Law. In the event that the Concessionaire intends to undertake any such services, it shall obtain all necessary applicable permits in accordance with such Change in Law and comply with such Change in Law throughout the Concession Period.

21.3.2 Further, the Concessionaire while seeking permission from the Authority of its proposal to undertake Additional Services, shall also submit projected additional year on year Revenue from the Additional Services, if applicable as per provision of the Clauses 21.3.3 and Article 1.

The projected additional year on year Revenue shall be duly examined and certified by the Independent Expert.

21.3.3 After completion of Additional Services, the Concessionaire shall pay 15% (fifteen percent) of the additional Revenue on yearly basis. The additional Revenue shall be deemed to be part of the Concession Fee for each year of the Concession Period starting from operationalization of the Additional Services; and it shall be payable as per the provisions of the Article 24 of this Agreement.

21.4 Hotel Management System

All reservations, bookings and invoicing for the Project shall be undertaken through a Hotel Management System (HMS System) implemented by the Concessionaire.

Article 22 Independent Expert

22.1 Independent Expert

The Authority shall appoint, no later than 90 (ninety) days from the Execution Date, a third party agency (the "**Independent Expert**") for the Concession Period. Provided that the Authority shall have the right to appoint any of its agencies or departments to monitor the Project until the Independent Expert is appointed in accordance with this Clause 21.1. The provisions of this Agreement with respect to the Independent Expert shall apply *mutatis mutandis* to such agency or department until the Independent Expert is appointed in accordance with the provisions of Schedule L and this Clause 21.1 and such provisions shall be repeated after expiry of each appointment.

22.2 Duties and functions

(a) The Independent Expert shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule L.

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

(c) A true copy of all communications sent by the Authority to the Independent Expert and by the Independent Expert to the Authority shall be sent forthwith by the Independent Expert to the Concessionaire.

(d) A true copy of all communications sent by the Independent Expert to Concessionaire and by the Concessionaire to the Independent Expert shall be sent forthwith by the Independent Expert to the Authority.

22.3 Authorised signatories

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

22.4 Remuneration

The remuneration, cost and expenses of the Independent Expert shall be paid by the Authority, one-half of such remuneration, cost and expense shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

22.5 Termination

22.5.1 The Authority may, in its discretion, terminate the appointment of the Independent Expert at any time, but only after the appointment of another Independent Expert in accordance with Clause 21.1 above.

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

receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and the Independent Expert for an amicable resolution of the Dispute and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure in Article 39. In the event that the appointment of the Independent Expert is terminated hereunder, the Authority shall appoint forthwith another Independent Expert in accordance with Clause 21.1 above.

22.6 Dispute Resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Expert, 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 in Article 39.

Part IV: Financial Covenants

Article 23 Financial Close

23.1 Financial Close

23.1.1 The Concessionaire shall provide to the Authority 3 (three) copies of the Financial Package and Financial Model furnished by it to the prospective Senior Lenders. As and when such Financial Package is agreed with the Senior Lenders, with or without modifications, and such agreement is confirmed by the signing of the agreed Financial Package by both the Concessionaire and the Senior Lenders, a copy of the same shall be furnished by the Concessionaire to the Authority forthwith.

23.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire covenants with the Authority that it shall achieve Financial Close within 120 (one hundred and twenty) days from the Execution Date. If the Concessionaire shall fail to achieve Financial Close within the said 120 (one hundred and twenty) days period, the Concessionaire shall be entitled to a further period of 60 (sixty) days, subject to payment of Damages to the Authority for an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay beyond the said 120 (one hundred and twenty) day period. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith, without being liable in any manner whatsoever to the Concessionaire, if the Concessionaire fails to pay in advance the Damages to the Authority under and in accordance with this Clause.

23.1.3 Notwithstanding anything to the contrary contained in this Agreement, if the Financial Close does not occur within 180 (one hundred and eighty) days including the extended period as set forth in Clause 23.1.2 above, all rights, privileges, claims and entitlements, if any, of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Concessionaire. It is clarified that in such an event, notwithstanding anything contained herein or otherwise agreed between the Parties, the Authority shall not be liable to the Concessionaire in any manner whatsoever.

23.1.4 Upon Termination of this Agreement under Clauses 23.1.2 and 23.1.3, the Authority shall be entitled to encash the Performance Security or the Bid Security, as the case may be, and appropriate the proceeds thereof as Damages for failure to achieve Financial Close in accordance with this Clause 23.1.

23.2 Termination due to failure to achieve Financial Close

(a) Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 23.1.2 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

(b) Upon Termination under Clause 23.2 (a), the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.5. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

Article 24 Concession Fee

24.1 Concession Fee

24.1.1 In consideration of the grant of the Concession, the Concessionaire shall during the Concession Period , pay to the Authority by way of a fee (the "**Concession Fee**") in the manner laid down in this Article 24, which shall consist of the following components:

1. Fixed amount (the "**Annual Concession Fee"**), which shall be a sum of INR …….[6] per annum plus applicable taxes for the Accounting Year in which the Project COD is achieved. Thereafter for every subsequent Accounting Year, the Annual Concession Fee for that Accounting Year shall be the Annual Concession Fee for the previous Account Year increased by 5% (five per cent); and

2. **2.00% (Two per cent)** of annual Gross Revenue ("**Gross Revenue Share**") plus applicable taxes for each of the Accounting Year during the Operation Period of the Concession Period. The sum payable as Gross Revenue Share will be computed each Accounting Year, wherein the per cent threshold will be constant throughout the Operation Period.

24.2 Annual Concession Fee

24.2.1 The Concessionaire agrees to pay to the Authority, for every year of the Concession Period, commencing from the Project COD, a non-refundable Annual Concession Fee plus applicable Taxes; increased at 5% (five per cent) year on year basis. In the event the Concessionaire accrues Revenue from Optional Development Obligations, the Annual Concession Fee shall be increased in proportion to additional Keys commissioned by Concessionaire. The revised Annual Concession Fee amount shall be increased at 5% (five percent) year on year basis from subsequent years, until successful completion of the Concession Period or Termination of this Agreement.

24.2.2 The Concessionaire having developed additional number of Keys (over and above number of Keys as part of Mandatory Development Obligations defined under Clause 12.3.1) by exercising the rights provided under Clauses 12.6, and upon such Keys becoming operational, the Annual Concession Fee as per the Clause 24.2.1 shall be proportionately increased and become liable to be paid for each Accounting Year immediately from the date of commissioning of additional number of Keys (the "**Additional Annual Concession Fee**").

i.e. For instance, if the Keys commissioned post Project COD is 35 Keys and the Concessionaire is liable to pay INR 1.10 Crore as Annual Concession Fee in that accounting year; and in the same accounting year undertakes development works and operationalised additional 35 Keys in 6th month of that Accounting Year, the revised Annual Concession Fee amount payable shall be calculated proportionately by applying the formula:

Annual Concession Fee payable for originally commissioned Keys (INR 1.10 Crore) + {(Additional Keys Commissioned (35)/ original commissioned Keys (35)) x (Annual Concession Fee payable (INR 1.10 Crore) x Remaining Months in that Accounting Year (6/ 12))}, i.e. (1.10) + {(35/35)(1.10*(6/12))} = INR 1.65 Crore. For next year, the Fee shall be calculated as: ((70/35)*1.10)*1.05 = INR 2.31 Crore. For subsequent years, the fee shall be escalated by 05% (five percent) year on year basis from subsequent years, until Termination.*

[6] The Highest Annual Concession Fee will be the Bidding Parameter. The amount quoted by the Selected Bidder/ Concessionaire will be inserted here.

24.2.3 The Annual Concession Fee payable shall be deemed to be part of the Concession Fee for the purpose of this Agreement and shall be paid in the manner laid down in Clause 24.4.1.

24.3 Gross Revenue Share

24.3.1 The Concessionaire further agrees to pay to the Authority, for every year of the Concession Period, commencing from the Project COD, **2.00% (Two per cent)** of Gross Revenue earned by the Concessionaire in that Accounting Year. For avoidance of doubt, it is noted that all Revenues earned by the Concessionaire from the Project shall be included in computation of Gross Revenue Share, including Revenue earned from Optional Development Obligations, Hospitality Services, and Additional Services.

24.3.2 The Concessionaire shall maintain a separate record for monthly Revenue from all activities. The record will detail Tariff and other details of the Revenue generation and shall be audited and certified by the Statutory Auditor of the Concessionaire. The Revenue generation from such activities and corresponding records shall be reviewed by the Independent Expert on quarterly basis for assertion of the actual Revenue.

24.3.3 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Gross Revenue in an honest and faithful, depute its representatives to the Project Facilities and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary to ascertain the actual Revenues provided that such deputation of the Authority's representative shall not be for a period of more than 7 days in any continuous period of 180 days.

24.3.4 If the verification of Gross Revenue pursuant to this Article demonstrates that the Gross Revenue is more than the amount reported by the Concessionaire, the Authority shall, for the purpose of determining the Gross Revenue, be entitled to undertake sampling of quarterly Gross Revenue receipts for a continuous period of 3 (three) months. The Parties hereto agree that if the quarterly Gross Revenue varies from the quarterly Gross Revenue reported by the Concessionaire exceeds 1% (one percent) thereof, the difference between the computed quarterly Gross Revenue and the reported quarterly Gross Revenue shall be multiplied by 90 (ninety) days and the product thereof shall be paid as Damages by the Concessionaire to the Authority.

24.3.5 In the event of any Dispute relating to such sampling, the Dispute Resolution Procedure in terms of Article 39 shall apply. For avoidance of doubt, it is agreed that seasonal variations in Gross Revenue shall be determined by the Independent Expert on the basis of past trends and other relevant information and due weightage shall be assigned to such variations in computing the Gross Revenue payable under this Article.

24.4 Payment of Concession Fee

24.4.1 Payment of Annual Concession Fee

24.4.1.1 The Annual Concession Fee to be paid by the Concessionaire shall be due and payable within 15 (fifteen) days of the commencement of the Accounting Year. Provided that the Concession Fee for the First Accounting Year shall be paid within 15 (fifteen) days of the occurrence of the COD.

24.4.1.2 The Concessionaire shall, with each payment of the Annual Concession Fee submit: (a) a certificate that the amounts paid are correct and in accordance with the provisions of the Agreements; (b) details in respect of Taxes/ duties payable/ reimbursable in accordance with the provisions of this Agreement; (c) details in respect of other Damages payable in accordance with the provisions of this Agreement; and (d) net amount payable under the provisions of this Agreement.

24.4.2 Payment of Gross Revenue Share

24.4.2.1 The Gross Revenue Share of an Accounting Year to be paid annually by the Concessionaire shall be due and payable after the Annual Accounts of the respective Accounting Year has been audited and not later than 31st October of the next Accounting Year.

24.4.2.2 The Concessionaire shall, with each payment of the Gross Revenue Share submit: (a) a Certificate of Gross Revenue and Gross Revenue Share Computation certified by the Statutory Auditor for the respective Accounting Year; (b) a Statement duly certified by the Statutory Auditor of monthly Revenue from all activities; and record of Tariff and other details of the Revenue generation; and (c) details in respect of any income transactions of the respective Accounting Year that shall not be considered for computation of the Gross Revenue Share.

24.5 Delayed Payments

All amounts due and payable by the Concessionaire under the provisions of this Agreement shall be paid on or before the time period stipulated in Clause 24.4. In the event of delay beyond such period the Concessionaire shall pay interest for the period of delay, calculated at the rate specified in Clause 42.4.

24.6 Disputed Amounts

24.6.1 The Authority shall, within 10 (ten) days of receiving the Concession Fee, notify the Concessionaire of the disputed amounts along with details thereof (the "**Disputed Amounts**"). Within 7 (seven) days of receiving such notice, the Concessionaire shall present any information or evidence as may be reasonably required for determining that such Disputed Amounts are not payable. The Authority may, if necessary, meet a representative of the Concessionaire for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure in accordance with Article 39 shall apply.

24.6.2 If any amount is payable by either Party upon determination of a dispute regarding any Disputed Amount such amount shall be deemed to be payable on the date when it first became due and interest for the period of delay shall be due and payable at the rate specified in Clause 24.7.

24.7 Set-off

24.7.1 Except as provided in Article 25, the Concessionaire shall not be entitled to retain or set-off any amount due to the Authority by it, but the Authority may retain or set-off any amount owed to it by the Concessionaire under this Agreement which has fallen due and payable against any amount due to the Concessionaire under this Agreement.

24.7.2 If the payment or deduction of any amount pursuant to Article 24 is disputed, then any undisputed element of that amount shall be paid, and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure in Article 39.

Article 25 Tariff

25.1 Tariff Structure

25.1.1 The Concessionaire may determine the tariff structure for different categories of Keys and other services in such manner as it deems fit; provided however, that such tariffs shall not be combined with any facility or service that is not directly connected with the Resort.

25.1.2 The Concessionaire may, for occupancy of Keys in the Resort by Users, levy and recover such tariffs as it may determine from time to time and shall also be entitled to charge market related rates for other services such as telephone, telefax, laundry, food, beverages, liquor, recreation amenities (outdoor pool, health club, spa, sauna, fitness facility etc.), outdoor catering, vending machines, Wi-Fi services and any other service (the "**Associated Services**"). The Concessionaire may also recover rent or fee for use of commercial or other spaces of every description and kind, provided by the Concessionaire.

25.2 Service Charges

The Concessionaire may levy and recover an additional service charge for and in respect of any facility or service as it may deem fit.

25.3 Taxes and duties

All Taxes, duties, levies, cess, fees and duties shall be paid by the Concessionaire.

Article 26 Project Account

26.1 Project Account

26.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish a Project Account with a Bank (the "**Project Account Bank**") in accordance with this Agreement read with the Project Account Agreement.

