

**DEPARTMENT OF TOURISM  
GOVERNMENT OF MEGHALAYA**



*Volume 3: General Conditions of Lease cum Development Agreement (GCA) and Special Conditions of  
Lease cum Development Agreement (SCA)*

invites

**REQUEST FOR PROPOSAL (RFP)**

for

**Development, Operation and Maintenance of Luxury Tented  
Accommodation located at Multiple Locations in Meghalaya under  
Design, Build, Finance, Operate and Transfer (DBFOT) Mode on Public  
Private Partnership**

**August 2024**

*(This document is meant for exclusive purposes of submitting the proposal against this RFP document and shall  
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## **Volume 3:**

**General Conditions of Lease cum Development Agreement (GCA) and**

**Special Conditions of Lease cum Development Agreement (SCA)**

## LEASE CUM DEVELOPMENT AGREEMENT

THIS LEASE CUM DEVELOPMENT AGREEMENT is entered into on this the ..... day of ..... (Month) ..... (Year) at .....

### By and Between

Meghalaya Tourism Development Corporation Limited (MTDC Ltd.) is a public sector corporation under the ownership and control of the Government of Meghalaya and having its registered office at Meghalaya Tourism Development Corporation Ltd., State Convention Centre (Pinewood Hotel Annexe), Bishop Cotton Road, Shillong - 793 001, represented by its authorized representative the <<Name of Authority >>, hereinafter referred to as the **"Authority/Lessor"** (which expression shall unless repugnant to the context or meaning thereof, include its successors and assigns) on one hand,

### AND

M/s. .... a company incorporated under the Companies Act 1956, and having its registered office at.....hereinafter referred to as the **"Lessee/Developer"** as the context would require, represented by its <<designation of authorized representative>> ..... s/o ..... resident of ..... Authorized signatory as per the Resolution passed by the Board of Directors Dt. ...., (which expression shall unless repugnant to the context or meaning thereof, shall include its successors and assigns) on the other hand.

### WHEREAS,

- A. The Lessor is desirous of developing a <<project title with description as per GCA 1.1 (FF)>> (hereinafter referred to as the "Project") and delineated in coloured boundary lines on the plan annexed hereto and marked as per Volume I of the bid document.
- B. <<Authority>> carried out a transparent competitive bidding process and after thoroughly evaluating the Bids received from the Bidders, the Bid submitted by ..... (Hereafter referred to as the **"Selected Bidder"**) has been accepted and communicated its offer to the Selected Bidder through its Letter of Intent (LoI) vide Lr. No..... dated.....(hereinafter referred to as the **"Letter of Intent"** or **"LoI"**). The LoI has been issued to the Selected Bidder for the award of the Project. The copies of the Request for Proposal (**"RFP"**), Selected (Successful) Bidder's bid documents, LoI and subsequent letter of acceptance sent by the Selected Bidder vide letter dated..... are collectively annexed hereto and marked as Addenda V.
- C. The Selected Bidder (Lessee) has incorporated Special Purpose Company (SPC)/ Special Purpose Vehicle (SPV) by name \_\_\_\_\_ for the purpose of implementation of the Project and has requested <<Authority/Lessor>> to enter into the Lease-cum-Development Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:



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## **SECTION I. GENERAL CONDITIONS OF LEASE CUM DEVELOPMENT AGREEMENT (GCA)**