26.1.2 The nature and scope of the Project Account are fully described in the agreement (the "**Project Account Agreement**") to be entered into amongst the Concessionaire, the Authority, the Project Account Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule M.

26.2 Deposits into Project Account

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

(a) all funds constituting the Financial Package;

(b) all Revenues from the usage of Project Facilities and its Associated Services;

(c) all payments by the Authority, if any; and

(d) All capital and / or revenue subsidy, if any, received by the Concessionaire from any Government Instrumentality.

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

26.3 Withdrawals during Concession Period

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

(a) all Taxes due and payable by the Concessionaire for and in respect of the Project.

(b) all payments relating to development of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

(d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

(e) Concession Fee due and payable to the Authority;

(f) monthly proportionate provision of Debt Service due in an Accounting Year;

(g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

(h) monthly proportionate provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;

(i) any reserve requirements set forth in the Financing Agreements; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

26.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 26.3.1, except with the prior written approval of the Authority.

26.4 Withdrawals upon Termination

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

(a) all Taxes due and payable by the Concessionaire for and in respect of the Project;

(b) 90% (ninety per cent) of Debt Due less Insurance Cover, excluding Subordinated Debt;

(c) Outstanding Concession Fee;

(d) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Concessionaire;

(e) retention and payments relating to the liability for defects and deficiencies set forth in Clause 34.1;

(f) outstanding Debt Service including the balance of Debt Due;

(g) outstanding Subordinated Debt;

(h) incurred or accrued O&M Expenses;

(i) any other payments required to be made under this Agreement; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-Clause (i) of this Clause 26.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 33.

26.4.2 The provisions of this Article and the instructions contained in the Project Account Agreement shall remain in full force and effect until the obligations set forth in Clause 26.4.1 have been discharged.

Article 27 Insurance

27.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, 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 Concessionaire 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 Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured. For avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

27.2 Insurance Cover

27.2.1 Without prejudice to the provisions contained in Clause 27.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

(a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;

(b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Resort and Project Infrastructure;

(c) the Concessionaire's general liability arising out of the Concession;

(d) liability to third parties for goods or property damage;

(e) workmen's compensation insurance; and

(f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (d) above.

27.3 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 27. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure in Article 39 shall apply.

27.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire 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 Concessionaire 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 Concessionaire to the Authority.

27.5 Remedy for failure to insure

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

27.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire 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.

27.7 Concessionaire's waiver

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

27.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall notwithstanding anything to the contrary contained in this Agreement, apply such proceeds towards payment of Damages and balance remaining, if any, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement in the Resort and Project Infrastructure, in accordance with the provisions contained in this behalf in the Financing Agreements.

27.9 Compliance with conditions of insurance policies

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

Article 28 Accounts and Audit

28.1 Audited accounts

28.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including the Revenues from room charges, restaurants, sale of food and provision of Associated Services, and all incomes derived or collected by it from or on account of the Resort and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the Revenue records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority only for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

28.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange

28.1.3 On or before the 31st (thirty-first) day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on Revenues and such other information as the Authority may reasonably require.

28.2 Appointment of Auditors

28.2.1 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm having at least five practicing Chartered Accountants on its rolls. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

28.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed in accordance with the Clause 28.2.2.

28.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right but not the obligation, to appoint at its cost from time to time and at any time, another firm of Chartered Accountants (the "**Additional Auditors**") to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

28.2.4 The Authority shall have the right, but not the obligation, to appoint at its own cost, another firm of Chartered Accountants (the "**Concurrent Auditors**") to undertake concurrent audit of the Concessionaire's accounts.

28.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter

incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

28.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 28.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

Part V: Force Majeure and Termination

Article 29 Force Majeure

29.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 29.2, 29.3, and 29.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event: (a) is beyond the reasonable control of the Affected Party; and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and (c) has Material Adverse Effect on the Affected Party.

29.2 Non-Political Event

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

(a) act of God, pandemic, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, tsunami, chemical or radioactive contamination or ionisation radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Resort and Project Infrastructure);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Resort and Project Infrastructure for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 29.3;

(c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(d) any delay or failure of an overseas Contractor to deliver any critical equipment required for the Resort and Project Infrastructure and not available in India if such delay or failure is caused outside India by any event specified in Sub-Clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable 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;

(f) the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through an inspection of the Project Site; or

(g) 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) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;

(c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(d) any civil commotion, boycott or political agitation which prevents operation of the Resort or Project Infrastructure by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

(e) failure of the Authority to permit the Concessionaire to continue the Development Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

(f) any failure or delay of a Contractor to the extent caused by an Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(g) any Indirect Political Event that causes a Non-Political Event; or

(h) any event or circumstances of any 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) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 36;

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

(c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorisation, no-objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no-objection certificate, exemption, consent, approval or permit;

(d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

(e) 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 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 the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no 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 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 under Clause 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 occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of the Conditions Precedent, and in Clause 23.1 for achieving the 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 Project 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 Project COD, whereupon the Concessionaire is unable to provide the Resort and Project Infrastructure services despite making best efforts or it is directed by the Authority or any Governmental Instrumentality to suspend the aforesaid services 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 Concessionaire was prevented from providing the aforesaid services on account thereof; provided that in the event of reduction in Resort and Project Infrastructure services on account of partial suspension of services which cause the Gross Revenue to decline below 75% (seventy five per cent) of the Average Daily Gross Revenue for the corresponding period over the preceding 2 (two) years, the Authority shall extend the Concession Period in proportion to the loss of such Gross Revenue due to Force Majeure. For the avoidance of doubt, loss of 25% (twenty five per

cent) in Gross Revenue for 4 (four) days as compared to the Average Daily Gross Revenue for the corresponding period during the preceding 2 (two) years shall entitle the Concessionaire to the extension of 1 (one) day in the Concession Period.

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, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

29.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Resort and Project Infrastructure (the "**Force Majeure Costs**") shall be allocated and paid as follows:

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

(c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

29.7.3 For avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Development Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Revenues from room charges, restaurants and sale of food and all incomes derived or collected by it from or on account of the Resort, Project Infrastructure and Associated Services, or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

29.7.4 Save and except as expressly provided in this Article, 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 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 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 15 (fifteen) days' time to the other Party to make a representation and may after the expiry of such 15 (fifteen) day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

29.9 Termination Payment for Force Majeure Event

29.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

29.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

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

(b) 110% (one hundred and ten per cent) of the Adjusted Equity.

29.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 32.3.2 as if it were an Authority Default.

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 in accordance with Article 39; 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.

29.12 Relief for Unforeseen Events

29.12.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the "**Unforeseen Event**"), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and Revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and

upon reaching agreement on occurrence thereof, deal with it in accordance with the provisions of this Clause 29.12.

29.12.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

29.12.3 The conciliation tribunal referred to in Clause 29.12.2 shall conduct its proceedings in accordance with the provisions of Article 39 as if it is an arbitration proceeding under that Article, save and except as provided in Clause 29.12.

29.12.4 The conciliation tribunal referred to in this Clause 29.12 shall conduct preliminary proceedings to satisfy itself that:

(a) an Unforeseen Event has occurred;

(b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and

(c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 29.12.

29.12.5 Upon completion of the conciliation proceedings referred to in this Clause 29.12, the conciliation tribunal may by a reasoned order make recommendations which shall be:

(a) based on a fair and transparent justification;

(b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event; and

(c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and

(d) quantified and restricted in terms of relief or remedy.

29.12.6 Within 15 (fifteen) days of receiving the order referred to in Clause 29.12.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into an agreement (the "**Supplementary Agreement**") setting forth the agreement reached hereunder, and the terms of such Supplementary Agreement shall have the force and effect as if they form part of the Agreement.

Article 30 Compensation for Breach of Agreement

30.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 30.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 30.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

30.2 Compensation for default by the Authority

Subject to the provisions of Clause 30.4, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss on account of Revenues from room charges, restaurants and sale of food and all incomes derived or collected by it from or on account of the Resort, Project Infrastructure and Associated Services, debt repayment obligations, or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

30.3 Extension of Concession Period

Subject to the provisions of Clause 30.4, in the event that a material breach or default of this Agreement set forth in Clause 30.2 causes delay in achieving COD or leads to reduction in the realisation of Gross Revenue, as the case may be, the Authority shall, in addition to payment of compensation under Clause 30.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or Gross Revenue was reduced on account thereof, as the case may be; and in the event of reduction in Gross Revenue to decline below 75% (seventy five per cent) of the Average Daily Gross Revenue for the corresponding period during the preceding 2 (two) years, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Gross Revenue. For the avoidance of doubt, loss of 25% (twenty five per cent) in realisation of Gross Revenue for 4 (four) days, as compared to the Average Daily Gross Revenue for the corresponding period during the preceding 2 (two) years shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period.

30.4 Compensation to be in addition

Compensation payable under this Article 30 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

30.5 Mitigation of costs and damage

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

Article 31 Suspension of Concessionaire's Rights

31.1 Suspension upon Concessionaire Default

Upon occurrence of Concessionaire Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive any Revenues from room charges, restaurants and sale of food and all other incomes received by it from or on account of the Resort, Project Infrastructure and Associated Services pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorised any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lender's Representative, the Authority shall extend the aforesaid 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

31.2 Authority to act on behalf of Concessionaire

31.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Revenues under and in accordance with this Agreement, and deposit the same in the Project Account. The Authority shall be entitled to make withdrawals from the Project Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 26.3.

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

31.3 Revocation of Suspension

31.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the suspension forthwith and restore all rights of the Concessionaire under this Agreement. For avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

31.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of the Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 31.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of the Senior Lenders.

31.5 Termination

31.5.1 At any time during the period of Suspension under this Article 31, the Concessionaire may by notice request the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake the substitution in accordance with the provisions of this Agreement and within the period specified in Clause 31.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 32 as if it is a Concessionaire Default under Clause 32.1.

31.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 31.1, this 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 Concessionaire Default.

Article 32 Termination

32.1 Termination for Concessionaire Default

32.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of the Agreement (the "**Concessionaire Default**"), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

(a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;

(c) the Concessionaire 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;

(d) the Concessionaire abandons or manifests intension to abandon the development or operation of the Resort and the Project Infrastructure without the prior written consent of the Authority;

(e) Project COD does not occur on or before the Scheduled Completion Date;

(f) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;

(g) the Concessionaire has failed to make any payment to the Authority including the Concession Fee within the period specified in this Agreement;

(h) upon occurrence of a Financial Default, the Lender's 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 Concessionaire fails to cure the default within the Cure Period specified hereinabove;

(i) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

(j) the Concessionaire creates any Encumbrance in breach of this Agreement;

(k) the Concessionaire repudiates this Agreement or otherwise takes an action or evidences or conveys an intention not to be bound by the Agreement;

(l) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

(m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

(n) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

(o) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;

(p) the Concessionaire has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect: provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

(iii) each of the Project Agreements remain in full force and effect.

(q) occurrence of any Insolvency Event;

(r) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;

(s) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(t) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;

(u) the Concessionaire issues Termination Notice in violation of the provisions of this Agreement;

(v) the Concessionaire commits a default in complying with any other provisions of this Agreement if such default causes or may cause a Material Adverse Effect on the Authority; or

(w) the Concessionaire violates any of the terms and conditions of the Applicable Permits obtained by the Authority, as provided in Schedule E.

32.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days,

whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 32.3.3.

32.1.3 The Authority shall, if there are Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 32.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement.

32.1.4 Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire: Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

32.2 Termination for Authority Default

32.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

(a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

(b) the Authority has failed to make any payment due to the Concessionaire, and the Concessionaire is unable to recover any unpaid amounts through the adjustment in the Concession Fee payable by it to the Authority;

(c) the Authority fails to provide any land which is necessary and required for construction of any essential element or part of the Resort and/or the Project Infrastructure; or

(d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be abound by this Agreement.

32.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Authority Default, the Concessionaire 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 Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

32.3 Termination Payment

32.3.1 Upon Termination on account of a Concessionaire Default during the Operations Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

(a) 90% (ninety per cent) of Debt Due less Insurance Cover; and

(b) 70% (seventy per cent) of the amount representing the Additional Termination Payment:

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 70% (seventy per cent) of such unpaid claims shall be included in the computation of Debt Due.

For avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to the Project COD, save and except as provided in Clause 32.3.3.

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

(a) Debt Due;

(b) 150% (one hundred and fifty per cent) of the Adjusted Equity; and

(c) 115% (one hundred and fifteen per cent) of the amount representing the Additional Termination Payment.

32.3.3 Upon Termination on account of the Concessionaire Default at any time prior to Project COD, no Termination Payment shall be due and payable for expenditure comprising the first 40% (forty per cent) of the Total Project Cost and in the event of the expenditure exceeding such 40% (forty per cent) and forming part of Debt Due, the provisions of Clause 32.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 40% (forty per cent). For avoidance of doubt and by way of illustration, if the total expenditure incurred prior to the Transfer Date is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five per cent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 32.3.3 Total Project Cost shall mean the amount specified in Sub-Article (b) of the definition of Total Project Cost in Clause 43.1. The Parties also agree that for determining the Termination Payment under this Clause 32.3.3, the expenditure comprising the latest Project Milestone shall also be reckoned.

32.3.4 Termination Payment shall become due and payable to the Concessionaire within 90 (ninety) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to existing Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 150 (one hundred fifty) days. For 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.

32.3.5 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire; provided that in the event any Project Assets, essential for the efficient, economic and safe operation of the Resort and Project Infrastructure, shall have been acquired and installed after the 30th (thirtieth) anniversary of the Appointed Date, with prior written consent of the Authority (which consent shall not be unreasonably

denied), a Termination Payment equal to 50% (fifty per cent) of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Clause 32.4.1, be made by the Authority to the Concessionaire.

32.3.6 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.3.5, in the event any Project Assets, essential for the efficient, economic and safe operations of the Resort and the Project Infrastructure, shall have been acquired and installed after the 30th (thirtieth) anniversary of the Appointed Date, with prior written consent of the Authority, which consent shall not be unreasonably denied, a sum equal to 75% (seventy-five per cent) of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.

32.4 Certain limitations on Termination Payment

32.4.1 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. For avoidance of doubt, it is agreed that within a period of 60 (sixty) days from Project COD, the Concessionaire 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, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that, notwithstanding anything contained in this Agreement, for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 50% (fifty per cent) of the Total Project Cost.

32.4.2 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. Provided, however, that the provisions of this Clause 32.4.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of the Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment.

32.4.3 Additional Termination Payment due and payable in respect of Specified Assets, forming part of the Resort or the Project Infrastructure, as the case may be, which are constructed, acquired or installed after the 5th (fifth) anniversary of Project COD, but no later than the 30th (thirtieth) anniversary of the Appointed Date, shall be limited to the lowest of:

(a) Adjusted Depreciated Value;

(b) the replacement value thereof, as assessed by the Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and

(c) 40% (forty per cent) of the sum of the Total Project Cost.

32.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

(a) take possession and control of the Resort and the Project Infrastructure forthwith;

(b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Resort and the Project Infrastructure;

(c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering the Resort and the Project Infrastructure;

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 33.1; and

(e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

32.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.3.6, 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 33 : Divestment of Rights and Interest

33.1 Divestment Requirements

33.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

(a) notify to the Authority forthwith the location and particulars of all Project Assets;

(b) deliver forthwith the actual or constructive possession of the Resort and Project Infrastructure, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

(c) cure all Project Assets of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on an as is where is basis after bringing them to a safe condition;

(d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete as built Drawings as on the Transfer Date, provided that in the event the Concessionaire has used the brand name and/or logo of the Selected Bidder/Consortium Members, if any, in relation to the Project or otherwise, the Concessionaire shall not be obliged to deliver and transfer such brand name and/or logo to the Authority. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;

(e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

(f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Resort and Project Infrastructure, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

(g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Resort and Project Infrastructure, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

33.2 Inspection and cure

33.2.1 Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Expert shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements.

33.2.2 If required, the Independent Expert shall cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 34 shall apply, mutatis mutandis, in relation to curing defects or deficiencies under this Article 33.

33.3 Cooperation and assistance on transfer of Project

(a) 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 Project Site.

(b) 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 Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

(c) The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value, determined by a reputed firm mutually agreed upon and appointed by the Parties, and free from any encumbrance all or any part of Resort and Project Infrastructure but which does not form part of the assets specified in Article 33.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure in Article 39 shall apply.

33.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule N (the "**Vesting Certificate**"), which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Resort and Project Infrastructure, 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 Resort and Project Infrastructure on the footing that all Divestment Requirements have been complied with by the Concessionaire.

33.5 Divestment costs

(a) The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Authority upon

Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

(b) In the event of any dispute relating to matters covered by and under this Article, the Dispute Resolution Procedure in Article 39 shall apply.

Article 34 Defects Liability after Termination

34.1 Liability for Defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Resort and the Project Infrastructure 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 Independent Expert in the Resort and the Project Infrastructure during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Resort and the Project Infrastructure conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire 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 be entitled to recover the same from the funds retained in the Project Account under the provisions of Clause 34.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Clause 34.2.1 shall not apply if Termination occurs prior to Project COD.

34.2 Retention of Concession Fee

34.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 34.2.3, a sum equal to the average of 1 (one) month's Concession Fee during the year immediately preceding the Transfer Date shall be retained in the Project 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 Clause 34.1.

34.2.2 Without prejudice to the provisions of Clause 34.2.1, the Independent Expert shall carry out an inspection of the Resort and the Project Infrastructure at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Resort and Project Infrastructure is such that the sum larger than the amount stipulated in Clause 34.2.1 should be retained in Project Account and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount recommended by the Independent Expert shall be retained in the Project Account for the period specified by it.

34.2.3 The Concessionaire may, for the performance of its obligations under this Article 34, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 34.2.1 or 34.2.2. as the case may be, and for the period specified therein, substantially in the form set forth in Schedule F (the "**Performance Guarantee**"), to be modified, *mutatis-mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 34. Upon furnishing of the Performance Guarantee under this Clause 34.2.3, the retention of funds in Project Account Agreement in terms of Clause 34.2.1 or 34.2.2, as the case may be, shall be dispensed with.

Part VI: Other Provisions

Article 35 Assignment and Charges

35.1 Restrictions on assignment and charges

35.1.1 Subject to Clauses 35.2 and 35.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.1.2 Subject to the provisions of Clause 35.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.2 Permitted assignment and charges

35.2.1 The restraints set forth in Clause 35.1 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 or liens or encumbrances required by any Applicable Law;

(b) mortgages, pledges or hypothecation of goods or 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 and/or for working capital arrangements for the Resort and Project Infrastructure; and

(c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements.

35.2.2 The Concessionaire shall not, directly or indirectly, transfer, mortgage, pledge, assign, hypothecate, encumber, let or sub-let or part with the occupation of the Resort or the Project Infrastructure or any part thereof and/or the benefits arising out of this Agreement or any part thereof in any manner whatsoever to any person, without the prior written consent of the Authority. The Concessionaire may permit or sub-let any third party to operate permissible activities in the Resort and Project Infrastructure such as offices, retail areas, gymnasium, spa, restaurant, coffee shops, banquet halls, or any other facilities within the Project Site for a period that shall be coterminous with or, less than the Concession Period and upon expiry of the Concession Period or Termination of the Agreement, all such permissions granted to third parties to operate or maintain any facilities or amenities as aforesaid shall automatically cease and terminate forthwith.

35.3 Substitution Agreement

35.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule O.

35.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be

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

35.4 Assignment by the Authority

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

35.4.2 Any assignment under this Article 35 shall be subject to the approvals and consents required under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

35.5 Mortgage of Project Assets

35.5.1 Notwithstanding anything to the contrary contained in this Agreement upon request made in this behalf by the Lender's Representative the Authority and the Concessionaire shall jointly execute a mortgage deed (the "**Mortgage Deed**") forthwith for the benefit of the Senior Lenders to provide inter alia for the following:

(a) as security for Debt Due all Project Assets (the "**Mortgaged Assets**") shall stand mortgaged in favour of Senior Lenders subject to the terms specified in the Mortgage Deed;

(b) Senior Lenders shall not exercise or enforce any rights or title over the Mortgaged Assets at any time prior to the expiry of 180 (one hundred and eighty) days from the Transfer Date;

(c) The charge created over the Mortgaged Assets shall stand released and extinguished upon the Authority making the Termination Payment in accordance with the terms of the Agreement;

(d) In the event that Termination Payment is not made before expiry of 180 (one hundred and eighty) days from the Transfer Date the Senior Lenders shall have the right and entitlement to use or dispose of the Mortgaged Assets for recovery of Termination Payment and any recovery in excess of the Termination Payment shall be due and payable by the Senior Lenders to the Authority;

(e) Upon taking over of the Mortgaged Assets by the Senior Lenders in accordance with the Mortgaged Deed, the rights and title of the Senior Lenders and Concessionaire for and in respect of recovery of Termination Payment shall be deemed to be extinguished and the Termination Payment shall be deemed to have been made in full by the Authority under and in accordance with the provisions of the Agreement;

(f) The Mortgaged Deed shall expire and cease to have any fore or effect upon the earlier of (i) repayment of Debt Due by the Concessionaire and (ii) the 20th (twentieth) anniversary of Project COD.

(g) For avoidance of doubt, the Mortgage Assets shall not include Project Site/ Land Parcels handed over by the Authority for the purpose of the proposed Project as per the provisions

of this Agreement. And under no circumstances the Concessionaire will consider mortgaging of the Project Site.

35.5.2 Pursuant to the provisions of Clause 35.5.1, the Lender's Representative shall prepare a draft Mortgage Deed substantially in conformity with this Clause 35.5.2 and furnish copies to the Authority and the Concessionaire for their review and comments. The Lender's Representative shall consider such comments and send a revised draft to the Authority and the Concessionaire for negotiations in good faith. In the event such negotiations do not conclude in the form of an agreed Mortgage Deed to be executed in 60 (sixty) days of furnishing the first draft hereunder, the Dispute Resolution Procedure in Article 39 shall apply.

Article 36 Change In Law

36.1 No claim in the event of Change in Law

36.1.1 Notwithstanding anything to the contrary contained in this Agreement, any increase in costs or reduction in net after tax or other financial burden due to Change in Law has to be borne by respective Parties and neither Party shall be liable for any payment/ reimbursement.

Article 37 Liability and Indemnity

37.1 General indemnity

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

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

37.2 Indemnity by the Concessionaire

37.2.1 Without limiting the generality of Clause 37.1 the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

(a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

(b) payment of Taxes required to be made by the Concessionaire in respect of the income or other Taxes of the Contractors, suppliers and representatives; or

(c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors;

(d) its omissions or acts of fraud, gross negligence and willful misconduct;

(e) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or

(f) loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

37.2.2 Without limiting the generality of the provisions of this Article 37, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any

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

37.3 Notice and Contest of Claims

37.3.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 37 (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.

37.4 Defense of Claims

37.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Clause, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

37.4.2 If the Indemnifying Party has exercised its rights under Clause 37.3, 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).

37.4.3 If the Indemnifying Party exercises its rights under Clause 37.3, 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;

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-Clause (b) or (c) or (d) of this Clause 37.4 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.

37.5 No consequential claims

37.5.1 Notwithstanding anything to the contrary contained in this Article 37, 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.

37.6 Limitation of Liability

37.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, save and except where amounts exceeding the Total Project Cost are specifically prescribed in this Agreement as Termination Payment, shall not exceed the Total Project Cost. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to:

(a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and willful misconduct;

(b) breach of any Applicable Laws or any Applicable Permits;

(c) any claims or loss on account of Intellectual Property rights violation by the Concessionaire;

(d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or

(e) any loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

37.7 Survival on Termination

The provisions of this Article 37 shall survive Termination.

Article 38 Rights to the Site

38.1 Rights to the Project Site

38.1.1 For the purpose of this Agreement, the Concessionaire shall have rights to use the Project Site in accordance with this Agreement and to this end, it may regulate the entry and use of the Resort by third parties in accordance with and subject to the provisions of this Agreement.

38.2 Access rights of the Authority and others

38.2.1 The Concessionaire shall allow free access to the Project Site at all times to the Authority Representatives, Senior Lenders, the Independent Expert, and to the persons duly authorised by any Government Instrumentality to inspect the Resort and the Project Infrastructure and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

38.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Project Site at all times for the authorised persons and vehicles of the relevant Government Instrumentality.

38.3 Property Taxes

38.3.1 All property taxes with respect to the Project Site shall be payable by the Authority as owner of the Project Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Project Site including taxes relating to the buildings on constructed on the Project Site shall not be reimbursed or payable by the Authority and the Concessionaire shall be solely responsible for payment of the same. The Parties agree that stamp duties due and payable on the grant of and license comprising the Agreement shall be paid by the Concessionaire.

38.4 Restriction on sub-letting

38.4.1 The Concessionaire shall not sub-lease, sub-license or sub-let the whole or any part of the Project Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for development, operation and maintenance of all or any part of the Resort and the Project Infrastructure.

Article 39 Dispute Resolution

39.1 Dispute resolution

(a) Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 39.2.

(b) 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 nonprivileged records, information and data pertaining to any Dispute.

39.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert, as the case may be, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, as the case may be, either Party may require such Dispute to be referred to Managing Director to the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) 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 30 (thirty) days of the notice in writing referred to in Clause 39.1 (a) 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 Clause 39.3.

39.3 Arbitration

(a) Any Dispute which is not resolved amicably by conciliation as provided in Clause 39.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 39.3 (a). Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) and rules framed thereunder. The venue of such arbitration shall be held at Sri Vijaya Puram, Andaman and Nicobar Islands, and the language of arbitration proceedings shall be English.

(b) There shall be a board of three arbitrators, of whom each Party shall appoint one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Arbitration and Conciliation Act, 1996 and Rules framed thereunder. The arbitral fees to be paid to the Arbitrators shall be borne by the parties equally.

(c) The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 39 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

(d) The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

(e) 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 40 Disclosure

40.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Concessionaire's registered office and the Resort. The Concessionaire shall prominently display at the Resort and Project Infrastructure, public notices stating the availability of the Specified Documents for such inspection and shall provide copies of the same to any person upon payment of copying charges on a no profit no loss basis.

40.2 Disclosure of Documents relating to safety

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

40.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 40.1 and 40.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 40.1 and 40.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

Article 41 Redressal of Public Grievances

41.1 Complaints Register

(a) The Concessionaire shall maintain a public relations office at the Resort where it shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**") in compliance with the minimum standards set out in Clause 21.1. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Resort and its website so as to bring it to the attention of all Users.

(b) The Complaint Register shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

(c) Without prejudice to the provisions of Clauses 41.1 (a) and (b), the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

41.2 Redressal of complaints

(a) The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

(b) Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Expert a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 2019 and it amendments thereof, and advise the Complainant to pursue the complaint at his own risk and cost.

Article 42 Miscellaneous

42.1 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 Sri Vijaya Puram and Calcutta High Court shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

42.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

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

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

42.3 Depreciation and interest

(a) For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation (based on written down value method) to be made by the Concessionaire under the Applicable Laws.

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

42.4 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 the existing Bank Rate and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

42.5 Waiver

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

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

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

(iii) shall not affect the validity or enforceability of this Agreement in any manner.

(b) 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.

42.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority or the Independent Expert of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

(b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-Clause (a) above.

42.7 Exclusion of implied warranties

This Agreement expressly excludes any warranty, condition or other undertaking implied by 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.