## A. ARTICLE- A: DEFINITIONS AND INTERPRETATIONS

<b>1. Definitions</b>	<p>1.1 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:</p> <p><b>"Accounting Year"</b> means the financial year commencing from 1<sup>st</sup> April of any calendar year and ending on 31<sup>st</sup> March of the next calendar year.</p> <p><b>"Adjusted Equity"</b> shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the <b>"Reference Date"</b>), 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:</p> <p>(a) on or before Project COD of the Project 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;</p> <p>(b) from Project COD, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the <b>"Base Adjusted Equity"</b>) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced 6.67% thereof at the commencement of each month following the expiry of the Development Period and the amount so arrived at shall be revised to the extent of variation in WPI occurring between expiry of the Development Period and the Reference Date;</p> <p>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 Lease Period is extended, but the revision on account of WPI shall continue to be made;</p> <p><b>"Agreement"</b> or <b>"Lease cum Development Agreement"</b> means this agreement including all Schedules hereto, and any amendments thereto made in accordance with the provisions of this Agreement.</p> <p><b>"Applicable Laws"</b> means all laws, promulgated or brought into force and effect by Lessor or the State Government or the Government of India or any statutory or regulatory body affiliated directly or indirectly to these governments including regulations and rules made thereunder, and judgments, decrees, injunctions, and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.</p> <p><b>"Applicable Permits"</b> means all clearances, permits, authorizations, consents and approvals under or pursuant to Applicable Laws, required to be obtained and maintained by the Developer, in order to design, finance, develop, operate and maintain the said Project</p> <p><b>"Arbitration Act"</b> means the Arbitration and Conciliation Act, 1996 and shall include all amendments, modifications to or any re-enactment thereof as in force from time to time.</p>
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	<p><b>“Authority”</b> means Meghalaya Tourism Development Corporation Limited (MTDC Ltd.). For the purpose of this Agreement, Authority is also known as the Lessor unless specifically specified otherwise. For the purpose of executing/administering this Agreement, at any time in due course, the Government of Meghalaya for administrative convenience may change the Authority, by assigning this Agreement to any other Government Corporation/Agency/Department to perform the role of “The Authority” in place of Meghalaya Tourism Development Corporation Limited (MTDC Ltd.), with the same terms and conditions as mentioned in this Agreement, and to perform the obligations of the Authority, and to implement the terms of this Agreement.</p> <p><b>“Annual Land Lease Rent”</b> or <b>“Annual Lease Rental”</b> or <b>“ALR”</b> will be the rent paid by the Lessee/Developer to Lessor/Authority and shall be escalated at a rate of 10% every three year on the rent paid during the previous year during the Lease Term/Period</p> <p><b>“Appointed Date”</b> 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 Lease Period;</p> <p><b>“Average Daily Gross Revenue”</b> 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 the 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;</p> <p><b>“Bank”</b> shall mean a bank incorporated in India and having a minimum net worth of Rs 1,000 crore (Rupees one thousand crore) or any other bank acceptable to the senior Lenders, but does not include a bank in which the Senior Lender has an interest;</p> <p><b>“Bank Rate”</b> shall mean the rate of annual interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;</p> <p><b>“Bid”</b> shall mean the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof;</p> <p><b>“Bid Date”</b> shall mean the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal;</p> <p><b>“Bid Security”</b> 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;</p> <p><b>“Change in Law”</b> means the occurrence of any of the following after the date of this Agreement:</p> <ul style="list-style-type: none"><li>a) the enactment of any new Indian law;</li><li>b) the repeal, modification or re-enactment of any existing Indian law;</li></ul>
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	<p>c) the commencement of any Indian law which has not entered into effect until the date of this Agreement;</p> <p>d) a change in the interpretation or application of any Indian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement; or</p> <p>e) any change in the rates of any of the Taxes</p> <p><b>"Companies Act"</b> shall mean, as applicable, the Companies Act, 1956 and the Companies Act, 2013 as amended from time to time.</p> <p><b>"Commercial Operation Date" or "COD"</b> shall mean the date on which a completion certificate is issued by the Authority post fulfilment of the Minimum Development Obligations of the Project by the Developer.</p> <p><b>"Commencement Date"</b> means the date of handing over of possession of the Project Site to the Lessee by the Lessor, from which the Lease Period commences.</p> <p><b>"Cure Period"</b> 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:</p> <p>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;</p> <p>b) not relieve any Party from liability to pay damages or compensation under the provisions of this Agreement; and</p> <p>c) not in any way be extended by any period of Suspension under this Agreement;</p> <p>provided that if the cure of any breach by the Lessee/Developer requires any reasonable action by the Lessee/Developer that must be approved by the Authority hereunder, , the applicable Cure Period shall be extended by the period taken by the Authority after the receipt of the relevant information to accord their approval;</p> <p><b>"Contractor"</b> shall means the person or persons, as the case may be, with whom the Lessee/ Developer has entered into any of the EPC Contract, the O&amp;M Contract, or any other agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Lessee.</p> <p><b>"Debt Due"</b> shall means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:</p> <p>(a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "<b>principal</b>") but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;</p> <p>(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, due to any reason including delayed principal / interest payments and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to</p>
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	<p>Authority Default; and</p> <p>(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;</p> <p>provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Lessee, 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;</p> <p>provided further that the Debt Due, on or after the Project COD, shall in no case exceed 70% (seventy per cent) of the Total Project Cost;</p> <p><b>"Debt Service"</b> 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</p> <p><b>"Developer"</b> is as specified in SCA and shall include its successors and permitted assignees. For the purpose of this Agreement, the Lessee shall be the Developer</p> <p><b>"Dispute"</b> shall have the meaning ascribed thereto in Article J.</p> <p><b>"Dispute Resolution Procedure"</b> means the procedure for resolution of Dispute set forth in Article J.</p> <p><b>"Emergency"</b> means a condition or situation that is likely to endanger the security of the individuals on the said Project including users thereof or which poses an immediate threat of material damage to any of the Project Assets</p> <p><b>"Encumbrance"</b> means any encumbrance 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site.</p> <p><b>"Execution Date"</b> shall mean the date on which this Agreement is executed by the Parties;</p> <p><b>"EPC Contract"</b> shall mean the engineering, procurement and construction contract or contracts entered into by the Lessee/Developer with one or more EPC Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;</p> <p><b>"EPC Contractor"</b> shall mean the person with whom the Lessee has entered into an EPC Contract;</p> <p><b>"Equity"</b> shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Lessee 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;</p>
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	<p><b>“Financial Closure”</b> means the date on which the financing documents providing for financial assistance by the lenders have become effective and the Lessee has access to such financial assistance.</p> <p><b>“Financial Model”</b> shall means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;</p> <p><b>“Financial Package”</b> 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;</p> <p><b>“Financial Year”</b> shall means the year commencing from 1<sup>st</sup> April of any calendar year to 31<sup>st</sup> March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Appointed Date to the 31<sup>st</sup> March of the next calendar year. In the last year of subsistence of this agreement, it means the period from 1<sup>st</sup> April to the Transfer Date.</p> <p><b>“Financing Agreements”</b> shall means the Agreements executed by the Lessee in respect of financing of the Project to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with this Agreement.</p> <p><b>"Force Majeure Event"</b> shall have meaning ascribed thereto in Article G</p> <p><b>"Good Industry Practice"</b> means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced developer engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of the guidelines issued from time to time</p> <p><b>"Government Agency"</b> means any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Developer or the project or any portion thereof, or the performance of all or any of the services or obligations of the Developer under or pursuant to this Agreement.</p> <p><b>"Gross Revenue"</b> for any Financial Year shall mean the total amount of Project revenue 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 Lessee/ or any agency appointed by the Lessee for operation and maintenance of the Project ("Operating Partner") from the operation of the Project Facilities / Project and its facilities, as certified by the statutory auditors of the Lessee, including but not limited to receipts from room occupancy charges, telephone, telefax and telex charges, laundry, sale of food,</p>
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	<p>beverages, liquor, recreational amenities (outdoor pool, health club, spa, sauna, fitness facility etc.), outdoor catering, receipts from vending machines; parking, commercial or other spaces on account of rent and fee of every description and kind, and the recovery in respect of any other service or facility provided by the Lessee/ Operating Partner to the users / guests of the said Project, which are availed/ realized by the Lessee from outside party(ies) at a consideration but shall exclude and be arrived at after deducting the following:-</p> <ul style="list-style-type: none"><li>a) all statutory applicable indirect taxes such as luxury tax, sales tax, entertainment tax, expenditure tax, service tax, goods &amp; services tax and the like by whatever name called now or in future, which the Lessee has agreed to pay or is bound to pay;</li><li>b) revenue on sale of assets of capital nature owned by the Lessee; and</li><li>c) interest income from investments made.</li></ul> <p>For the avoidance of doubt, Gross Revenue shall also include any amount received by any Affiliate/third party agency to whom the Lessee/ Operating Partner has contracted any Associated Services, Hospitality Services and/or any other activity related to the Project, and any amount received by the Lessee/ Operating Partner from a third party to whom it has contracted any Associated Services, Hospitality Services and/or any other activity related to the Project;</p> <p><b>“Hospitality Services”</b> shall mean the services performed under this Agreement such as reception of Users, organising events, provision of food and beverages, room services and any other services performed by the Lessee/ Operating Partner towards creating Revenue from the Project;</p> <p><b>“Indirect Political Event”</b> shall have the meaning ascribed thereto in Article G.</p> <p><b>“Implementation Period”</b> or <b>“Development Period”</b> or <b>“Construction Period”</b> 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 12 (twelve) months from the Appointed Date, provided the Construction Period of the Optional Development Obligation, if any, shall be mutually agreed by the Parties;</p> <p><b>“Insolvency Event” in respect of a Party shall mean:</b></p> <ul style="list-style-type: none"><li>(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</li><li>(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,</li></ul>
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	<p>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;</p> <p><b>“Lease”</b> shall have the meaning ascribed thereto in Article 8.1.</p> <p><b>“Lease Term/Period”</b> shall be defined as specified in the SCA</p> <p><b>“Lenders' Representative”</b> 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;</p> <p><b>“Lock-In Period”</b> shall be defined as specified in the GCA</p> <p><b>“Material Adverse Effect”</b> means material adverse effect on (a) the ability of the Developer to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.</p> <p><b>“Material Breach”</b> means a breach by either Party of any of its obligations under this Agreement which has/ likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure within the Cure Period.</p> <p><b>“Non-Political Event”</b> shall have the meaning ascribed thereto in Clause 28.1.</p> <p><b>“Operator”</b> or <b>“Operating Partner”</b> means either the Developer itself or person/ agency with whom the Developer has entered into or may enter into Operations and Maintenance contract/ agreement for the said Project without being absolved of any liabilities and obligations mentioned in this Agreement. For the purpose of this Agreement, the obligations, rights and responsibilities of the Operator have not been distinguished from that of Developer unless specified otherwise in any communication or instruction from the Developer.</p> <p><b>“Operations Period”</b> means the period commencing from COD and ending at the expiry of the Lease Period.</p> <p><b>“O&amp;M Expenses”</b> shall mean expenses incurred by or on behalf of the Lessee/Developer or by the Authority, as the case may be, for all O&amp;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&amp;M; (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs; (f) payments required to be made under the O&amp;M Contract or any other contract in connection with or incidental to O&amp;M; and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;</p> <p><b>“Parties”</b> means the parties to this Agreement collectively and <b>“Party”</b> shall mean either of the Parties to this Agreement individually.</p>
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	<p><b>"Performance Security/ Performance Bank Guarantee"</b> means the Performance Security for operation and maintenance as applicable in terms of Clause 11</p> <p><b>"Person"</b> means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, special purpose vehicle, special purpose company, government or Government Agency or any other legal entity.</p> <p><b>"Political Event"</b> shall have the meaning ascribed thereto in Clause 30</p> <p><b>"Project"</b> - Lessor hereby grants and authorizes the Developer to design, finance, build, operate and maintain the Project i.e. Development, Operation and Maintenance of Luxury Tented Accommodation located at Multiple Locations in Meghalaya under Design, Build, Finance, Operate and Transfer (DBFOT) Mode on Public Private Partnership (PPP) mode and to exercise and/or enjoy the rights, powers, privileges, authorizations and entitlements as set forth in this Agreement, including but not limited to the right to levy, demand, collect and appropriate fees from persons liable for payment of Fee for using the Project/Project Assets or any part thereof</p> <p><b>"Project Assets"</b> means all physical and other assets relating to and forming part of the Project including but not limited to (i) rights over the Project Site in the right of way or otherwise, (ii) tangible assets such as civil works including foundations, embankments, pavements, road surface, interchanges, drainage works, lighting facilities, sign boards, electrical works for lighting on the Project, telephone and other communication systems and equipment for the Project, rest areas, amenities, service facilities, and all connected infrastructure thereto etc. (iii) Service Facility situated on the Project Site, (iv) the rights of the Developer (v) financial assets, such as security deposits for electricity supply, telephone and other utilities, etc., (vi) insurance proceeds subject to Lenders' rights thereto and (vii) Applicable Permits and authorizations relating to or in respect of the Project.</p> <p><b>"Project Site"</b> as defined in Volume-II: Terms of Reference (ToR) and Project Profile. In case of request from Lessee, the Authority may provide additional land for the Project during the Lease Period, if available and at the Authority's discretion</p> <p><b>"Project Infrastructure"</b> shall mean collectively the captive facilities to be developed at the Project Site for the exclusive use of the Project, the trunk infrastructure (water treatment plant, sewage treatment plant; the power facility etc) and the infrastructure to carry out the Associated Services.</p> <p><b>"RFP" or "Request for Proposal"</b> means the Request for Proposal document issued by the Authority. The terms <b>"RFP"</b> and <b>"Request for Proposal"</b> are synonymous with <b>"Tender Documents"</b> and <b>"Bidding Documents"</b>.</p> <p><b>"Rs."</b> or <b>"Rupees"</b> or <b>"INR"</b> refers to the lawful currency of the Republic of India.</p> <p><b>"Revenue"</b> shall mean all amounts charged and recovered by the Lessee from the Users on mutually agreed terms and shall include user charges for use of the Project 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 Lessee or receivable by the Lessee or payable to the Lessee or due and realisable by the Lessee,</p>
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	<p>for or with respect to use of the Project and any of the Hospitality Services;</p> <p><b>“Right of Way”</b> 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 Project Facilities in accordance with this Agreement;</p> <p><b>“Senior Lender”</b> shall mean the financial institutions, trusts, funds, banks and agents or trustees of debenture holders including their successors and assignees, who have advanced or agreed to guarantee or advance or provide finance to the Lessee under any of the Financing Documents for meeting all or part of the Total Project Cost and who hold <i>pari passu</i> charge on the assets, rights, title and interests of the Lessee.</p> <p><b>“Statutory Auditors”</b> shall mean a reputable firm of chartered accountants acting as the statutory auditors of the Developer under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force.</p> <p><b>“Special Purpose Vehicle (SPV)/ Special Purpose Company (SPC)”</b> means a separate legal entity formed by the successful bidder/ bidder consortium to undertake the Project as per the terms and conditions specified in this Agreement.</p> <p><b>“Specifications and Standards”</b> shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project and Project Infrastructure, as per applicable rules and regulations, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project and Project Infrastructure submitted by the Lessee to, and expressly approved by, the Authority;</p> <p><b>“Selected Bidder”</b> means the shortlisted Bidder after evaluation as per RFP, to whom Letter of Award is issued by the Authority.</p> <p><b>“Taxes”</b> 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 Project 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 avoidance of doubt, Taxes shall not include taxes on corporate income;</p> <p><b>“Tendering Authority”</b> means Department of Tourism, Govt of Meghalaya any Government.</p> <p><b>“Termination”</b> means termination of this Agreement and the Service hereunder pursuant to a Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement due to expiry of the Lease Period in the normal course.</p> <p><b>“Termination Date”</b> means the date on which the Termination occurs which shall be the date on which Termination Notice has been delivered or deemed to have been delivered by a Party issuing the same to the other Party in accordance with the provisions of this Agreement.</p>
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	<p><b>“Termination Notice”</b> means a communication in writing by a Party to the other Party containing the intent to Terminate in accordance with the applicable provisions of this Agreement.</p> <p><b>“Total Project Cost”</b> shall mean the capital cost incurred on construction and financing of the Project and shall be limited to the lowest of:</p> <ol style="list-style-type: none"> <li>a) the capital cost of the Project as set forth in the Financial Package;</li> <li>b) the assessment of the Lessee's investment as made by the Approved Valuer to be appointed by the Authority; or</li> <li>c) a sum of Rs. [ _____ ] (Rupees [ _____ ]) The amount to be suitably inserted based on the specifics of the Project.</li> </ol> <p>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;</p> <p>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;</p> <p>provided also that the Total Project Cost shall not exceed the actual capital cost of the Project upon completion of the Project;</p> <p><b>“Transfer Date”</b> shall mean the date on which this Agreement and the Lease hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;</p> <p><b>“WPI”</b> 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.</p>
<p><b>2. Interpretations</b></p>	<p>2.1 In this Agreement, unless the context otherwise requires:</p> <ol style="list-style-type: none"> <li>a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;</li> <li>b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Union of India;</li> <li>c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);</li> </ol>