42.8 Survival

Termination shall:

(a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

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

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

42.9 Entire Agreement

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

42.10 Severability

If for any reason whatsoever, 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 shall 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 in Article 39 or otherwise.

42.11 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.

42.12 Third parties

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

42.13 Successors and assigns

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

42.14 Notices

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

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

sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e- mail to the number as the Concessionaire may from time to time designate by notice to the Authority.

{Name:

Designation:

Address: Fax No:

Email:}

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

{Managing Director

Address: ANIIDCO Ltd., Vikas Bhawan, PB No. 180, Sri Vijaya Puram, Andaman & Nicobar Islands – 744101

Landline No.: +91 03192-232098

Fax No:

Email: aniidcoprojects@gmail.com}; and

(c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other eases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working clay following the date of its delivery.

42.15 Language

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

42.16 Confidentiality

(a) Each Party shall keep the Confidential Information confidential and shall not disclose the same to any other person without the prior written consent of the other Party.

(b) Sub-Clause (a) shall not apply in the following circumstances:

(i) any disclosure required by Applicable Laws or in respect of information already in the public domain;

(ii) any disclosure required by any applicable stock exchange listing rule; and

(iii) disclosure to under a Financing Agreement, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.

(c) Either Party shall have the right to disclose Confidential Information pursuant to this Agreement or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.

(d) In the event a disclosure is required by Applicable Law, upon reasonable request by the non-disclosing Party, the disclosing Party shall use all reasonable efforts and cooperate with other Party's efforts to obtain confidential treatment of material so disclosed.

(e) Each Party shall utilise the same degree of care to preserve and protect the other Party's Confidential Information from disclosure that they use to protect their own Confidential Information, which shall not be less than reasonable care.

(f) Confidential Information disclosed shall be and remain the property of the disclosing Party. The obligations of the Parties to protect Confidential Information shall survive 3 (three) years from Termination.

42.17 Stamp Duty

Any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Concessionaire.

42.18 Counterparts

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

Article 43 Definitions

43.1 Definitions

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

- "**Accounting Year**" shall mean the Financial Year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

- "**Additional Auditors**" shall have the meaning set forth in Clause 28.2.3;

- "**Additional Services**" shall have the meaning set forth in Clause 21.3;

- "**Additional Termination Payment**" shall mean the amount payable upon Termination in respect of Specified Assets, if any, as limited by the provisions of Article 32.4.3;

- "**Adjusted Depreciated Value**" shall mean the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three per cent) based on the written down value method) to reflect the variation occurring in the WPI between the date of purchase thereof and the Transfer Date;

- "**Adjusted Equity**" shall mean 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 Project COD of the Resort and Project Infrastructure, 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 Effective Date and the Reference Date;

  (b) from Project COD and until the 4th (Fourth) anniversary thereof, an amount equal to the Adjusted Equity as on Project 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 Project COD to the extent of variation in WPI occurring between Project COD and the Reference Date; and

  (c) any time after the 4th (Fourth) anniversary of Project COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.15% (zero point one five per cent)[7] thereof at the commencement of each month following the 4th (fourth) 3rd (third) anniversary of Project COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between Project COD and the Reference Date;

[7] This number has been arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 60 year Concession Period shall be 100/654.54 = 0.15277 rounded off to two decimal points i.e. 0.15.

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

- "**Affected Party**" shall have the meaning set forth in Clause 29.1;

- "**Agreement**" shall mean this Agreement, its Recitals and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

- "**Ancillary Facilities**" shall have the meaning set forth in Clause 3.1.3;

- "**Annual Concession Fee**" shall have the meaning set forth in Clause 24.1.1 (1);

- "**Appendix**" shall have the meaning set forth in Clause 10.3.1;

- "**Applicable Laws**" shall mean all laws, brought into force and effect by GOI or the UT Administration including rules, regulations, notifications, directives, policies and office memorandums, made thereunder, 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 on or before the Bid Date;

- "**Applicable Permits**" shall mean 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 development, construction, operation and maintenance of the Resort and the Project Infrastructure during the subsistence of this Agreement and upon termination, the transfer of the Resort and Project Infrastructure to the Authority;

- "**Appointed Date**" shall mean the date on which Financial Close is achieved and the Conditions Precedent are either satisfied and/or waived in accordance with the terms of this Agreement, and shall be deemed to be the date of commencement of the Concession Period;

- "**Approved Valuer**" shall mean a firm of valuers recognised as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 Crore (Indian Rupees One Hundred Crore only) each in value;

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

- "**Associate**" or "**Affiliate**" shall mean, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) 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);

- "**Associated Services**" shall have the meaning set forth in Clause 25.1.2;

- "**Authority**" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

- "**Authority Default**" shall have the meaning set forth in Clause 32.2;

- "**Authority Indemnified Persons**" shall have the meaning set forth in Clause 37.1.1;

- "**Authority Representative**" shall mean 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;

- "**Average Daily Gross Revenue**" shall mean the average daily Gross Revenue determined upon division of the annual Gross Revenue of the preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by 5% (five per cent); provided that the Average Daily Gross Revenue for any period prior to completion of the first Accounting Year following Project COD shall be simple average of the Gross Revenue realised with respect to every day during the period between Project COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred;

- "**Award**" shall have the meaning set forth in Clause 39.3;

- "**Bank**" shall mean a bank incorporated in India and having a minimum net worth of INR 1,000 Crore (Indian Rupees One Thousand Crore) or any other bank acceptable to the senior Lenders, but does not include a bank in which the Senior Lender has an interest;

- "**Bank Rate**" shall mean the rate of interest of General Provident Fund; as applicable and in effect;

- "**Beach Facilities**" shall mean beach activities (jet skiing, scuba diving, snorkeling, game fishing, kayaking, water surfing, para gliding etc.), beach beds, changing rooms, watch towers etc.;

- "**Bid**" shall have the meaning set forth in Recital (C) 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 Date**" shall mean the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal;

- "**Bid Security**" shall mean the security provided by the Selected Bidder to the Authority along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

- "**Change in Law**" shall mean the occurrence of any of the following after the date of Bid:

  (a) the enactment of any new Indian law as applicable to the Project;

  (b) the repeal, modification or re-enactment of any existing Applicable Law;

  (c) the commencement of any Indian law which has not entered into effect until the Bid Date;

(d) 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

(e) any change in the rates of any of the Taxes;

- "**Change in Ownership**" shall mean a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {existing promoters/selected bidder/Consortium Members}, together with {its/their} Associates in the total equity to decline below (i) 51% (fifty one per cent) at any time prior during the Construction Period and until the expiry of the 2nd (second) anniversary of the Project COD; (ii) the shareholding of each of the technical member and the financial member of the Consortium declines below 26% (twenty six per cent) until the expiry of the 2nd (second) anniversary of the Project COD; and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be) in the proportion of the equity holding of {existing promoters/Selected Bidder/ any Consortium Member} to the total equity, if it occurs prior to the 2nd (second) anniversary of Project COD, shall constitute Change in Ownership;

- "**Change of Scope**" shall have the meaning set forth in Clause 16.1;

- "**Change of Scope Request**" shall have the meaning set forth in Clause 16.2;

- "**Change of Scope Order**" shall have the meaning set forth in Clause 16.2;

- "**Companies Act**" shall mean, as applicable, the Companies Act, 1956 and the Companies Act, 2013 as amended from time to time;

- "**Completion Certificate**" shall have the meaning set forth in Clause 14.2;

- "**Complainant**" shall have the meaning set forth in Clause 41.1;

- "**Complaint Register**" shall have the meaning set forth in Article 41.1(a);

- "**Concession**" shall have the meaning set forth in Clause 3.1;

- "**Concessionaire**" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

- "**Concessionaire Default**" shall have the meaning set forth in Clause 32.1.1;

- "**Concession Fee**" shall have the meaning set forth in Clause 24.1;

- "**Concession Period**" shall have the meaning set forth in Clause 3.2(a);

- "**Concurrent Auditors**" shall have the meaning set forth in Clause 28.2.4.

- "**Conditions Precedent**" shall have the meaning set forth in Clause 4.1.1;

- "**Consortium**" shall have the meaning as set forth in Recital (C);

- {"**Consortium Member or Member**" shall mean a company specified in Recital (C) as a member of the Consortium;}

- "**Construction Period**" shall mean the period beginning from the Appointed Date and ending on Project COD and subject to the provisions of this Agreement, which shall be a period of **4 (four) years** from the Appointed Date, provided the Construction Period of the Optional Development Obligation shall be mutually agreed by the Parties;

- "**Contractor"** shall mean the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contracts, the O&M Contracts, or any other material agreement for the construction, operation and/or maintenance of the Resort or the Project Infrastructure or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

- "**Covenant**" shall have the meaning set forth in Clause 5.2.5;

- "**Cure Period**" shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

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

  (b) not relieve any Party from liability to pay damages or compensation under the provisions of this Agreement; and

  (c) not in any way be extended by any period of Suspension under this Agreement;

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

- "**Damages**" shall have the meaning set forth in Clause 1.2.1 (w);

- "**DBFOT**" shall have the meaning set forth in Recital (B);

- "**Debt Due**" shall mean 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 2 (two) years prior to the Transfer Date;

  (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub- Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date; (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender; and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and

(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

provided further that the Debt Due, on or after the Project COD, shall in no case exceed 50% (fifty per cent) of the Total Project Cost;

- "**Deemed Completion Certificate**" shall have the meaning set forth in Clause 14.3;
- "**Deemed Performance Security**" shall have the meaning as set forth in Clause 9.4;
- "**Debt Service**" shall mean 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 for and in respect of Debt Due under the Financing Agreements;
- "**Development Works**" shall mean all construction works and things necessary to complete the Mandatory Development Obligation (MDO) and Optional Development Obligation (ODO), if applicable in accordance with this Agreement;
- "**Dispute**" shall have the meaning set forth in Clause 39.1;
- "**Disputed Amounts**" shall have the meaning set forth in Clause 24.6.1;
- "**Dispute Resolution Procedure**" shall mean the procedure for resolution of Disputes set forth in Article 39;
- "**Divestment Requirements**" shall mean the obligations of the Concessionaire for and in respect of Termination as set forth in Article 33;
- "**Document**" or "**Documentation**" shall mean 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**" shall mean all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule D, and shall include as built drawings of the Resort and Project Infrastructure;
- "**EHS**" shall have the meaning set forth in Clause 5.12;
- "**EPC Contract**" shall mean the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more EPC Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;
- "**EPC Contractor**" shall mean the person with whom the Concessionaire has entered into an EPC Contract;
- "**Emergency**" shall mean a condition or situation that is likely to endanger the security of the individuals on or about the Resort and Project Infrastructure, including Users thereof, or which poses an immediate threat of material damage to any Project Assets;

- "**Encumbrances**" shall mean, in relation to the Resort and Project Infrastructure, 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 Resort and Project Infrastructure, where applicable herein but excluding utilities referred to in Clause 11.1;

- "**Equity**" shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire 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 Company, and any interest- free loans advanced by any shareholder of the Company for meeting such equity component;

- "**Execution Date**" shall mean the date on which this Agreement is executed by the Parties;

- "**Financial Close**" shall mean 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 O;

- "**Financial Model**" shall mean 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**" shall mean 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 Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt, if any;

- "**Financial Year**" shall mean a year commencing on 1st April of a calendar year and ending on 31st March of the immediately succeeding calendar year;

- "**Financing Agreements**" shall mean the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including 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 made in accordance with Clause 5.2.3;

- "**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Clause 29.1;

- "**Force Majeure Costs**" shall have the meaning ascribed to it in Clause 29.7;

- "**GOI**" shall mean the Government of India;

- "**Good Industry Practice**" shall mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this

Agreement, Applicable Laws and Applicable Permits and includes prudent Resort and Project Infrastructure practices generally accepted by the hotel and hospitality industry for ensuring reliable, safe, economical and efficient construction, operation and maintenance of the Resort and Project Infrastructure;

- "**Government Instrumentality**" shall mean any department, division or sub-division of the Government of India or the UT Administration and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the UT Administration/State Government, as the case may be, and having jurisdiction over the Resort and the Project Infrastructure or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

- "**Gross Revenue**" of the Resort for and in respect of any Accounting Year shall mean the total amount of gross Revenues and receipts of every kind (from both cash and credit transactions computed prior to payment of any commission or service charge or fee thereon) derived by the Concessionaire from the operation of the Resort and its facilities and provision of Associated Services, Hospitality Services and/or any other activity related to the Project including Beach Facilities, if any, as certified by the statutory auditors of the Concessionaire, and shall include Revenues and receipts from and on account of room occupancy charges, telephone including telefax and telex charges, laundry, food, beverages, liquor, recreational amenities (including outdoor pool, health club, spa, sauna, fitness facility etc.), outdoor catering, vending machines, parking, use of commercial or other spaces for rent or fee of every description and kind, and any other services or facility provided by the Concessionaire, but shall exclude the following:

  (a) All statutory applicable indirect Taxes such as, GST, expenditure tax, and the like by whatever name called now or in future, which the Concessionaire is bound to pay;

  (b) Any revenue earned by the Concessionaire on sale of assets of a capital nature which are owned by the Concessionaire; and

  (c) Interest income from investment made;

  For the avoidance of doubt, Gross Revenue shall also include any amount received by the Affiliate to whom the Concessionaire has contracted any Associated Services, Hospitality Services and/or any other activity related to the Project, and any amount received by the Concessionaire from a third party to whom it has contracted any Associated Services, Hospitality Services and/or any other activity related to the Project.

  For the avoidance of doubt, for the purpose of Gross Revenue, the same shall not include:

  (a) It is clarified that deferments (other than those offered in normal course of business), if any, offered by the Concessionaire to the Users ; or amounts, if any, not collected by the Concessionaire for any reason whatsoever (provided the Concessionaire has demonstrated to the satisfaction of the Authority that all available legal recovery remedies have been exhausted and the same is certified as non-recoverable by statutory auditors) in respect of the Project Facilities and Services, shall be ignored for the purpose of computing Gross Revenue.

- "**Gross Revenue Share**" shall mean the payments made by the Concessionaire to the Authority, based on percentage (%) of Gross Revenue as set forth in the Clause 24.1.1;

- "**Hospitality Services**" shall mean the services performed under this Agreement such as reception of Users, provision of food and beverages, room services and any other services performed by the Concessionaire towards creating Revenue from the Resort;

- "**Indemnified Party**" shall mean the Party entitled to the benefit of an indemnity pursuant to Article 37;

- "**Indemnifying Party**" shall mean the Party obligated to indemnify the other Party pursuant to Article 37;

- "**Independent Expert**" shall have the meaning set forth in Article 22;

- "**Indirect Political Event**" shall have the meaning set forth in Article 29.3;

- "**Insolvency Event**" in respect of a Party shall mean:

  (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party's ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 (the "Code"); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

  (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking: (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts; (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of 90 (ninety) days; or (C) directions with the same or similar effect happen under the provisions of the Companies Act or the Code in relation to the winding up of the company;

- "**Inspection Report**" shall have the meaning set forth in Clause 13.2;

- "**Insurance Cover**" shall mean the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 27, and includes all insurances required to be taken out by the Concessionaire under Clause 27.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

- "**Intellectual Property**" shall mean 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, 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;

- "**Keys**" shall mean a room with standard occupancy of two persons;
- "**L&FS**" shall have the meaning set forth in Clause 5.12;
- "**L&FS Standards**" shall mean the standards prescribed under the National L&FS Standards and at least one internationally accepted L&FS standards such as US Life Safety Code (NFPA), as amended from time to time;
- "**Lead Member**" shall have the meaning as set forth in Recital (C);
- "**Lenders' Representative**" shall mean 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;
- "**LOA**" or "**Letter of Award**" shall mean the letter of award referred to in Recital (D);
- "**Maintenance Requirements**" shall have the meaning set forth in Clause 17.2;
- "**Mandatory Development Obligations**" or "**MDO**" shall have the meaning set forth in Clause 12.3.1 and shall mean the investment towards development of specified number of Keys proposed along with development of respective ancillary facilities;
- "**Material Adverse Effect**" shall mean a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;
- "**Medical Aid Post**" shall have the meaning set forth in Clause 5.7;
- "**Mortgage Assets**" shall have the meaning as set forth in Clause 35.5.1;
- "**Mortgage Deed**" shall have the meaning as set forth in Clause 35.5.1;
- "**Nominated Company**" shall mean a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;
- "**Non-Political Event**" shall have the meaning set forth in Clause 29.2;
- "**NPV**" shall have the meaning set forth in Article 36.3;
- "**O&M**" shall mean the operation and maintenance of the Resort and the Project Infrastructure and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Revenue in accordance with the provisions of this Agreement;
- "**O&M Contract**" shall mean the operation and maintenance contract that may be entered into between the Concessionaire and an external Hotel Brand or Chain/ O&M Member for performance of the O&M obligations in accordance with this Agreement;
- "**O&M Member**" shall mean a contractor with whom the Concessionaire has entered into an O&M Contract, if any;

- "**O&M Expenses**" shall mean expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees; (b) cost of materials, supplies, utilities and other services; (c) premia for insurance; (d) all Taxes, duties, cess and fees due and payable for O&M; (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs; (f) payments required to be made under 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 Clause 19.2;

- "**Operation Period**" shall mean the period commencing from Project COD of the Mandatory Development Obligations and ending on the Transfer Date;

- "**Optional Development Obligation**" shall have the meaning set forth in Clause 12.6.1;

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

- "**Performance Guarantee**" shall have the meaning set forth in Clause 34.2.2;

- "**Performance Security**" shall have the meaning set forth in Clause 9.1;

- "**Performance Security Period**" shall have the meaning set forth in Clause 9.3;

- "**Political Event**" shall have the meaning set forth in Clause 29.4;

- "**Project**" shall mean the construction, development operation and maintenance of the Resort and Project Infrastructure and undertaking Mandatory Development Obligation and Optional Development Obligation on a DBFOT basis in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

- "**Project Account Agreement**" shall have the meaning set forth in Clause 26.1.2;

- "**Project Account Bank**" shall have the meaning set forth in Clause 26.1.1;

- "**Project Agreements**" shall mean this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to INR 1,00,00,000 (Rupees One Crore) for each such agreement;

- "**Project Assets**" shall mean all physical and other assets relating to and forming part of the Resort, Project Infrastructure and the Project Site including:

  (a) rights over the Project Site in the form of Right of Way;

  (b) tangible assets such as civil works including foundations, drainage works, pavements, electrical systems, communication systems, fare collection systems, rest areas and administrative offices;

  (c) Ancillary Facilities situated on the Project Site;

(d) Buildings and immovable fixtures or structures forming part of the Resort and Project Infrastructure;

(e) all rights of the Concessionaire under the Project Agreements;

(f) financial assets, such as receivables, security deposits etc.;

(g) insurance proceeds; and

(h) Applicable Permits and authorisations relating to or in respect of the Resort and Project Infrastructure;

- "**Project COD**" shall have the meaning set forth in Article 15.1 and shall include commercial operations date of Mandatory Development Obligations or of any Optional Development Obligation, as the case may be;

- "**Project Completion Schedule**" shall mean the progressive Project Milestones set forth in Schedule G for completion of the Resort and Project Infrastructure on or before the Scheduled Completion Date;

- "**Project Infrastructure**" shall mean collectively the captive facilities to be developed at the Project Site for the exclusive use of the Resort the trunk infrastructure including water treatment plant, sewage treatment plant; the RO plant; the power facility as a renewable energy power project of at least 25000 kWh capacity; and the infrastructure to carry out the Associated Services;

- "**Project Milestone(s)**" shall mean the project milestones set forth in Schedule G;

- "**Project Site**" shall have the meaning set forth in Clause 10.1;

- "**Protected Documents**" shall have the meaning set forth in Clause 40.3;

- "**Provisional Certificate**" shall have the meaning set forth in Clause 14.1;

- "**Punch List**" shall have the meaning set forth in Clause 14.1;

- "**Reference Exchange Rate**" shall mean, 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 State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

- "**Request for Proposal**" or "**RFP**" shall have the meaning set forth in Recital (C);

- "**Resort**" shall mean the resort which is at least 5-star rated by Ministry of Tourism, Government of India, required at the Project Site as per Schedule B and fulfilling the requirements as stipulated in this Agreement;

- "**Resort Website**" shall have the meaning set forth in Clause 5.15;

- "**Revenue**" shall mean all amounts charged and recovered by the Concessionaire from the Users on mutually agreed terms and shall include user charges for use of the Resort and Hospitality Services by the Users 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 Concessionaire or receivable by the Concessionaire or payable to the Concessionaire or due and realisable by the Concessionaire, for or with respect to use of the Resort and any of the Hospitality Services;

- "**Right of Way**" shall mean the constructive possession of the Project Site, together with all way leaves, easements unrestricted access and other rights of way howsoever described, necessary for construction, operation and maintenance of the Resort and the Project Infrastructure in accordance with this Agreement;

- "**Rs.**" or "**Rupees**" or "**Indian Rupees**" or "**INR**" shall mean the lawful currency of the Republic of India;

- "**Safety Requirements**" shall have the meaning set forth in Clause 18.1;

- "**Schedule**" shall mean a schedule under this Agreement;

- "**Scheduled Completion Date**" shall mean the scheduled date(s) for achieving Project COD as set forth in Schedule G;

- "**Scope of the Project**" shall have the meaning set forth in Clause 2.1;

- "**Selected Bidder**" shall mean the Bidder selected by the Authority to award the Project following the completion of the Bidding Process (as defined under the RFP);

- "**Senior Lenders**" shall mean the financial institutions, banks, multilateral lending agencies, rusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire;

- "**Specialties**" shall have the meaning set forth in Clause 21.2;

- "**Specifications and Standards**" shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Resort and Project Infrastructure, as set forth in Schedule C, and any modifications thereof, or additions thereto, as included in the design and engineering for the Resort and Project Infrastructure submitted by the Concessionaire to, and expressly approved by, the Authority;

- "**Specified Assets**" shall mean and include such of the Project Assets which are constructed, acquired or installed after the 5th (anniversary) of Project COD, but no later than the 30th (thirtieth) anniversary of the Appointed Date, but shall in no case include land;

- "**Specified Documents**" shall have the meaning set forth in Clause 40.1;

- "**Statutory Auditors**" shall mean a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 28.2;

- "**Subordinated Debt**" shall mean the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

(a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

(b) all accrued interest on the debt referred to in Sub-Clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans denominated in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter-Bank Offer Rate) plus 2% (two per cent) in case of loans denominated in foreign currency, but does not include any interest that had fallen due 1 (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 Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

- "**Substitution Agreement**" shall have the meaning set forth in Clause 35.3.1;

- "**Supplementary Agreement**" shall have the meaning set forth in Clause 29.12.6;

- "**Suspension**" shall have the meaning set forth in Clause 33.1;

- "**Taxes**" shall mean any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Resort and Project Infrastructure 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**" shall mean the expiry or termination of this Agreement and the Concession hereunder;

- "**Termination Notice**" shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

- "**Termination Payment**" shall mean the amount payable by the Authority to the Concessionaire, under and in accordance with this Agreement, upon Termination;

- "**Tests**" shall mean the tests set forth in Schedule H to determine the completion of Project in accordance with the provisions of this Agreement;

- "**Threshold Value of Keys**" shall mean the maximum number of Keys that can be developed as part of the Project and in accordance with the upfront CRZ Clearance procured by the Authority;

- "**Total Project Cost**" shall mean the capital cost incurred on construction and financing of the Project and shall be limited to the lowest of:

  (a) the capital cost of the Project as set forth in the Financial Package;

  (b) the assessment of the Concessionaire's investment as made by the Approved Valuer to be appointed by the Authority; or

(c) a sum of **INR 93,00,00,000/- (Indian Rupees Ninety-Three Crore Only)**;

provided that in the event WPI increases, on an average, by more than 3% (three per cent) per annum for the period between the Bid Date and Project COD, the amount mentioned in (a) and (b) above shall be increased such that the effect of increase in WPI, in excess of such 3% (three per cent), is reflected in the Total Project Cost;

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

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

- "**Transfer Date**" shall mean the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

- "**Unforeseen Events**" shall have the meaning as set forth in Clause 29.12.1;

- "**Users**" shall mean the third parties which use the Resort, Beach Facilities or Ancillary Facilities or any part thereof, in accordance with the provisions of this Agreement and Applicable Laws;

- "**Vesting Certificate**" shall have the meaning set forth in Clause 33.4; and

- "**WPI**" shall mean the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

SIGNATORIES

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ____ day of _____ 20____

I, _____, hereunto affixed the common seal in the presence of:

_____, director, who has signed these presents in token thereof; and

_____, Company Secretary / Authorised Officer who has countersigned the same in token thereof:

SIGNED, SEALED AND DELIVERED For and on behalf of **THE CONCESSIONAIRE** by:

_____ (Signature)

_____ (Name)

_____ (Designation)

_____ (Address)

_____ (Fax No.)

_____ (e-mail address)

In the presence of:

1. _____, Director
2. _____, Company Secretary

SIGNED, SEALED AND DELIVERED For and on behalf of **THE AUTHORITY** by:

_____ (Signature)

_____ (Name)

_____ (Designation)

_____ (Address)

_____ (Fax No.)

_____ (e-mail address)

For and on behalf of _____ by:

_____ (Signature)

_____ (Name)

_____ (Designation)

_____ (Address)

_____ (Fax No.)

_____ (e-mail address)

For and on behalf of _____ by:

_____ (Signature)

_____ (Name)

_____ (Designation)

_____ (Address)

_____ (Fax No.)

_____ (e-mail address)

Schedules

Schedule A Site of the Project

(See Clause 2.1 (a))

1. The Project Site

1.1. The Project Site of the Resort shall include the land, as described in Annex-I of this Schedule A.

1.2. An inventory of the Project Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Project Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.

1.3. Additional land required for ancillary buildings, extension/ addition of Resort or for construction of works specified in Change of Scope Order issued under Clause 16.2.2 of this Agreement shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Project Site and vest in the Authority.