	<p>d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the/construction or interpretation of this Agreement;</p> <p>e) the words "include" and "including" are to be construed without limitation;</p> <p>f) references to "construction" include, unless the context otherwise requires investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;</p> <p>g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;</p> <p>h) any reference to a day shall mean a reference to a calendar day</p> <p>i) any reference to a month shall mean a reference to a calendar month;</p> <p>j) the Schedules/Addenda/Appendices/Annexures to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;</p> <p>k) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;</p> <p>l) references to recitals, Articles, sub-articles, clauses, or Schedules/Addenda/Appendices/Annexures in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules/Addenda/Appendices/ Annexures of or to this Agreement;</p> <p>m) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing issued from a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;</p> <p>n) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; and</p> <p>o) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages;</p> <p>p) unless otherwise expressly provided in this Agreement, any documentation required to be provided or furnished by the Developer to Lessor shall be provided free of cost and in three copies and if Lessor is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof;</p> <p><b>2.2 Measurements and Arithmetic Conventions</b></p> <p>All measurements and calculations shall be in metric system and calculations done to 2 (two) decimals places, with the third digit of 5 (five) or above rounded up and below 5 (five) belong rounded down, except in Fee calculation which shall be rounded off to nearest Indian Rupee100 (hundred).</p>
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	<p><b>2.3 In case of ambiguities or discrepancies within this Agreement, the following shall apply:</b></p> <ol style="list-style-type: none"> <li>a) Between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;</li> <li>b) Between the Articles and the Schedules/Addenda/Appendices/Annexures, the Articles shall prevail;</li> <li>c) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;</li> <li>d) Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;</li> <li>e) Between any value written in numerals and that in words, the latter shall prevail.</li> </ol>
<p><b>3. Contract Documents</b></p>	<p>3.1 The Lease cum Development Agreement, all documents forming part of the Contract (and all parts of these documents) are intended to be correlative, complementary, and mutually explanatory. The Agreement shall be read as a whole. The order of precedence of documents shall be:</p> <ol style="list-style-type: none"> <li>1. Vol III: Lease cum Development Agreement consisting of GCA and SCA, including any Schedules/Addenda made which includes the Land Lease Deed and Schedules/Addenda included pursuant to any amendments made.</li> <li>2. Vol II: ITB and BDS and any amendments thereof (including Vol I of the bid).</li> <li>3. Bidder's proposal submitted to the Authority.</li> </ol>

## B. ARTICLE- B: PROJECT DEVELOPMENT

<p><b>4. Right of Development</b></p>	<p>4.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, Lessor hereby grants and authorizes the Developer to design, finance, build, operate, maintain and manage the Project and to exercise and/or enjoy the rights, powers, privileges, authorizations and entitlements as set forth in this Agreement, including but not limited to the right to levy, demand, collect and appropriate Fees from persons liable for payment of Fee for using the Project/Project Assets or any part thereof (collectively "the Project").</p>
<p><b>5. Project Site</b></p>	<p>5.1 Lessor hereby undertakes to handover to the Developer, physical possession of the Project Site an <b>"as is where is" basis</b>, free from Encumbrance together with the necessary rights of way/easement /way leaves for the purpose of implementing the Project in accordance with 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 Lessee accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Project Site.</p> <p>5.2 Lessor confirms that upon the Project Site being handed over pursuant to the preceding sub-article (5.1) the Developer shall have the exclusive right to enter upon,</p>

	<p>occupy and use the Project Site subject to and in accordance with the provisions of this Agreement.</p> <p>5.3 The Lessor hereby grants to the Lessee/ Developer, access to the Project Site for carrying out any surveys, investigations and soil test of the Project Site that the Lessee may deem necessary prior to Appointed Date, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Lessee on or about the Project Site pursuant hereto in the event of Termination or otherwise.</p> <p>5.4 It is expressly agreed that the Lessee's rights to the Project Site by way of the lease granted hereunder, shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Lease, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Project Site by the Lessee or its Contractors, the rights of the Lessee in respect of the Project Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.</p> <p>5.5 It is expressly agreed that trees on the Project Site are the property of the Authority except that the Lessee shall be entitled to exercise usufructuary rights thereon during the Lease Period.</p> <p>5.6 During the Lease Period, the Lessee 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 Lessee 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 Lessee therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.</p> <p>5.7 During the Lease Period, the Lessee 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 Lessee 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 Lessee therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.</p> <p>5.8 The Right of Way and right to the Project Site granted to the Lessee hereunder shall always be subject to the right of access of the Authority, its representatives or authorised personnel, and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.</p> <p>5.9 Geological and archaeological finds: It is expressly agreed that mining, geological or archaeological rights do not form part of the rights granted to the Lessee under this Agreement and the Lessee hereby acknowledges that it shall not have any rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such</p>
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	rights, interest and property on or under the Project Site shall vest in and belong to the Authority or the concerned Government Instrumentality.
<b>6. Use of Project Site</b>	<p>6.1 The Developer shall not without prior written consent or approval of Lessor use the Project Site for any purpose other than for the purposes specified in this Agreement (including Minimum Development Obligations and Minimum Service Obligations, if any) and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Lessor.</p> <p>6.2 Any use of the Project Site for any purpose other than for the purpose specified under this Agreement shall be considered as a material breach and default on the part of the Lessee/Developer/Operator as the case may be.</p>
<b>7. Peaceful Possession</b>	<p>7.1 Lessor warrants that:</p> <ul style="list-style-type: none"> <li>a) the Project Site together with the necessary right of way/easement/ way leaves having been acquired through the due process of law belongs to and vested in Lessor, and that Lessor has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement;</li> <li>b) the Developer shall have no obligation/liability as to payment of any compensation whatsoever to or the rehabilitation and resettlement of any Person from whom the Project Site or any part thereof had been acquired and that the same shall be the sole responsibility of Lessor; and</li> <li>c) the Lessor shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site during the Lease Period</li> </ul>

## **C. ARTICLE- C: LEASE TERM/ PERIOD**

<b>8. Lease Term/ Period</b>	<p>8.1 Subject to and in accordance with the terms and conditions set forth in this Lease cum Development Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Developer possession of the Project Site on ‘as is where is basis’ for the sole purpose of the Project, and grants and authorizes the Developer the exclusive rights and privilege to develop, conceptualise, design, finance, construct, maintain and operate the Project Assets and to exercise or to enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement (the “Lease”) for the entire duration of the Lease Period or until the earlier Termination of the Lease in accordance with the provisions of this Agreement, and the Developer hereby accepts the Lease and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.</p> <p>8.2 <b>The Lease Term shall be 15 (Fifteen Years) from the Appointed Date which includes 12 (twelve ) months for construction.</b></p> <p>8.3 Unless terminated in accordance with the provisions of this Agreement, in consideration of the ‘Annual Land Lease Rent’ hereby reserved and in consideration of the observance of all the terms and conditions as set out in this Agreement by the</p>
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	Parties, the Lessor hereby unequivocally and irrevocably grants to the Lessee, the Lease in the Project Site, free from all encumbrances, costs, charges, claims, demands and any other liabilities whatsoever, to hold and enjoy, without any interruption, for a Lease Period as specified in the GCA 8.2.
<b>9. Renewal of Lease Term/ Period</b>	<p>9.1 The Lease Term may be renewed for an additional period of 5 (five) years subject to compliance to all terms and conditions of the Lease cum Development Agreement by the Lessee on First Right of Refusal basis on mutual agreement of conditions.</p> <p>9.2 If for any reason the Lessor and Lessee decide to exercise this option in positive manner leading to renewal of Lease for a period as specified in the SCA, then in that event, all the terms and conditions including Annual Land Lease Rent and aggregate period of extension shall be as per the prevailing Government policies at that time.</p>
<b>10. Non-renewal of Lease Term/ Period</b>	10.1 In case of non-renewal of the Lease beyond the Lease Term, the Lessor shall resume the Project Site, Project as specified in the GCA 1.1 and all Project Assets including structures appurtenant thereto along with all fixtures and fittings shall stand vested in the Lessor with immediate effect upon expiration of Term and without any liabilities/ obligations towards the Lessee