Annex-I (Schedule-A) Project Site for the Resort

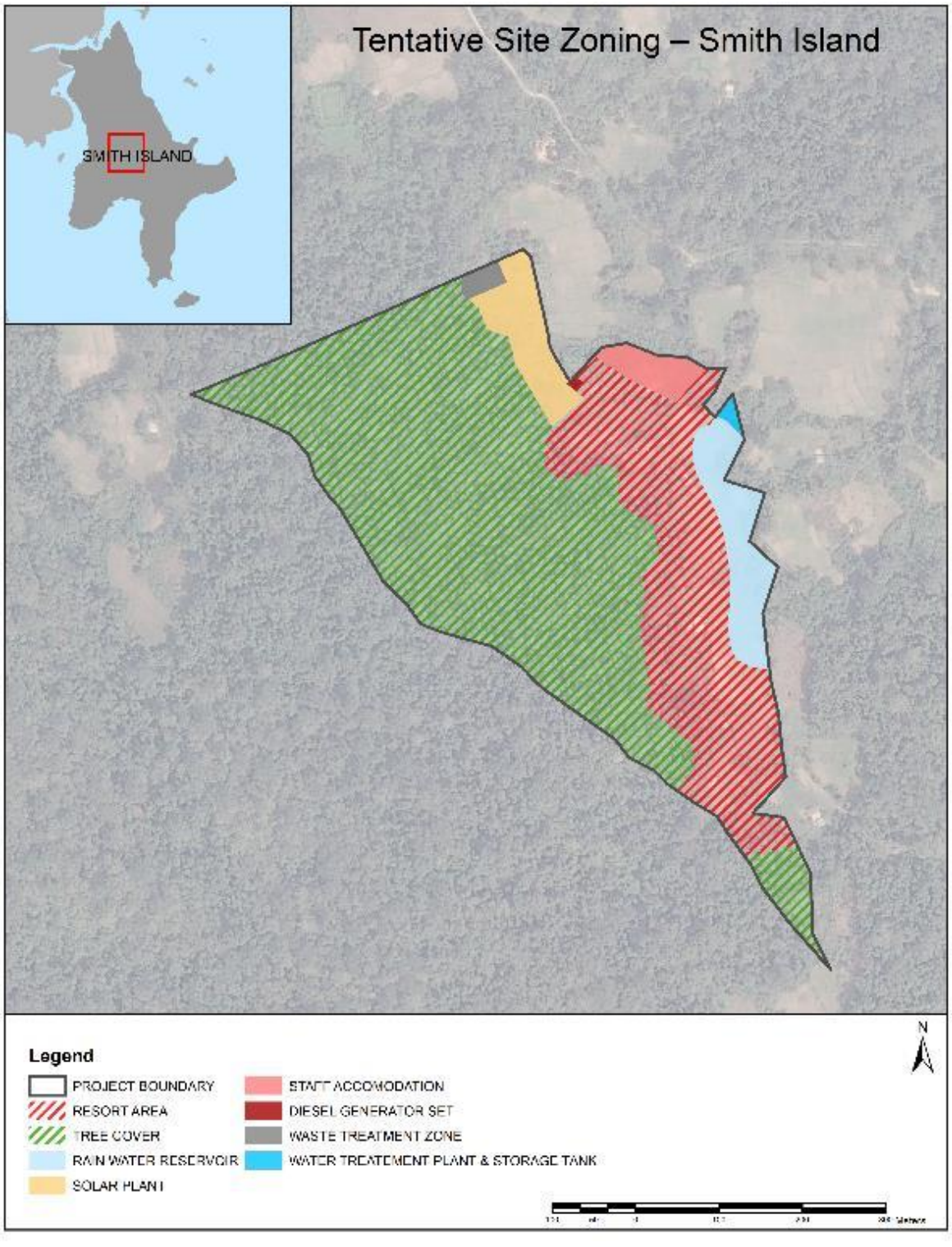
To provide Location Map of the Project Site, location and Area details of the Land Parcels identified for the proposed Project.

Location Map

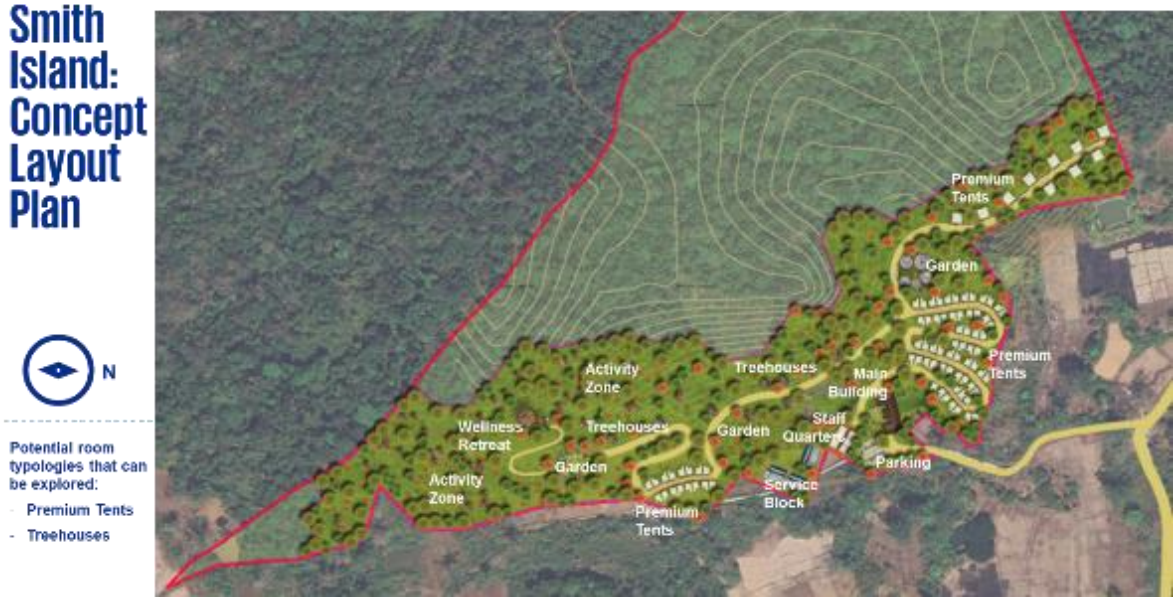
Particulars of Proposed Site	
Survey No./ Village	Survey Nos. 96, 98 and 1/1/2, Smith Land
Area of Land Parcels	25.0084 Hectare
Site Coordinates	Lat: 13°20'41.57" N I Long: 93°3'12.24" E

District	North and Middle Andaman
State/ Union Territory	Andaman and Nicobar Islands
CRZ classification of project location	Plots fall under IIMP as per IPZ Notification, 2011

CRZ Map



Indicative Concept Plan for the proposed Project



Schedule B Development of the Project

(See Article 2.1(b))

Development of the Project shall include development of the Resort, including supporting and Ancillary Infrastructure, which shall meet the 5-Star/ 5-Star Deluxe or equivalent star categorisation certificate from Ministry of Tourism, Government of India.

Development of the Resort shall mean development of the Resort, Ancillary Facilities, Ancillary Facilities and Project Infrastructure and any other activities incidental thereto as permitted under Applicable Laws and Applicable Permits, including such additional rights as may be granted time to time. Development of the Resort shall include construction of the Resort as described in this Schedule B. Development of the Resort shall conform with the provisions of Annex-I (Description of Resort/ Project) and Annex-II (Description of Ancillary Facilities & Utilities Infrastructure) of this Schedule B.

Resort shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Schedule C.

Annex-I (Schedule B)

- Development Obligations as part of the overall Project

Particulars		Components of the Resort/ Project to be Developed
Threshold Capacity of Keys that can be developed in the Proposed Project		• Maximum of **70 Keys** can be developed on the Project Site.
Mandatory Development Obligations during the Construction Period	:	• To develop the Project as a luxury Eco-tourism Resort meeting 5-Star/ 5-Star Deluxe Certification Standards for Hotel as per prevailing certification policy of Ministry of Tourism, Govt. of India. Obtaining and maintaining such certification throughout the Operations Period is required. • To develop, operate, maintain and manage as per best standards of the industry: o minimum room inventory of **35 Keys**; and o amenities as part of the Project complying with Certification Standards for 5 Star/ 5 Star Deluxe considered by the Bidder for the Project. • To develop utility infrastructure to support the smooth and efficient operation of the Project with design capacity stipulated in the CRZ clearance procured for the Project. • Leveling, grading, boundary wall / fencing, gate, internal roads, drainage, power distribution, street lighting, etc. • By adoption of the above mentioned Development Standards, will ensure environmentally sustainable development of the Project and minimal impact on the ecological sensitivity of the region/ island.
Additional Development during the Operation Period of the Concession Period	:	• Any development over and above development carried out as part of Mandatory Development Obligations (MDO), such as additional number of Keys and Facilities for enhancement of business operations or by its nature may increment the Hospitality Services and may lead to the potential increase in the Revenue from the Project, provided such development is in conformity with the development and planning regulations as applicable to the Project (**Optional Development Obligations**); and including any such development as permissible due to Change of Law during the Concession Period (**Additional Services**).

Annex-II (Schedule B)

Description of Ancillary Facilities & Utilities Infrastructure

The Project shall be a self-sustainable project and shall include, inter alia, following Ancillary Facilities that can developed and forming part of the Project.

- The Concessionaire shall construct the facilities described in the table below for provision of Hospitality Services and Special Services as mentioned under Article 21 of this Agreement.

Particulars		Description of Ancillary Facilities
Project Components Identified and permitted to be developed	:	**Eco-Resort** • Main Reception • Restaurant • Open Dining Area • Wellness Centre • Landscape Area (Garden and Sports Facilities) • Parking • Staff Quarters • Swimming Pool • Recreational and Yoga Facilities, etc. **Activity/ Beach Facilities** • Water Sports i.e. Scuba-diving, Snorkeling, Kayaking, Canoeing, etc. • Indoor and Outdoor sports within the premises as permitted by law • other activity based facilities

- The Concessionaire shall have to carry out installation, testing, and commissioning of the utility infrastructure to support the Project operations and provision of hospitality services smoothly and efficiently.

Particulars		Description of Utilities
Project Components Identified and permitted to be developed	:	The design capacity of the required utility infrastructure should comply the provisions/ conditions of the CRZ clearance procured by the Authority for the Project.

Schedule C Specifications and Standards

(See Article 2.1(b))

2. Resort

2.1. The Resort shall conform with the Specifications and Standards as specified in this Schedule C and in this Agreement.

2.2. The Specifications and Standards applicable to the design and construction of the Resort shall conform with the National Building Code of India, relevant specifications and standards specified by the Bureau of Standards, other Applicable Laws and Good Industry Practice.

2.3. In the absence of any specific provision in this Agreement, the following standards shall apply in order of priority:

(i) National Building Code;

(ii) Bureau of Indian Standards (BIS);

(iii) International guidelines including GRIHA/ LEED/ Green Globe;

(iv) Eco-resort regulations as stipulated by Town and Country Planning Unit of Andaman Public Works Department or respective Competent Authority; and

The Master Plan for Havelock and Neil Island 2034 has laid down following guidelines which shall be applicable for construction of eco resort (for reference)

- The structure shall be restricted to G+1 floor only. Maximum stilt height permissible is 1m above ground level.
- Maximum floor area of a single unit of resort / cottage shall not exceed 50 sq mt.
- Maximum number of units to be clubbed is restricted to 3 and the total floor area shall not exceed 170 sq mt at each floor level.
- Use of cement concrete is restricted to sub-structure for single storied building. However, to facilitate laying of service / plumbing lines in bathrooms / toilets, not more than two side walls are allowed to be constructed with conventional materials like hollow blocks / bricks etc. RCC roofing in this case is also permitted.
- In case of G+1 structure, the use of cement concrete is permissible only for Columns and beams up to ground floor level and only renewable and reusable materials (other than cement concrete) are permissible for roof. However, bath / toilets on the first floor can have cement concrete flooring & roofing.
- At the first-floor level all structures shall only be of renewable and reusable materials other than cement concrete.
- In case building constructed on stilts, the eco-friendly material other than cement concrete shall be used for flooring.
- Only sloped roof is permissible for all developments.

- The use of cement concrete shall be allowed in super structure for kitchen, waste water recycle plant & Rain Water harvesting tank.

- Further, Eco Resorts exceeding 1,000 sq mt of floor area shall provide for recycling & reuse of wastewater generated and the same shall be shown in the plans submitted for Planning Permission. Eco Resorts exceeding 500 sq mt of floor area, shall provide for environmentally sustainable methods of solid waste management, and the plan for the same shall be submitted while Planning Permission is sought.

Further, to ensure that the Eco resorts cause minimal impact over the environment, the Masterplan lays down following cautions to secure permission for the tourists' facilities.

- The proposed activity is to be clearly established as eco-friendly, and in this regard, it is to be ensured that the proposed eco resorts are designed in harmony with the local natural and cultural environment, using principles of sustainable design

- Minimize the use of non-renewable energy resources and minimize the use of non-renewable materials for construction

- Make use of recycled materials where possible

- Work in harmony with the local community, offering jobs with a wide range of responsibilities and employment

- Work to provide benefits to local conservation and offer to educate the visitor about the local environment and culture.

(v) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Independent Expert.

2.4. The latest version of the specified codes and standards which were notified published at least 60 (sixty) days prior to the Bid Date in respect of this Agreement shall apply.

2.5. The Resort shall conform to 5-Star Categorisation by Ministry of Tourism, Government of India.

2.6. The Resort shall conform to following:

(a) Andaman and Nicobar Islands Tourism Policy, and its subsequent amendments, if any; as well as other policy(s) for Tourism Sector drafted and applicable to the Resort;

(b) Local Development and Planning Regulations, stipulated by Town and Country Planning Unit of Andaman Public Works Department or respective Competent Authority; and

(c) Environment Protect Act of Government, 1986 of Government of India.

Schedule D Drawings

(See Clause 12.2 (g))

1. Drawings

In compliance with the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Expert, free of cost, all Drawings as required by the Authority which shall be informed after the Execution Date but prior to the Appointed Date.

- Architectural Drawings
- Structural Drawings
- Façade Drawings
- HVAC Drawings
- Electrical Drawings- Power and Data/AV/ Voice systems
- Plumbing Drawings
- Fire-fighting Drawings
- Interior Drawings
- Landscape Drawings
- Shop Drawings
- Automation Drawings
- Miscellaneous Drawings

Note: *This list shall be prepared by the Authority in consultation with the Independent Expert*

2. Additional Drawings

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

Schedule E Applicable Permits

(See Clauses 4.1.2 (b) and 4.1.3 (d))

2.1. The Authority shall, as required under Applicable Laws, obtain the following Applicable Permits on or before the Appointed Date:

(a) Conversion of Land Use (CLU);

(b) Consent to establish and Consent to operate under the provisions of the Water (Prevention and Control of Pollution) Act, 1974;

(c) Consent to establish and Consent to operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981;

(d) CRZ Clearance;

(e) Environmental Clearance; and

(f) License to store and serve alcohol in the Resort (Commitment to license or letter of intent to store and serve alcohol shall be provided at the date of signing of agreement. Actual license shall be contingent upon compliance to fire and other approvals as per extant provisions for issuance of license to store and serve alcohol, and shall be provided after completion of construction.

2.2. It is expressly provided that the responsibility of the Authority shall be limited to providing above Applicable Permits, subject to compliance during the concession, if any. The Concessionaire, at its own risk and cost, shall be solely responsible for adhering to the conditions of Applicable Permits. The Concessionaire shall responsible for making its fully aware about terms and conditions of the Applicable Permits. Further, if the Concessionaire is of opinion of seeking fresh approvals, required due to change in design of the project, as be allowed to be carried out by the Concessionaire at its own cost and efforts; wherein the Authority will provide the possible support. Also, the Concessionaire will need to seek such approvals during the Construction Period itself, which will be governed by the provisions stipulated in the Concession Agreement.

2.3. It is also expressly provided that CRZ Clearance/ Environmental Clearance required to exercise Optional Development Obligation shall be sole responsibility of the Concessionaire.

2.4. Any violation of the terms & conditions of the applicable permit obtained by the Authority to facilitate the Concessionaire shall be treated as Concessionaire's default and relevant provisions of default of the Concession Agreement shall be applicable for such occurrence.

2.5. The Concessionaire shall obtain all the other required Applicable Permits from the relevant local authorities, as per Applicable Laws, for construction and operation of the Resort and Project Infrastructure. An indicative list of Applicable Permits is provided in Annex II to the Schedule E.

2.6. The development and maintenance of the Resort and Ancillary Facilities shall be in compliance to Form I submitted by the Authority for obtaining / CRZ Clearance. The Form I submitted for the Project is provided as Annex-I to Schedule E.

Annex-I (Schedule E)

The upfront clearances procured by the Authority for the Project as specified under Schedule E a copy of it to be attached hereinunder this Annex.

Certain project specific clearances have been procured upfront by the Authority are as follows:

1. **Combined Environmental and CRZ Clearance** – MoEF&CC vide letter no. F.No. 11-5/2019-IA-III, dated 28.03.2019, granted CRZ approval for the Project.

2. **Conversion of Land Use** – The Authority has already got the Land use for the Project converted to 'Commercial' use for the purpose of development of eco-tourism resort development.

Annex-II (Schedule E)

The following list of Applicable Permits which are envisaged to be necessary for construction, operation and maintenance of the Eco-Tourism Resort is indicative only. The actual Applicable Permits shall be contingent upon nature of the Resort and nature of construction and operation methodology proposed by the Concessionaire.

(a) **License to store and serve alcohol in the Resort**: Commitment to license to store and serve alcohol shall be provided at the date of signing of agreement. Actual license shall be contingent upon compliance to fire and other approvals as per extant provisions and shall be provided after completion of construction.

(b) **Other Clearances**: The following list of Applicable Permits for construction, operation and maintenance of the Eco-Tourism Resort is indicative only. The actual Applicable permits will be contingent upon the nature of construction and operation envisaged by the Concessionaire.

The estimated timeframe for obtaining following approvals is 30 days, subject to the Concessionaire submitting its applications complete in all respect in a timely manner. The Authority will provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project.

Sr. No.	Clearance(s)/ Permit(s)
1	Registration under A&N Shops & Commercial Establishment Regulation, 2004 by Labour Department
2	Registration under Contract Labour (Regulation and Abolition Act, 1970) by Labour Department
3	Registration of Establishment under Building & Other Construction Workers Act, 1996 by Labour Department
4	Food license issued by Food Safety Commissioner, FSSAI
5	Consent to Establish/Operate under Water (Prevention & Control of Pollution) Act, Air (Prevention & Control of Pollution) Act, 1981 by Pollution Control Committee
6	Fire clearance by Fire Service Department
7	Building plan approval under A & N Islands (Panchayat Administration Rule, 1997) by Gram Panchayat
8	GST registration issued by Goods & Service Tax Department, Deputy Commissioner Office
9	VAT registration issued by Deputy Commissioner Office
10	Registration of CA document by Deputy Commissioner Office Department

Schedule F Performance Security

(See Clause 9.1 (a))

WHEREAS:

(A)....., (the "**Concessionaire**") and the **UT Administration of Andaman and Nicobar Islands (ANI Administration)** represented by the **Managing Director, Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)** (the "**Authority**") and having its principal offices at **ANIIDCO Ltd., Vikas Bhawan, PB No. 180, Sri Vijaya Puram, Andaman & Nicobar Islands – 744101** have entered into a Concession Agreement dated ..... (the "**Agreement**") whereby the Authority has agreed to the Concessionaire undertaking the development, operation, maintenance and management of the Project at ..... in ..... on design, finance, build, operate, maintain and transfer ("**DBFOT**") basis, subject to and in accordance with the provisions of the Agreement.

(B). The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of INR ……. Crore (Indian Rupees ……. Crore Only) (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the period of l (one) year from the Appointed Date.

(C). We, ... through our Branch at ..... (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of a Secretary or equivalent, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall cease to be in force and effect after expiry of a period of 6 (six) months from the Project COD, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of ____ from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this .....day of ..... 2025 at .....

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

(i) *The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.*

(ii) *The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.*

Schedule G Project Completion Schedule

(See Clause 10.3.5)

1. Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule G for each of the Project Milestones and Scheduled Completion Date (the "**Project Completion Schedule**"). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

1.1. Project Milestone-I

Project Milestone-I shall occur on the date falling on the 60th (sixtieth) day from the Appointed Date (the "**Project Milestone-I**"). Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced Development Works of the Resort and the Project Infrastructure and incurred an expenditure of not less than 5% (five per cent) of the Financial Package.

1.2. Project Milestone-II

Project Milestone-II shall occur on the date falling on the 365th (three hundred and sixty fifth) day from the Appointed Date (the "**Project Milestone-II**"). Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of the facilities planned in the Resort and the Project Infrastructure and expended not less than 20% (twenty per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Expert, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Expert to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one—half of the expenditure referred to hereinabove shall have been incurred on Development Works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery employed for the use of developing the Project Infrastructure.

1.3. Project Milestone-III

Project Milestone-III shall occur on the date falling on the 730th (seven hundred and thirtieth) day from the Appointed Date (the "**Project Milestone-III**"). Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced construction of the facilities planned in the Resort and the Project Infrastructure and expended not less than 60% (sixty per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Expert, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Expert to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one—half of the expenditure referred to hereinabove shall have been incurred on Development Works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery employed for the use of developing the Project Infrastructure.

1.4. Project Milestone-IV

Project Milestone-IV shall occur on the date falling on the 1,095th (one thousand and ninety-fifth) day from the Appointed Date (the "**Project Milestone-IV**"). Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced construction of the facilities planned in the Resort and the Project Infrastructure and expended not less than 90% (ninety

per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Expert, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Expert to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one—half of the expenditure referred to hereinabove shall have been incurred on Development Works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery employed for the use of developing the Project Infrastructure.

1.5. Scheduled Completion Date

The Scheduled Completion Date shall occur on the 4th (fourth) anniversary of the Appointed Date (the "**Scheduled Completion Date**"). On or before the Scheduled Completion Date, the Concessionaire shall have completed the Resort and the Project Infrastructure in accordance with this Agreement.

1.6. Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

Schedule H Tests

(See Clauses 12.4.2 and 13.3)

1. Schedule for Tests

1.1. The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Resort, notify the Independent Expert and the Authority of its intent to subject the Resort to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Expert and the Authority detailed inventory and particulars of all works and equipment forming part of the Resort.

1.2. The Concessionaire shall notify the Independent Expert of its readiness to subject the Resort to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Expert shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Expert shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 12 and this Schedule H.

2. Tests

2.1. In pursuance of the provisions of Clause 12.4.2 of this Agreement, the Independent Expert shall conduct, or cause to be conducted, the Tests specified in this Paragraph.

2.2. Visual and Physical Test

The Independent Expert shall conduct a visual and physical check of the Resort, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.3. Trial run

The Independent Expert shall require the Concessionaire to carry out or cause to be carried out a trial run of all equipment, facilities and systems to determine that the Resort is in conformity with the provisions of this Agreement.

2.4. Tests for equipment

The Independent Expert shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Resort and described in Schedule B.

2.5. Environmental audit

The Independent Expert shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.6. Safety review

The Independent Expert shall carry out a safety audit of the Project to determine its compliance with the provisions of Schedule-K and this Agreement.

3. Agency for Conducting Tests

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

4. Inspection by the Independent Expert

Upon successful completion of Tests, the Independent Expert shall submit an Inspection Report in accordance with the provisions of Article 12.

5. Tests during Construction

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

Schedule I Format For Completion Certificate

(See Clause 14.2.2 (a))

To whom it may concern

In consideration of the requirements of conditions of Article 14 of the Agreement and the Concessionaire's application for a Provisional Certificate/Completion Certificate, the Authority hereby grants the Provisional Certificate/Completion Certificate

This Provisional Certificate has been issued pending completion of the Punch List as described in Annex I to the Provisional Certificate.

This Provisional Certificate/Completion Certificate is issued on the understanding that the conditions of the Agreement have been met except for minor outstanding work that does not affect the use and safety of the Resort/Project Infrastructure and their intended use as certified by Authority through its letter dated ●.

Provisional Certificate/Completion Certificate does not relieve the Concessionaire of any requirements or obligations within the Agreement.

Signed this …….. day of …….., 2025 at ……...

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of of	For and on behalf
The Concessionaire by:	The Authority by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

Schedule J Maintenance Requirements

(See Clause 17.2)

1. Maintenance Requirements

1.1. The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the Maintenance Requirements set forth in this Schedule J.

1.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in Clause 2 of this Schedule J within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement.

2. Repair/rectification of defects and deficiencies

2.1. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in the Project within reasonable time limit in accordance with Good Industry Practices.

2.2. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. Other defects and deficiencies

In respect of any defect or deficiency, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.

4. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule J, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification, the Concessionaire shall be entitled to additional time in conformity with Good industry Practice.

5. Emergency repairs/restoration

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

6. Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Project and maintain a record thereof in a register. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Expert at any time during office hours.

7. Divestment Requirements

All defects and deficiencies shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the Transfer Date.

8. Other Maintenance Requirements

The Concessionaire shall at all times ensure that:

(a) the hours of availability of all services provided by the Project Facilities conform to Good Industry Practice and are posted on its website;

(b) all the Hospitality and Additional services, as may be required in accordance with Good Industry Practice and Applicable Laws, are available 24 (twenty four) hours a day and on all days in a year;

(c) the Keys are clean, hygienic and ensure pleasant and healthy environment for its Users;

(d) all recreational amenities and infrastructure services are in working condition and are readily available for use to its Users.

(e) proper room service is provided to maintain cleanliness & hygiene of Project Facilities;

(f) there is adequate lighting within the Project in conformity with the Specifications and Standards; and

(g) Hospitality and Additional services are carried out in a manner that it conforms to the environment standards prescribed under Applicable Laws and Applicable Permits.

Schedule K Safety Requirements

(See Clause 18.1)

1. Guiding principles

1.1. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.

1.2. Safety Requirements apply to all phases of construction, development, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

1.3. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule K.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following:

(a) Applicable Laws and Applicable Permits;

(b) provisions of this Agreement;

(c) relevant Standards/Guidelines contained in nationally accepted codes; and

(d) Good Industry Practice.

3. Safety measures during Operation Period

3.1. The Concessionaire shall develop, implement and administer a safety programme for the Resort and Project Infrastructure, staff, Users and other persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.

3.2. The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.

3.3. The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in 3 (three) copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Clause 3.1 of this Schedule K for averting or minimising such accidents in future.

4. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Clause 2 of this Schedule K, shall be borne by the Concessionaire in accordance with the provisions of Clause 18.2 of Article 18.

Annex-I: (Schedule K) - Safety Guidelines

1. System integrity

In the design of the Resort and Project Infrastructure, particular care shall be taken to minimise the likely incidence of failure.

2. Safety management

A safety statement shall be prepared by the Concessionaire once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. 2 (two) copies of the statement shall be sent to the Independent Expert within 15 (fifteen) days of the close of every year.

3. Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the Disaster Management Manual) to be prepared and published by the Concessionaire prior to Project COD. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the Independent Expert no later than 30 (thirty) days prior to Project COD.

4. Fire safety

4.1. To prevent fire in the Project, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

4.2. To deal with incidents of fire, the Concessionaire shall provide a hydrant based fire-fighting system in conformity with the provisions of Schedule C.

5. Surveillance and Safety Manual

The Concessionaire shall, no later than 60 (sixty) days prior to Project COD, evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection

6. Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety of the Project and all persons affected by it.

Schedule L Terms of Reference for the Independent Expert

(See Clause 22.2 (a) and (b))

1. Role and functions of the Independent Expert

The role and functions of the Independent Expert shall include the following:

(i) review of the Drawings and Documents as set forth in Paragraph 2;

(ii) review inspection and monitoring of Development Works as set forth in Paragraph 2;

(iii) review inspection and testing of Resort and Project Infrastructure as set forth in Paragraph 2;

(iv) review inspection and monitoring of O&M as set forth in Paragraph 3;

(v) review inspection and monitoring of Divestment Requirements in accordance with the Agreement;

(vi) assisting the Parties in resolution of Disputes as set forth in Paragraph 4; and (vii) undertaking all other duties and functions in accordance with the Agreement.