## D. ARTICLE- D: PAYMENTS, GUARANTEES & USER CHARGES

<b>11. Performance Security</b>	<p>11.1 The Developer shall, for due and punctual performance of its obligations during the Lease Period, deliver to Lessor, within 30 days from the execution of this Agreement, an irrevocable and unconditional guarantee from a scheduled bank acceptable to Lessor, in the form set forth in format provided in Addenda II of Vol-III of the bid document, (the "<b>Performance Bank Guarantee</b>") for a sum as specified in the SCA. The Lessee shall maintain and keep in force the Performance Security for the entire duration of the Performance Security Period.</p> <p>11.2 In the event of the encashment of the Performance Bank Guarantee by Lessor, pursuant to any act of the Lessee/Developer/Operator having a material adverse effect on the execution of the Project or due to the violation of any of the provisions of this Agreement, or in case of Lessee events of default, the Lessee/Developer/Operator, as the case may be shall within 15 (fifteen) days of the Encashment, replenish the same, or furnish fresh Performance Bank Guarantee failing which Lessor shall be entitled to terminate this Agreement in accordance with the provisions of Article H below. The provisions set forth in 11.1 above shall apply mutatis mutandis to such fresh Performance Bank Guarantee.</p> <p>11.3 Notwithstanding anything to the contrary contained in this Agreement, in the event that the Performance Security is not provided by the Lessee 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 Lessee under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Lessee, and this</p>
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	<p>Agreement shall be deemed to have been terminated by mutual agreement of the Parties.</p> <p><b>11.4 Appropriation of Performance Security :</b> Upon occurrence of a Lessee 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 Lessee Default or failure to meet any Condition Precedent or failure to pay such amounts which are due and payable by the Lessee to the Authority under and in accordance with the provisions of this Agreement. Upon such encashment and appropriation of the Performance Security, the Lessee 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 this Article H. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Lessee shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Lessee Default or for satisfying any Condition Precedent, and in the event of the Lessee not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article H.</p> <p><b>11.5 Validity of Performance Security:</b> The Performance Security shall remain in force and effect for a period of 6 (six) months from the end of the Lease Period (the “<b>Performance Security Period</b>”); provided, however, that the Performance Security shall not be released if the Lessee is in breach of this Agreement. The Lessee shall be obligated to keep the Performance Security revalidated, renewed, extended and continuously in force and effect up to a period of six months beyond the end of lease tenure.</p>
<p><b>12. Revenue Share</b></p>	<p><b>12.1</b> The Lessee agrees to pay to the Authority, for every year of the Lease Period, commencing from the Project COD, 1% (one per cent) of the Gross Revenue as its share in the revenues earned from the Project (the “<b>Revenue Share</b>”). The Revenue Share shall be calculated and payable in the following manner:</p> <p>a) the Revenue Share shall be payable in monthly instalments. Within 7 (seven) days of the end of each month, the Lessee shall pay to the Authority against the Revenue Share, a provisional amount calculated on the basis of Gross Revenue of the immediately preceding month and final settlement thereof, based on audited accounts of the Lessee, shall be made within 120 (one hundred and twenty) days of completion of the respective Accounting Year.</p> <p><b>12.2</b> The Lessee shall furnish to the Authority audited quarterly statements within 30 days of the end of a quarter. The Authority may, additionally, ask the Lessee furnish its book of accounts from time to time to verify the sanctity of records. If any discrepancy is</p>



	<p>found in the report of Gross Revenues by the Lessee, the Authority would be entitled to:</p> <ol style="list-style-type: none"> <li>i. Recover any payments due from the Lessee due to discrepant reporting of the Gross Revenues with a penal interest rate of 18% p.a.; and / or</li> <li>ii. Terminate the Agreement due to Lessee Default in accordance with this Agreement.</li> </ol> <p>12.3 The Lessee shall, with each payment of the Project Considerations, shall submit:</p> <ol style="list-style-type: none"> <li>i. a certificate that the amounts paid are correct and in accordance with the provisions of the Agreements;</li> <li>ii. detailed calculations of the Revenue Share based on the Gross Revenue;</li> <li>iii. details in respect of Taxes/duties payable/reimbursable in accordance with the provisions of this Agreement;</li> <li>iv. details in respect of other Damages payable in accordance with the provisions of this Agreement; and</li> <li>v. net amount payable under the provisions of this Agreement.</li> </ol>
<p><b>13. Annual Land Lease Rent</b></p>	<p>13.1 In consideration of the Lease of the Project Site and the development rights appurtenant thereto in favour of the Lessee, the Lessee shall, during the Lease Period, in terms of this Agreement, make payments to Lessor with respect to the Annual Land Lease Rent. The Annual Land Lease Rent for the first year of Lease Period is as specified in the SCA. The amount of Annual Land Lease Rent shall be escalated at a rate of 10% percent every three year on the rent paid during the previous year during the Lease Term.</p> <p>The schedule of Annual Land Lease Rent payable is appended at Schedule II.</p> <p>13.2 The First Annual Land Lease Rent shall be made on a pro-rata basis (calculated as the number of days between the end of the Construction Period (i.e. which shall be a period of 12 (twelve) months from the Appointed Date) or COD, whichever is earlier and 31<sup>st</sup> March of the year or following year, which ever applicable and payment to be made within 15 days from the COD date or period ending 12 (twelve) months from the Appointed Date, whichever is earlier. Subsequent to the advance payment of the First Year Annual Land Lease Rent to the Lessor by the Lessee, payment of Annual Land Lease Rent from Second Year of the Lease Period until the end of the Lease Period shall be due as per the schedule/timelines provided in the SCA.</p> <p>13.3 In case of default in making the subsequent payment, penalties with interest shall be charged as specified in the SCA.</p> <p>13.4 In the event, the payments are delayed beyond the period specified in the SCA, it shall be construed as a Lessee default in payment of Annual Land Lease Rent. When such a default occurs, the Lessor shall issue a default notice to the Lessee to remedy the situation. If the situation is not remedied, at the end of the time specified in such notice, the Lessor may encash the Performance Bank Guarantee and may also issue, at its discretion, a Termination Notice.</p> <p>13.5 Annual Land Lease Rent shall be payable to the account specified in the SCA.</p>

	<p>13.6 <b>Lease Moratorium:</b> No Annual Land Lease Rental to be paid during the construction period i.e. which shall be a period of 12 (twelve) months from the Appointed Date. In case of Construction Period extends beyond 12 (twelve) months from the Appointed Date, the lease moratorium period will not be extended beyond the 12 (twelve) months period. If the Commercial Operation Date (COD) is achieved within the designated Construction Period of 12 (twelve) months, the lease moratorium period concludes on the date of COD achievement.</p> <p>Kindly note: Lease moratorium period will be site specific and will be as per terms of the RFP and any addendum issued. The Lease cum Development Agreement will be modified accordingly.</p>
<p><b>14. User Charges / Fees</b></p>	<p>14.1 Subject to the provisions of this Agreement, the Lessee shall during Operations Period be entitled to levy, demand and collect Fee or Tariff for its services to the end users, in accordance with the industry norms and practices for the use of the Project Assets as well as allied facilities.</p> <p>14.2 Lessor will not be involved in the determination of such Fee or Tariff that Developer will charge.</p> <p>14.3 The Lessee may formulate, publish and implement appropriate scheme(s) for frequent users as may reasonably be required by business requirements from time to time.</p> <p>14.4 Based on the Project and its components, Lessee may be entitled to various incentives under Meghalaya Industrial &amp; Investment Promotion Policy (MIIPP)-2024 and Uttar Poorva Transformative Industrialisation Scheme (UNNATI)-2024, or any other schemes as applicable.</p> <p>In order to avail the benefits under various policies and schemes, for clarity, it is to state that the Lessee shall have to fulfil all the requirements and also follow the set procedure thereon. Mere concluding of this Agreement will not guarantee the benefits under any Policy.</p> <p>14.5 The Lessee may levy and recover an additional service charge for and in respect of any facility or service as it may deem fit.</p> <p>14.6 All Taxes and duties shall be paid by the Lessee.</p>

**E. ARTICLE- E: OBLIGATIONS AND UNDERTAKINGS**

<p><b>15. General Obligations of the Lessee</b></p>	<p>15.1 The Lessee shall at its own cost:</p> <ul style="list-style-type: none"> <li>i. should design, develop, finance, construct, implement, operate, and maintain all facilities developed as a part of the Project either through itself or through its contractors in accordance with the provisions of this Agreement, Minimum</li> </ul>
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	<p>Development Obligations and Minimum Service Obligations specified, Good Industry Practices and Applicable Laws;</p> <ul style="list-style-type: none"> <li>ii. obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance with thereof at all times during the Lease Period;</li> <li>iii. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;</li> <li>iv. provide all assistance to the Lessor officials as they may reasonably require for the performance of their duties and services under this Agreement;</li> <li>v. appoint, supervise, monitor and control the activities of Contractors / Staff or any other service provider under their respective Agreements as may be necessary;</li> <li>vi. make efforts to maintain harmony and good professional relations among the personnel employed in connection with the performance of the Lessee's obligations under this Agreement;</li> <li>vii. take all reasonable precautions for the prevention of accidents on or about the Project, Project Assets and provide all reasonable assistance and emergency medical aid to accident victims;</li> <li>viii. not to place or create nor to permit any contractor or vendor or service provider or any other person claiming through or under the Lessee to create or place any Encumbrance over all or any part of the Project Assets, or on any rights of the Lessee therein, save and except as expressly set forth in this Agreement;</li> <li>ix. be responsible for safety, soundness and durability of the Project Asset including all structures forming part thereof and their compliance with the Specifications and Standards;</li> <li>x. ensure that the Project Site &amp; Project Assets remain free from all encroachments, encumbrances. It shall take all steps necessary to remove encroachments, if any;</li> <li>xi. make timely payment to Government Agencies, if required, for provision of such services as are not provided in the normal course or are available only on payment;</li> <li>xii. remove promptly according to Good Industry Practice, from the Project Site, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) and keep the Project Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits</li> <li>xiii. Provide access to the auditors and inspectors of Lessor whenever Lessor chooses to conduct such audit or assessment</li> <li>xiv. Provide waste management as per laws in force.</li> <li>xv. Operate and maintain the Project Assets at its cost in accordance with the prudent utility practices and the terms and conditions of this Agreement, with the objective of providing adequate service standards to the users and ensuring that at the end of the Lease Period, including extension thereof, the Project is transferred to the Lessor or its nominated agency in fair condition, subject to normal wear and tear having regard to the terms and conditions of this Agreement.</li> <li>xvi. In order to fulfil its obligations under this Agreement and the Project Agreements, the Lessee may at its discretion appoint Construction Contractor(s) and the O&amp;M</li> </ul>
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	<p>Contractor(s) by entering into Construction Agreement(s) and O&amp;M Agreement(s). The Lessee may undertake the operations and maintenance of the Project on its own, through its consortium member or through any other agency/ company. The operations and maintenance agency can be finalized even after signing of this Agreement with the Lessor. However, the Lessee shall finalize the O&amp;M operator within 1 year from the date of signing of the Agreement</p> <p>xvii. Shall organize the supervision, monitoring and control of the construction, operation and maintenance of the Project by the Contractor (s) as may be necessary to ensure the proper performance of their respective obligations under the Construction Agreement(s), the O&amp;M Agreement(s) and other relevant Project Agreements in accordance with the conditions of Clearances and the terms and conditions of this Agreement.</p> <p>xviii. Ensure Payment of all taxes including Service Tax, Property Tax, Fees, Levies or Cess, User Charges (Electricity, water supply), and other statutory or other dues incurred during the Lease Period, without any pending liabilities.</p> <p>xix. Ensure that any arrangement with the users of the Project Assets is in line with the provisions of this Lease cum Development Agreement and is subject to the rights and obligations of the Parties under this Lease cum Development Agreement.</p> <p>xx. Ensure compliance with all labour, statutory requirements, environment, mining, and health and safety laws as applicable to the Project in the State of Meghalaya and India.</p> <p>xxi. Promptly intimate in writing to the Competent Authorities and hand over to them any archaeological finds, treasures and precious and semi-precious minerals discovered at the Project Site by the Lessee or its employees, agents and Contractors</p> <p>xxii. perform and fulfil its obligations under the Financing Agreements;</p> <p>xxiii. procure registration from the Department of Tourism, Government of India and Government of Meghalaya, as the case may be;</p> <p>xxiv. transfer the Project to the Authority upon expiry or termination of this Agreement, in accordance with the provisions thereof;</p>
<p><b>16. Conditions Precedent</b></p>	<p>16.1 Save and except as may otherwise be expressly provided herein, the obligations of the Lessee under this Agreement shall be subject to the satisfaction in full of the Conditions Precedent by the Lessee. These would be as specified in the SCA.</p> <p>16.2 Upon successful compliance to the Conditions Precedent specified above, the possession of the Project Site shall be given to the Lessee and the Land Lease Deed may be registered with the Stamps and Registration Department of the State.</p> <p>16.3 The Lessee at its cost shall register the Land Lease Deed on its execution by paying the necessary Stamp Duty and Registration Fee as applicable.</p>
<p><b>17. Shareholder Lock-in</b></p>	<p>17.1 The shareholding of Bidder (s) in the SPC/ SPV shall be governed by the Lock-In Period as defined below and specified in the SCA.</p> <p>17.2 In case of sole Bidder, it shall retain minimum of 51% as equity contribution in the SPC/ SPV throughout the Lock-In Period.</p>

	<p>17.3 In the SPC/ SPV formed by a Consortium of two Members, the total equity contribution put together by both the Consortium Members shall not be less than 51% throughout the Lock-In Period.</p> <p>17.4 Further, in the SPC/ SPV formed by a Consortium of two Members, the equity contribution of the Lead Member in the consortium shall not be less than 51% throughout the Lock-In Period and equity contribution from the other Member in the Consortium shall not be less than 10% throughout the Lock-In Period.</p> <p>17.5 Violation of any condition specified under 17.2, 17.3 and 17.4 shall be treated as Event of Default as dealt with in Article H of this Agreement.</p>
<p><b>18. Financial Close/ Closure</b></p>	<p><b>18.1 Financial Close/ Closure</b></p> <p>18.1.1 The Lessee 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 Lessee and the Senior Lenders, a copy of the same shall be furnished by the Lessee to the Authority forthwith.</p> <p>18.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Lessee covenants with the Authority that it shall achieve <b>Financial Close within 120 (one hundred and twenty)</b> days from the Execution Date. If the Lessee shall fail to achieve Financial Close within the said 120 (one hundred and twenty) days period, the Lessee shall be entitled to a further period of 60 (sixty) days, subject to an advance weekly payment by the Lessee to the Authority of Rs. 10,00,000 (Rupees ten lakh)] per week or part thereof as Damages for any 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 Lessee, if the Lessee fails to pay in advance the Damages to the Authority under and in accordance with this Sub-Article.</p> <p>18.1.3 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 18.1.2 above, all rights, privileges, claims and entitlements, if any, of the Lessee under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Lessee. 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 Lessee in any manner whatsoever.</p> <p>18.1.4 Upon Termination of this Agreement under Clause 18.1.2 and 18.1.3, 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 18.1.</p>

	<p><b>18.2 Termination due to failure to achieve Financial Close</b></p> <p>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 18.1.2 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Lessee under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Lessee, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties.</p> <p>b) Upon Termination under Clause 18.2(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 this Agreement, it shall, upon Termination, return the Bid Security. For 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.</p>
<p><b>19. Obligations of the Lessee during Implementation Period</b></p>	<p>19.1 The Lessee shall, before commencement of construction has requisite organization and competent personnel and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project development and to deal with the Lessor’s officials and to be responsible for all necessary exchange of information required pursuant to this Agreement.</p> <p>19.2 Submit to the Authority 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 SCA.</p> <p>19.3 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.</p> <p><b>19.4 Design and Drawing:</b></p> <p>i. The Lessee shall, subject to the Minimum Development Requirements prescribed for the Project in the Lease cum Development Agreement, at its cost, charges and expenses cause drawings[“<b>Drawings</b>”]to be prepared showing the proposed the Project and submit copies of the drawings to Authority and / or any other official / agency designated by Authority for the purpose of monitoring; Provided that, the Lessee shall in any event, be solely responsible for the adequacy of the Drawings.</p> <p>ii. Drawings relating to the Project shall be subject to review by Authority and / or any other official / agency designated by AUTHORITY for the purpose of monitoring hereinafter provided in the succeeding clause.</p> <p>iii. By forwarding the Drawings for review to Authority and / or any other official / agency designated by Authority for the purpose of monitoring - the Lessee represents that it has determined and verified that the design and related aspects</p>

	<p>of the Project are in conformity with the Minimum Development Requirements set forth in the Lease cum Development Agreement.</p> <p><b>19.5 Review and approval of drawings</b></p> <ol style="list-style-type: none"><li>i. The Lessee shall, promptly and in such sequence as is consistent with the detailed Project design &amp; drawing, development guidelines and Minimum Development Requirements, submit Drawings to Authority and / or any other official / agency designated by AUTHORITY for the purpose of monitoring.</li><li>ii. Authority and / or any other official / agency designated by AUTHORITY for the purpose of monitoring - shall review the Drawings within 15 (Fifteen) days of their receipt and convey comments/observations thereon to the Lessee – with particular reference to the conformity or otherwise of the Drawings with the Minimum Development Requirements and development guidelines applicable to the Project. If the Drawings are not in conformity with the above provisions of the Lease cum Development Agreement, such Drawings shall be revised by the Lessee within 15 (fifteen) days of being intimated by Authority or any other official / agency designated by Authority for the purpose of monitoring, to the extent necessary and re-submitted to Authority and / or any other official / agency designated by Authority for the purpose of monitoring for further review. Authority or any other official / agency designated by Authority for the purpose of monitoring shall give their observations and comments, if any, within 15 (Fifteen) days of the receipt of such revised Drawings which shall be taken into account by the Lessee while finalising the Drawings.</li><li>iii. If Authority and / or any other official / agency designated by Authority for the purpose of monitoring does not object to the Drawings submitted by the Lessee within the period stipulated above, the Lessee shall be entitled to proceed with the Project accordingly subject to clearance from the development authority having jurisdiction over the Project area.</li><li>iv. It is expressly agreed that notwithstanding any review or failure to review by Authority and / or any other official / agency designated by Authority for the purpose of monitoring - or any comments/observations of Authority and / or of any other official / agency designated by AUTHORITY for the purpose of monitoring, the Lessee shall be solely responsible for the adequacy of the Drawings and their conformity with the Minimum Development Requirements and other provisions of this Agreement and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement.</li><li>v. The Lessee shall be liable for delays in the Project and consequences thereof, caused by reason of any Drawings not being in conformity with the Minimum Development Requirements and other provisions in this Agreement and shall not be entitled to seek any relief in this regard from AUTHORITY. If there is any delay in execution of the project due to AUTHORITY and / or any other official / agency designated by AUTHORITY for the purpose of monitoring - not being able to review and / or sanction the drawings and provide his comments, then the timelines for the Project shall be accordingly extended in accordance with the numbers of days during which AUTHORITY and / or any other official / agency designated by AUTHORITY for the purpose of monitoring - does not provide</li></ol>
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	<p>comments and / or sanction Drawings subject to a maximum of 3 months, provided that the delay has not been caused due to any action of the Lessee.</p> <p>vi. If any new construction has been undertaken for the Project to meet the Minimum Developmental Guidelines, then within 90 (ninety) days of COD, the Lessee shall furnish to AUTHORITY three copies of "as built" Drawings reflecting the layout of the Project Facility as actually designed, engineered and constructed, including without limitation an "as built" surveys illustrating the layout of the Project Facility and setback lines, if any, of the buildings and structures forming part of Project Facility.</p> <p>19.6 The lessee must set up a prototype tent at the assigned site following a design and drawing that has received approval. The lessee can proceed with additional construction and initiate commercial operations only after receiving official authorization for the prototype tent from the Authority.</p> <p>19.7 On or after the Appointed Date, the Lessee shall undertake development of the Project on the Project Site and in conformity with the Specifications and Standards. The Lessee shall undertake the Mandatory Development Obligations, where the Development Works shall commence from the Appointed Date and shall be completed in accordance with the proposed Project Completion Schedule as set forth in SCA.</p> <p>19.8 The Lessee shall develop and construct the Project in accordance with the Project Completion Schedule set forth in SCA. In the event that the Lessee fails to achieve any Project Milestone within 30 (thirty) days from the date set forth for such Project Milestone, 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 <b>Authority in a sum calculated at the rate of 0.2% (zero point two per cent)</b> of the amount of Performance Security for delay of each day until such Project Milestone is achieved up to a <b>maximum of 20% (twenty per cent)</b> 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 SCA shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule Completion Date 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 19.8 shall be refunded by the Authority to the Lessee, but without any interest thereon. For avoidance of doubt, it is agreed that recovery of Damages under this Clause 19.8 shall be without prejudice to the rights of the Authority under this Agreement, or otherwise including the right of Termination thereof.</p> <p>19.9 In the event that the Development Works pertaining to the Mandatory Development Obligation is not completed within 90 (ninety) 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.</p> <p>19.10 <b>Monthly Progress Report:</b> During the Construction Period, the Lessee shall, within 7 (seven) days after the close of every month, furnish to the Authority a monthly</p>
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	<p>report on progress of the Development Works and shall promptly give such other relevant information as may be required by the Authority. The provisions of this clause 19.10 shall apply mutatis mutandis to the Development Works undertaken for the Mandatory Development Obligation and the Optional Development Obligation.</p> <p>19.11 <b>Tests:</b> For determining that the Development Works conform to the Agreement and Specifications and Standards, the Authority shall require the Lessee 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 Authority 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 Lessee shall, with due diligence, carry out or cause to be carried out all the Tests in accordance with the instructions of the Authority and furnish the results thereof to the Authority.</p> <p>19.12 In the event that results of any Tests conducted under this Clause 19.11 establish any defects or deficiencies in the Development Works, the Lessee shall carry out remedial measures and furnish a report to the Authority in this regard.</p> <p>19.13 Violation of any of the above conditions will be treated as an Event of Default as dealt with in Article H of this Agreement</p>
<p><b>20. Obligations of the Lessee during Operations</b></p>	<p>20.1 The Lessee, on its own or through a contracted agency for operations and maintenance of the Project, shall ensure that the Minimum Development Obligations and Minimum Service Obligations are met throughout the lease period.</p> <p>20.2 The Lessee, on its own or through a contracted agency for operations and maintenance of the Project, shall ensure that all terms and conditions relating to O&amp;M of this Lease cum Development Agreement are complied with throughout the Lease Period.</p> <p>20.3 Any changes/ deviations shall be only after written approval of the Lessor</p> <p>20.4 It is also clarified that the conditions above are applicable during and after the Lock-In Period i.e. throughout the Lease Period.</p> <p>20.5 Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Lease Period from any cause whatsoever other than Force Majeure Event, the Lessee shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.</p> <p>20.6 <b>Annual Status Report:</b> During Operation Period, the Lessee shall, no later than 7 (seven) days after the close of every Accounting Year, furnish to the Authority an annual report stating in reasonable detail the condition of the Project and the Project</p>