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

2. Construction Period

2.1. The Independent Expert shall undertake a review of the Drawings to be furnished by the Concessionaire along with supporting data. The Independent Expert shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

2.2. The Independent Expert shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

2.3. The Independent Expert shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

2.4. The Independent Expert shall inspect the Development Works and equipment (if any) at least once every quarter, preferably after receipt of the quarterly progress report from the Concessionaire, but before the 20th (twentieth) day of succeeding month in any case, and make out a report of such inspection (the Inspection Report) setting forth an overview of the status, progress, quality, safety and conformity of Development Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or

deficiencies observed by it. The Independent Expert shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

2.5. The Independent Expert may inspect the Resort and Project Infrastructure more than once in a quarter.

2.6. For determining that the Development Works conform to Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Expert in accordance with Good Industry Practice for quality assurance.

2.7. The sample size of the tests, to be specified by the Independent Expert under Paragraph 2.6, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in accordance with Good Industry Practice; provided that the Independent Expert may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.

2.8. The timing of tests referred to in Paragraph 2.7, and the criteria for acceptance rejection of their results shall be determined by the Independent Expert in accordance with Good Industry Practice. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

2.9. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Development Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 2 shall apply to such tests.

2.10. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Expert shall undertake a review of the progress of development and identify potential delays, if any. If the Independent Expert shall determine that completion of the Resort and Project Infrastructure is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which Project COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire forthwith.

2.11. If suspension of Development Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.

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

3. Operation Period

3.1. In respect of the Drawings and Documents received by the Independent Expert for its review and comments during the Operation Period, the provisions of Paragraph 2 shall apply, mutatis mutandis.

3.2. The Independent Expert shall review the annual status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

3.3. The Independent Expert shall inspect the Resort and Project Infrastructure, at least once every year, preferably after receipt of the yearly status report for the relevant year from the Concessionaire, but before the 30th (thirtieth) day after the close of each year in any case, and make out an Inspection Report setting forth an overview of the safety of operations and their conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Resort and Project Infrastructure. The Independent Expert shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

3.4. The Independent Expert may inspect the Project more than once a year.

3.5. The Independent Expert shall in its Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Resort and Project Infrastructure is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

3.6. In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-J, the Independent Expert shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.

3.7. The Independent Expert shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Article 13.2.

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

4. Assistance in Dispute resolution

4.1. When called upon by either Party in the event of any Dispute, the Independent Expert shall mediate and assist the Parties in arriving at an amicable settlement.

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

5. Other duties and functions

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

6. Miscellaneous

6.1. The Independent Expert shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

6.2. A copy of all communications, comments, instructions, Documents sent by the Independent Expert to the Concessionaire pursuant to this Schedule, and a copy of all the test results with comments of the Independent Expert thereon shall be furnished by the Independent Expert to the Authority forthwith.

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

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

Schedule M Project Account Agreement

(See Clause 26.1.2)

THIS PROJECT ACCOUNT AGREEMENT is entered into on this the .... day of ....., 2025.

AMONGST

1. ..... , Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ..... (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. ..... , (*insert name and particulars of Lenders' Representative*) and having its registered office at ..... acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3. .... (*insert name and particulars of the Project Account Bank*) and having its registered office at ..... (hereinafter referred to as the "**Project Account Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4. The **UT Administration of Andaman and Nicobar Islands (ANI Administration)** represented by the **Managing Director, Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)** and having its principal offices at **ANIIDCO Ltd., Vikas Bhawan, PB No. 180, Sri Vijaya Puram, Andaman & Nicobar Islands – 744101** (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

WHEREAS:

A. The Authority has entered into an agreement dated ..... with the Concessionaire (the "**Concession Agreement**") for developing Resort and Project Infrastructure, in……on DBFOT basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

C. The Concession Agreement requires the Concessionaire to establish an Project Account, inter alia, on the terms and conditions stated therein.

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

1. Definitions and Interpretation

1.1. Definitions

Unless contrary to the provisions of this Agreement, the capitalised terms used in the Agreement but not defined in this Agreement, shall have meaning assigned to it under the Concession Agreement. In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Agreement**" shall mean this Project Account Agreement and any amendment thereto made in accordance with the provisions contained herein;

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

"**Cure Period**" shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

"**Project Account**" shall mean an account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"**Project Account Default**" shall have the meaning ascribed thereto in Clause 6.1.1 of this Agreement;

"**Lenders' Representative**" shall mean the person referred to as the Lenders' Representative in the foregoing Recitals;

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

"**Payment Date**" shall mean, in relation to any payment specified in Clause 4.1 of this Agreement, the date(s) specified for such payment; and

"**Sub-Accounts**" shall mean the respective sub-accounts of the Project Account, into which the monies specified in Clause 4.1 of this Agreement would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s);

1.2. Interpretation

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

1.2.2. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this

Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

2. Project Account

2.1. Project Account Bank to act as trustee

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

2.1.2. The Concessionaire hereby declares that all rights, title and interest in and to the Project Account shall be vested in the Project Account Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2. Acceptance of Project Account Bank

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

2.3. Establishment and operation of Project Account

2.3.1. Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Project Account with the ..... (name of Branch) branch of the Project Account Bank. The Project Account shall be denominated in Rupees.

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

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

this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. Project Account Bank's fee

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

2.5. Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Project Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Project Account.

2.6. Substitution of the Concessionaire

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

3. Deposits into Project Account

3.1. Deposits by the Concessionaire

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

(a) All funds constituting the Financial Package;

(b) All revenues from the usage of the Project Facilities and its Associated Services;

(c) All payments by the Authority;

(d) All capital and / or revenue subsidy, if any, received by the Concessionaire from any Government Instrumentality.

Provided that the Senior Lenders may make direct disbursement to the Contractors and suppliers in accordance with the express provisions contained on this behalf in the Financing Agreements

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

3.2. Deposits by the Authority

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

(a) Any monies disbursed by the Authority to the Concessionaire;

(b) all Revenues collected by the Authority, if any, in exercise of its rights under the Concession Agreement; and

(c) Termination Payments.

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

3.3. Interest on deposits

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

4. Withdrawals from Project Account

4.1. Withdrawals during Concession Period

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

(a) all Taxes due and payable by the Concessionaire for and in respect of the Project;

(b) all payments relating to development of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

(d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

(e) Concession Fee due and payable to the Authority;

(f) monthly proportionate provision of Debt Service due in an Accounting Year;

(g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

(h) monthly proportionate provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;

(i) any reserve requirements set forth in the Financing Agreements and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2. No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Project Account Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1 of this Agreement; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2. Withdrawals upon Termination

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

(a) all Taxes due and payable by the Concessionaire for and in respect of the Project.

(b) 90% (Ninety per cent) of Debt Due less Insurance Cover, excluding Subordinated Debt;

(c) Outstanding Concession Fee;

(d) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Concessionaire;

(e) retention and payments relating to the liability for defects and deficiencies set forth in this Agreement;

(f) outstanding Debt Service including the balance of Debt Due;

(g) outstanding Subordinated Debt;

(h) incurred or accrued O&M Expenses;

(i) any other payments required to be made under this Agreement; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that the disbursements specified in Sub-Clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3. Application of insufficient funds

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

4.4. Application of insurance proceeds

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

4.5. Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 31 of the Concession Agreement. Any instructions given by the Authority to the Project Account Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. Obligations of the Project Account Bank

5.1. Segregation of funds

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

5.2. Notification of balances

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

5.3. Communications and notices

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

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;

(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Project Account Bank from the Concessionaire or any other person hereunder or in connection herewith; and

(d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4. No set off

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

5.5. Regulatory approvals

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

6. Project Account Default

6.1. Project Account Default

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

(a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Project Account as provided herein and fails to cure such breach by depositing the same into the Project Account within a Cure Period of 5 (five) business days;

(b) the Concessionaire causes the Project Account Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Project Account or any Sub- Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

(c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

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

7. Lender's Covenant

The Senior Lenders acknowledge the provisions of this Agreement and agree to the Authority's right to be paid from the Concession Fee, the Additional Concession Fee and other amount due in respect of the terms of the Concession Agreement and hereby expressly permit the Concessionaire to deposit such amount as provided in Clause 3 of this Agreement.

8. Termination of Project Account Agreement

8.1. Duration of the Project Account Agreement

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

8.2. Substitution of Project Account Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Project

Account Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Project Account Bank, provided that the new Project Account Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Project Account to a new Project Account established with the successor Project Account Bank.

The termination of this Agreement shall take effect only upon coming into force of an Project Account Agreement with the substitute Project Account Bank.

8.3. Closure of Project Account

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

9. Supplementary Project Account Agreement

9.1. Supplementary Project Account agreement

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

10. Indemnity

10.1. General indemnity

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

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

10.1.3. The Project Account Bank shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Project Account Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense,

arising out of acts done in discharge of their lawful functions by the Project Account Bank, its officers, servants and agents.

10.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 of this Agreement or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

11. Dispute Resolution

11.1. Dispute resolution

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

11.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

12. Miscellaneous Provisions

12.1. Governing law and jurisdiction

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

12.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

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

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

12.3. Priority of agreements

In the event of a conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement. The contents of this Agreement shall prevail over any other agreement executed for the mechanism of the payment between the Concessionaire and the Senior Lenders under the Financing Agreements.

12.4. Alteration of terms

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

12.5. Waiver

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

(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 Pany; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

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

12.6. No third party beneficiaries

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

12.7. Survival

12.7.1. Termination of this Agreement:

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

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or

(c) caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

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

12.8. Severability

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

12.9. Successors and assigns

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

12.10. Notices

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

12.11. Language

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

12.12. Authorised representatives

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

12.13. Original Document

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

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

THE COMMON SEAL OF THE CONCESSIONAIRE has been affixed

pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the .... day of .... .. 2025, hereunto affixed in the presence of ..... , Director, who has signed these presents in token thereof and .....,

Company Secretary / Authorised Officer who has countersigned the same in token thereof:

(Signature)

(Name)

(Designation)

(Address)

(Fax N0.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of PROJECT ACCOUNT BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the

Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address) (Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THE AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address) (Fax No.)

(e-mail address)

Schedule N Vesting Certificate

(See Clause 33.4)

The **Union Territory of Andaman and Nicobar Islands** , represented by the **Managing Director, Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)** (the "**Authority**") refers to the Concession Agreement dated .... (the "**Agreement**") entered into between the Authority and .... (the "**Concessionaire**") for a Project, at ..... in ..... ……on design, finance, build, operate and transfer ("**DBFOT**") basis.

The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 33.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this …..day of....., 2025 at……..

AGREED, ACCEPTED AND SIGNED

For and on behalf of Concessionaire by:

(Signature)

(Name)

(Designation)

(Address) SIGNED, SEALED AND DELIVERED

For and on behalf of Authority by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

l. 2.

Schedule O Substitution Agreement

(See Clause 35.3.1)

This SUBSTITUTION AGREEMENT is entered into on this the .... day of 2025

AMONGST

UT Administration of Andaman and Nicobar Islands (ANI Administration) represented by the **Managing Director, Andaman and Nicobar Islands Integrated Development Limited (ANIIDCO)** and having its principal offices at **ANIIDCO Ltd., Vikas Bhawan, PB No. 180, Sri Vijaya Puram, Andaman & Nicobar Islands – 744101** (hereinafter referred to as the "**Authority**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

.... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ...., (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

.... (*insert name and particulars of Lenders' Representative*) and having its registered office at ...., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

(i) The Authority has entered into a Concession Agreement dated with the Concessionaire (the "**Concession Agreement**") for the Project at ..... in ……..on design, finance, build, operate and transfer ("**DBFOT**") basis, and a copy of which is annexed hereto and marked as Annex-A to form pan of this Agreement.

(ii) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(iii) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

(iv) In order to enable implementation of the Project including its financing, construction, development, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1. Definitions And Interpretation

1.1. Definitions

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

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

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

"**Lenders' Representative**" shall mean the person referred to as the Lenders' Representative in the foregoing Recitals;

"**Nominated Company**" shall mean a company, incorporated under the provisions of the Companies Act, 1956/ 2013, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/ transfer of the Concession as provided in this Agreement;

"**Notice of Financial Default**" shall have the meaning ascribed thereto in Clause 3.2.1 of this Agreement; and

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

1.2. Interpretation

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

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

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

2. Assignment

2.1. Assignment of rights and title

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

3. Substitution Of The Concessionaire

3.1. Rights of substitution

Pursuant to the rights, title and interest assigned under Clause 2.1 of this Agreement, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2. Substitution upon occurrence of Financial Default

3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record, A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

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

3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 31 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3. Substitution upon occurrence of Concessionaire Default

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

3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such

withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4. Procedure for substitution

3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2 of this Agreement, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

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

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

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

(b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and

(c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4. If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the

Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5. The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the

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

3.5. Selection to be binding

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

4. Project Agreements

4.1. Substitution of Nominated Company in Project Agreements

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

5. Termination of Concession Agreement

5.1. Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of 32.2 of the Concession Agreement.

5.2. Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2 of this Agreement, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3. Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Project Account in accordance with the provisions of the Project Account Agreement.

6. Duration of the Agreement

6.1. Duration of the Agreement

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

(a) Termination of the Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7. Indemnity

7.1. General indemnity

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

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

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

7.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 of this Agreement or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. Dispute Resolution

8.1. Dispute resolution

8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders'

Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the international Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9. Miscellaneous Provisions

9.1. Governing law and jurisdiction

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

9.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

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

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

9.3. Priority of agreements

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

9.4. Alteration of terms

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

9.5. Waiver

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

(e) 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;

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

(g) shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6. No third party beneficiaries

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

9.7. Survival

Termination of this Agreement:

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

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

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

9.8. Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9. Successors and assigns

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

9.10. Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its

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

9.11. Language

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

9.12. Authorised representatives

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

9.13. Original Document

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS

AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

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

Secretary / Authorised Officer who has countersigned the same in token thereof:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders'

Representative

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

In the presence of:

1.

2.

For and on behalf of THE AUTHORITY by

(Signature)

(Name)

(Designation)

(Address)

(Fax N0.)

(e-mail address)