	<p>Infrastructure including its compliance and shall promptly give such other relevant information as may be required by the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.</p> <p>20.7 Violation of any of the above conditions will be treated as an Event of Default as dealt with in Article H of this Agreement.</p>
<b>21. Obligation of the Lessor</b>	<p>21.1 Lessor shall</p> <ol style="list-style-type: none"> <li>i. hand over the physical possession of Project Site together with necessary right of way/ way leaves to the Lessee, free from any Encumbrance;</li> <li>ii. ensure peaceful use of the Project Site by the Lessee under and in accordance with the provisions of this Agreement without any let or hindrance from Lessor or persons claiming through or under it;</li> <li>iii. upon written request from the Lessee, assist him (as an owner of the project site only) in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Lessee than those generally available to commercial customers receiving substantially equivalent facilities/utilities;</li> <li>iv. Observe and comply with all its obligations set forth in this Agreement.</li> <li>v. Lessor shall undertake periodic inspection of the Project jointly with the Lessee to determine the condition of the Project including its compliance or otherwise with the statutory food, safety, hygiene norms and this Agreement</li> <li>vi. neither do nor omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;</li> <li>vii. support, cooperate with and facilitate the Lessee in the implementation and operation of the Project in accordance with the provisions of this Agreement;</li> <li>viii. upon written request from the Lessee, execute the Substitution Agreement.</li> <li>ix. execute a Lease Deed, in accordance with this Agreement, relating to the Project Site in favour of the Lessee,</li> </ol>

## F. ARTICLE- F: INSURANCES

<b>22. Insurance during Lease Period</b>	<p>22.1 The Lessee shall effect and maintain at its own cost, during the Lease Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Lessee 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 Lessee during the Lease Period. The Lessee 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 Lessee 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.</p>
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	<p>22.2 Without prejudice to the provisions contained in Clause 22.1, the Lessee shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:</p> <ul style="list-style-type: none"> <li>a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Lessee, at replacement value;</li> <li>b) comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project and the Project Infrastructure;</li> <li>c) the Lessee's general liability arising out of the Lease;</li> <li>d) liability to third parties for goods or property damage;</li> <li>e) workmen's compensation insurance; and</li> <li>f) any other insurance that may be necessary to protect the Lessee and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (f) above.</li> </ul>
<b>23. Insurance Companies</b>	<p>23.1 The Lessee shall insure all insurable assets comprised in the Project and Project Assets through Indian insurance companies and if so permitted by Lessor, through foreign insurance companies, to the extent that insurances are necessary to be effected through them.</p>
<b>24. Evidence of Insurance Cover</b>	<p>24.1 The Lessee shall, from time to time, provide to Lessor copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Lessee in accordance with this Agreement.</p> <p>24.2 <b>Notice to Authority:</b> No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Lessee 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 F. Within 30 (thirty) days of receipt of such notice, the Authority may require the Lessee 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 J shall apply.</p>
<b>25. Application of Insurance Proceeds</b>	<p>25.1 All moneys received under insurance policies shall be promptly applied by the Lessee towards repair or renovation or restoration or substitution of the Project Assets or any part thereof which may have been damaged or destroyed under written intimation to Lessor. The Lessee shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Assets or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.</p>
<b>26. Validity of Insurance Cover</b>	<p>26.1 The Lessee shall pay the premium payable on such insurance policy (ies) so as to keep the policy (ies) in force and valid throughout the Lease Term and furnish copies of the same to Lessor</p> <p>26.2 All insurances obtained by the Lessee in accordance with this Article F shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15</p>

	(fifteen) days of obtaining any insurance cover, the Lessee 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 Lessee to the Authority.
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## G. ARTICLE- G: FORCE MAJEURE

<b>27. Force Majeure Event</b>	<p>27.1 As used in this Agreement, the expression "<b>Force Majeure</b>" or "<b>Force Majeure Event</b>" 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 Clause 28, 29 and 30 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "<b>Affected Party</b>") of its obligations under this Agreement and which act or event:</p> <ul style="list-style-type: none"> <li>(a) is beyond the reasonable control of the Affected Party, and</li> <li>(b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and</li> <li>(c) has Material Adverse Effect on the Affected Party.</li> </ul>
<b>28. Non-Political Events</b>	<p>28.1 A Non-Political Event shall mean one or more of the following acts or events:</p> <ul style="list-style-type: none"> <li>i. acts of God, epidemic, extremely adverse weather conditions, lightening, earthquake, landslide, cyclone, flood, volcanic eruption, chemical, radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project and Project Infrastructure);</li> <li>ii. strikes or boycotts (other than those involving the Lessee, Contractors or their respective employees / representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project 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, as set forth in Clause 29.</li> <li>iii. 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 Lessee by or on behalf of such Contractor;</li> <li>iv. any delay or failure of an overseas Contractor to deliver any critical equipment required for the Project 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 Lessee by or on behalf of such Contractor;</li> <li>v. any judgement or order of any court of competent jurisdiction or statutory authority made against the Lessee in any proceedings for reasons other than (i) failure of the Lessee to comply with any Applicable Law or Applicable Permits (ii) on account of breach of any Applicable Law or of any contract, or</li> </ul>

	<p>(iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;</p> <p>vi. 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</p> <p>vii. any other event or circumstance of a nature analogous to the foregoing.</p>
<b>29. Indirect Political Events</b>	<p>29.1 An Indirect Political Event shall mean one or more of the following acts or events:</p> <p>i. 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;</p> <p>ii. 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, operations or management of the Project to be financially unviable or otherwise not feasible;</p> <p>iii. 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;</p> <p>iv. any civil commotion, boycott or political agitation which prevents collection of User Charges by the Lessee for an aggregate period of 7 (seven) days in an Accounting Year;</p> <p>v. failure of the Authority to permit the Lessee to continue with the Construction 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;</p> <p>vi. any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Lessee by or on behalf of such Contractor;</p> <p>vii. any Indirect Political Event that causes a Non-Political Event; or</p> <p>viii. any event or circumstances of a nature analogous to any of the foregoing.</p>
<b>30. Political Events</b>	<p>30.1 Political Event shall mean one or more of the following acts or events by or on account of Lessor or any other Government Agency:</p> <p>i. Change in Law, only when provisions of this Agreement cannot be applied;</p> <p>ii. Expropriation or compulsory acquisition by any Government Agency of any Project Assets or rights of the Lessee or of the Contractors</p>
<b>31. Effect of Force Majeure Event</b>	<p>31.1 Upon the occurrence of a force majeure event, the following shall apply:</p> <p>31.1.1 There shall be no Termination of this Agreement except as provided in Clause 33 hereinafter;</p> <p>31.1.2 Upon occurrence of any Force Majeure Event prior to Appointed Date, the period set forth for fulfilment of the Conditions Precedent, and for achieving the Financial</p>

	<p>Close, shall be extended by a period equal in length to the duration of the Force Majeure Event.</p> <p>31.1.3 At any time after the Appointed Date, if any Force Majeure Event occurs:</p> <p>(a) before the Project COD, the Lease 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</p> <p>(b) after the Project COD , whereupon the Lessee is unable to provide the Project and Project Infrastructure services despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the aforesaid services during the subsistence of such Force Majeure Event, the Lease Period shall be extended by a period equal in length to the period during which the Lessee was prevented from providing the aforesaid services on account thereof; provided that in the event of reduction in Project 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 Lease Period in proportion to the loss of such Gross Revenue due to Force Majeure. For 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 Lessee to the extension of 1 (one) day in the Lease Period.</p> <p>31.1.4 Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of the Clause 32 hereinafter</p>
<p><b>32. Allocation of cost during subsistence of Force Majeure</b></p>	<p>32.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.</p> <p>32.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project and Project Infrastructure (the "<b>Force Majeure Costs</b>") shall be allocated and paid as follows:</p> <p>(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 cost arising out of any such Force Majeure Event;</p> <p>(b) upon occurrence of an Indirect Political Event, all the Force Majeure Costs attributable to such Indirect Political Event, shall be borne by the Lessee;</p> <p>(c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Lessee.</p>

	<p>32.3 For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&amp;M Expenses, any increase in the cost of Development Works for the Project on account of inflation and all other costs attributable directly to the Force Majeure Event, but shall not include loss of Revenues from the Project and all incomes derived or collected by it from or on account of the Project and 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 it is relevant.</p> <p>32.4 During the occurrence of Force Majeure Event, the Lessee shall continue to pay the Annual Land Lease Rent to the Authority. However, the Lessee will be permitted to postpone the payments for a period of Force Majeure event not exceeding 120 days without interest.</p>
<p><b>33. Termination</b></p>	<p>33.1 If the Force Majeure Event subsists for a cumulative period of [180 (one hundred eighty)] days or more within a continuous period of [365 (three hundred 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, the 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 make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not in receipt of such representation, in its sole discretion issue the Termination Notice.</p> <p>33.2 Anything related to the Project which conflicts or contradicts with the duties and obligations of the Government of Meghalaya will lead to the Termination of the Lease cum Development Agreement including the Land Lease Deed entered between the Lessor and the Lessee.</p>
<p><b>34. Dispute Resolution</b></p>	<p>34.1 In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure, provided however 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.</p>
<p><b>35. Liability for other losses, damages etc</b></p>	<p>35.1 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 existing of any Force majeure Event or exercise of any right pursuant hereto.</p>
<p><b>36. Duty to report</b></p>	<p>36.1 The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:</p> <p>a) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have</p>

	<p>known, of its occurrence and the probable material affect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.</p> <p>b) Any notice pursuant to Force Majeure shall include full particulars of:</p> <ol style="list-style-type: none"> <li>i. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article with evidence in support thereof;</li> <li>ii. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;</li> <li>iii. the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and</li> <li>iv. any other information relevant to the Affected Party's claim.</li> </ol> <p>c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this clause and such other information as the other Party may reasonably request the Affected Party to provide.</p>
<p><b>37. Excuse from performance of obligations</b></p>	<p>37.1 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:</p> <ol style="list-style-type: none"> <li>(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;</li> <li>(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</li> <li>(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.</li> </ol>

## H. ARTICLE- H: EVENTS OF DEFAULT AND TERMINATION

<p><b>38. Suspension upon Lessee Default</b></p>	<p>38.1 Upon occurrence of Lessee 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:</p> <ol style="list-style-type: none"> <li>a) suspend all rights of the Lessee under this Agreement including the Lessee's right to receive any Revenues from Project, Project Infrastructure and Associated Services pursuant hereto; and</li> </ol>
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	<p>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 “<b>Suspension</b>”).</p> <p>Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Lessee 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 Lessee 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.</p> <p>38.2 During the period of Suspension hereunder, all rights and liabilities vested in the Lessee in accordance with the provisions of this Agreement shall continue to vest in the Lessee, and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Lessee under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Lessee and the Lessee undertakes to indemnify the Authority for all costs incurred during such period. The Lessee hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it, to use during Suspension, all Intellectual Property belonging to or licensed to the Lessee with respect to the Project and its design, engineering, construction, operation and maintenance and which is used or created by the Lessee in performing its obligations under the Agreement.</p>
<p><b>39. Revocation of Suspension and Substitution of Lessee</b></p>	<p>39.1 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 may revoke the Suspension forthwith and restore all rights of the Lessee under this Agreement. For the 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.</p> <p>39.1.1 Upon the Lessee having cured the Lessee 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 Lessee under this Agreement.</p> <p>39.2 <b>Substitution of Lessee:</b> At any time during the period of Suspension, the Lenders' Representative, on behalf of the Senior Lenders, shall be entitled to substitute the Lessee 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 this Agreement, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of the Senior Lenders.</p>
<p><b>40. Termination</b></p>	<p>40.1 At any time during the period of Suspension under this Article H, the Lessee 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, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate</p>

	<p>this Agreement under and in accordance with Clause 41 as if it is a Lessee Default under Clause 41.</p> <p>40.2 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 38, 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 Lessee Default.</p> <p>40.3 <b>Termination by mutual consent:</b> Both parties can terminate the contract through issue of a notice, not exceeding 180 (one hundred and eighty) days, with mutual consent without being required to pay termination related charges. Rights of Lessor for liquidated damages for actions of the Developer will not be affected by termination through mutual consent.</p>
<p><b>41. Lessee Events of Default</b></p>	<p>41.1 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 Lessee fails to cure the default within a Cure Period of 60 (sixty) days, the Lessee shall be deemed to be in default of this Agreement (the "<b>Lessee Default</b>"), unless the default has occurred solely 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:</p> <ul style="list-style-type: none"> <li>(a) The Performance Security has been encashed and appropriated in accordance with the terms of this Agreement and the Lessee fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;</li> <li>(b) the Lessee fails to meet the various implementation timelines specified and continues to be in default for 90 (ninety) days;</li> <li>(c) the Lessee abandons or manifests intention to abandon the development or operation of the Project and the Project Infrastructure without the prior written consent of the Authority;</li> <li>(d) Project COD does not occur on or before the Scheduled Completion Date</li> <li>(e) the Lessee is in breach of the Maintenance Requirements or Safety Requirements, as the case may be, as per Good Industry Practice;</li> <li>(f) the Lessee fails to pay the Annual Land Lease Rent and Revenue Share as per the terms specified in this Agreement and within the period specified in this Agreement;</li> <li>(g) 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 Lessee fails to cure the default within the Cure Period specified hereinabove;</li> <li>(h) a breach of any of the Project Agreements by the Lessee has caused a Material Adverse Effect;</li> <li>(i) the Lessee creates any Encumbrance in breach of this Agreement;</li> <li>(j) the Lessee repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;</li> </ul>

	<ul style="list-style-type: none"><li>(k) a Change in Ownership has occurred in breach of the provisions under this Agreement ;</li><li>(l) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Lessee under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Lessee, and such transfer causes a Material Adverse Effect;</li><li>(m) an execution levied on any of the assets of the Lessee has caused a Material Adverse Effect;</li><li>(n) the Lessee is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Lessee or for the whole or material part of its assets that has a material bearing on the Project;</li><li>(o) the Lessee 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 Lessee are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Lessee under this Agreement and the Project Agreements; and provided that:<ul style="list-style-type: none"><li>(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;</li><li>(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 Lessee as at COD; and</li><li>(iii) each of the Project Agreements remains in full force and effect;</li></ul></li><li>(p) occurrence of any Insolvency Event;;</li><li>(q) any representation or warranty of the Lessee herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Lessee is at any time hereafter found to be in breach thereof;</li><li>(r) the Lessee 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;</li><li>(s) the Lessee has failed to fulfil any obligation, for which failure, Termination has been specified in this Agreement;</li><li>(t) the Lessee issues Termination Notice in violation of the provisions of this Agreement;</li><li>(u) The Lessee creates any Encumbrance on the Project Site/ Project Assets including the structures constructed</li><li>(v) The Lessee fails to meet the Conditions Precedent</li><li>(w) The Lessee is in violation of provisions of Land Lease Deed</li><li>(x) the Lessee commits a default in complying with any other provision of this Agreement if such default cause a Material Adverse Effect on the Authority.</li></ul>
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	<p>41.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Lessee Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Lessee; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Lessee of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Lessee 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 this Article.</p> <p>41.3 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 41.2 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 Lessee 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.</p> <p>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 Lessee: Provided further that upon written request from the Lenders' Representative and the Lessee, 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.</p>
<p><b>42. Lessor Events of Default</b></p>	<p>42.1 The following events shall constitute events of default by Lessor (each a "Lessor Event of Default"), unless any such Lessor Event of Default has occurred as a result of Lessee Event of Default or due to a Force Majeure Event:</p> <ol style="list-style-type: none"> <li>a) Any representation made or warranties given by the Lessor under this Agreement is found to be false or misleading.</li> <li>b) The Lessor commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Lessee;</li> <li>c) the Authority fails to provide any land which is necessary and required for construction of any essential element or part of the Project and/or the Project Infrastructure; or</li> <li>d) The Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;</li> </ol> <p>42.2 Without prejudice to any other right or remedy which the Lessee may have under this Agreement, upon occurrence of a Authority Default, the Lessee shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by</p>

	<p>issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Lessee 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.</p>
<p><b>43. Termination Payment/ Compensation</b></p>	<p><b>43.1 Termination before Appointed Date</b></p> <p>43.1.1 In case the Agreement is terminated due to Lessee Event of Default, Authority shall not be liable to make any payment to the Lessee. The Bid Security, Performance Guarantee, and Lease Rent paid by the Lessee till the date of Termination shall be forfeited</p> <p>43.1.2 In case the Agreement is terminated by the Lessee due to Lessor Event of Default, the Lessee shall be reimbursed the amount advanced to Authority including proportionate Annual Lease Rental for the first year and the Bid Security or Performance Security shall be returned to the Lessee. The Lessee shall not be entitled to any interests on the amount advanced and or in the Bid Security or Performance Security</p> <p><b>43.2 Termination after Appointed Date and during Implementation of the Project</b></p> <p>43.2.1 In case the Agreement is terminated due to Lessee Event of Default, Authority shall not be liable to make any payment to the Lessee. The Performance Security for Implementation of the project or Performance Security shall be forfeited and shall be utilised by Authority to settle any outstanding dues and other claims of Authority on the Lessee.</p> <p>43.2.2 In case the Agreement is terminated by the Lessee due to Authority Event of Default, AUTHORITY shall release the Performance Security and proportionate Annual Lease Rentals to the Lessee without interest.</p> <p><b>43.3 Termination after Implementation of the project is over (during Operation Period)</b></p> <p>43.3.1 In case the Agreement is terminated due to Lessee Event of Default, Authority shall not be liable to make any payment to the Lessee. The Performance Security shall be forfeited and shall be utilised by Authority to settle any outstanding dues and other claims of Authority on the Lessee.</p> <p>43.3.2 In case the Agreement is terminated by the Lessee due to Authority Event of Default, AUTHORITY shall release the Performance Security, without interest and shall pay to the Lessee, by way of Termination Payment, an amount equal to:</p> <ul style="list-style-type: none"> <li>i. Debt Due;</li> <li>ii. 150% (one hundred and fifty per cent) of the Adjusted Equity;</li> </ul> <p>43.4 Termination Payment shall become due and payable to the Lessee within 30 (thirty) days of a demand being made by the Lessee to the Authority with the necessary</p>

	<p>particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) 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.</p> <p>43.5 Upon Termination on expiry of the Lease Period by efflux of time, no Termination Payment shall be due and payable to the Lessee;</p> <p>43.6 The Lessee expressly agrees that Termination Payment under this Article H shall constitute a full and final settlement of all claims of the Lessee on account of Termination of this Agreement for any reason whatsoever and that the Lessee or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.</p> <p>43.7 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 Lessee 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 70% (fifty per cent) of the Total Project Cost.</p>
<p><b>44. Rights of the Lessor on Termination</b></p>	<p>44.1 Upon Termination of this Agreement for any reason whatsoever, Lessor shall have the power and authority to:</p> <ol style="list-style-type: none"> <li>i. take possession and control of Project Site and Project Assets forthwith without, at its discretion, the need to give a Cure Period or Notice of Termination.</li> <li>ii. prohibit the Developer and any person claiming through or under the Developer from entering upon the Project Site or Project Assets or any part thereof;</li> <li>iii. encash the Performance Bank Guarantee/ Performance Security</li> <li>iv. require the Lessee to comply with the Divestment Requirements set forth in this Agreement</li> <li>v. complete the development in progress by handing over the Project Assets (movable and immovable) to the new Lessee or undertake fresh development, as the case may be. In case the completion of development is in progress and is handed over to a new Lessee based on Annual Land Lease Rent which is lower than the Annual Land Lease Rent agreed with the original Lessee, the original Lessee shall be liable to meet the gap as on date between the NPV of Annual Land Lease Rent agreed by him and the NPV of Annual Land Lease Rent agreed with the new Lessee. The NPV shall be calculated on the discount rate plus three percent (3%) which shall be the prevailing Bank Rate. The duration for which the NPV will</li> </ol>

	<p>be calculated shall be from the date of handing over of Project Assets until the end of the Lease Period.</p>
<p><b>45. Divestments Right after Termination</b></p>	<p>45.1 Upon termination, the Lessee shall comply with and conform to the following divestment requirements namely:-</p> <ol style="list-style-type: none"> <li>i. Deliver forthwith the actual, or possession of the Project Assets and Project Facility, on “as is where is” basis after bringing them to a safe condition free and clear of encumbrances;</li> <li>ii. Deliver relevant records and reports pertaining to the Project and its operation and maintenance, including all programs and manuals pertaining thereto and maintenance certificates obtained hitherto, as on the date of termination;</li> <li>iii. Transfer or deliver all applicable Permits to the extent permissible under Applicable Law;</li> <li>iv. Execute such deeds of conveyance, documents and other writings as AUTHORITY may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Lessee in the Project including the right to receive outstanding insurance claims to the extent due and payable to AUTHORITY, absolutely unto AUTHORITY or its nominee;</li> <li>v. Comply with all other requirements as may be prescribed or required under Applicable Law, for completing the divestment and assignment of all rights, title and interest of the Lessee in the Project, free from all encumbrances, absolutely unto AUTHORITY or to its nominee.</li> <li>vi. 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 AUTHORITY shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in</li> <li>vii. Vesting Certificate which will have the effect of constituting evidence of divestment by the Lessee of all of its rights, title and interest in the Project, and their vesting in 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 AUTHORITY or its nominee on, or in respect of, the Project on the footing that all divestment requirements have been complied with by the Lessee.</li> </ol> <p>45.2 The Lessee shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Lessee in the Project in favour of AUTHORITY upon termination, save and except that all stamp duties payable on any deeds or documents executed by the Lessee in connection with such divestment shall be borne by AUTHORITY.</p> <p>45.3 The Lessee shall not make any modifications to the Project Assets or Project Facilities which could have an adverse impact on the operations of or on the value of the assets at the Project Facility during the Lease Period.</p> <p>45.4 <b>No demolition of the Project Facility</b> – in part or full – shall be allowed during the Lease Period unless specifically approved by AUTHORITY. During the lease period, the lessee shall not remove all cause removal of any movable assets from the Project Facility without prior permission of AUTHORITY.</p>



	<p>45.5 <b>Inspection and cure:</b> The Lessee agrees that at least 6 months prior to the expiry by efflux of time of the Lease Period it shall cause to be conducted at its cost by an expert – appointed by both Parties on mutual consent – a condition survey and an inventory of the entire Project Site &amp; Project Facility / Assets. If, as the result of such survey, the expert observes that the Project Facilities have not been operated and maintained in accordance with the requirements of this Agreement (over and above normal wear &amp; tear), the Lessee shall, at its cost &amp; expense, take all necessary steps to ensure that the Project Facilities are in good working condition well before the Transfer Date. In the event the Lessee fails to comply with this provision, AUTHORITY shall itself cause the condition survey and the inventory of the Project Assets &amp; Project Facilities to be conducted and remove any defect or deficiency observed in the survey. AUTHORITY shall be promptly reimbursed by the Lessee for costs incurred in conducting such survey, preparation of inventory and curing of Project Assets &amp; Project Facilities.</p> <p>45.6 If the Lessee fails to handover the peaceful possession of the Project Facility within one month of termination, AUTHORITY shall have the right to charge for illegal use and occupation of the premises, a daily amount equivalent to 2% (two percent) of the Annual Lease Rental payable at the time of termination till such time the premises is vacated by the Lessee.</p> <p>45.7 In the event of any dispute relating to the matters covered by this clause, the Dispute Resolution Mechanism of this Agreement shall apply.</p> <p><b>45.8 Vesting Certificate:</b></p> <p>45.8.1 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 Addenda-IV- (the "<b>Vesting Certificate</b>"), which will have the effect of constituting evidence of divestment by the Lessee of all of its rights, title and interest in the Project and the 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 Project and the Project Infrastructure on the footing that all Divestment Requirements have been complied with by the Lessee.</p>
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**I. ARTICLE- I: HANDOVER AND DEFECT LIABILITY**

<p><b>46. Handing over of Project Site and Project Assets</b></p>	<p>46.1 Upon the expiry of the Lease Period by efflux of time and in the normal course, the Developer shall at the end of the Lease Period, hand over vacant and peaceful possession of the Project Site and Project Assets at no cost to Lessor</p>
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<p><b>47. Liability for Defects after Termination</b></p>	<p>47.1 The Lessee shall be responsible for all defects and deficiencies in the Project 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 Authority in the Project and the Project Infrastructure during the aforesaid period. In the event that the Lessee 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 Lessee's risk and cost so as to make the Project and the Project Infrastructure conform to the maintenance requirements as per Good Industry Practice. All costs incurred by the Authority hereunder shall be reimbursed by the Lessee 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 appropriation of Performance Guarantee provided thereunder. For avoidance of doubt, the provisions of this Article shall not apply if Termination occurs prior to Project COD.</p> <p><b>47.2 Retention of Gross Revenue:</b></p> <p>47.2.1 Notwithstanding anything to the contrary contained in this Agreement, a sum equal to the average of monthly Gross Revenue during the year immediately preceding the Transfer Date shall be retained in the nominated Bank 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 47.1</p>
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## J. ARTICLE- J: DISPUTE RESOLUTION

<p><b>48. Dispute</b></p>	<p>48.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 49.</p> <p>48.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.</p>
<p><b>49. Conciliation</b></p>	<p>49.1 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 the Principal Secretary of the Authority and the Chairman of the Board of Directors of the Lessee for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the</p>

	<p>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 48. 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 50.</p>
<p><b>50. Arbitration</b></p>	<p>a) Any Dispute which is not resolved amicably by conciliation, as provided in Clause 49, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 50 (b). Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Shillong, and the language of arbitration proceedings shall be English.</p> <p>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 Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi.</p> <p>c) The arbitrators shall make a reasoned award (the <b>“Award”</b>). Any Award made in any arbitration held pursuant to this Article I shall be final and binding on the Parties as from the date it is made, and the Lessee and the Authority agree and undertake to carry out such Award without delay.</p> <p>d) The Lessee and the Authority agree that an Award may be enforced against the Lessee and/or the Authority, as the case may be, and their respective assets wherever situated.</p> <p>e) This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any adjudication proceedings hereunder.</p>
<p><b>51. Adjudication by Regulatory Authority or Commission</b></p>	<p>51.1 In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon disputes between the Lessee and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 50, be adjudicated upon by such regulatory authority or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.</p>

## K. ARTICLE- K: REPRESENTATIONS, WARRANTIES AND DISCALIMER

<b>52. Representations, warranties and undertaking of the Lessee/ Developer</b>	<p>52.1 The Lessee represents, warrants and undertakes to the Authority that:</p> <ul style="list-style-type: none"><li>(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;</li><li>(b) it has full power and authority to execute, deliver and perform its obligations under this Lease and to carry out the transactions contemplated hereby;</li><li>(c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution &amp; delivery, exercise of rights and performance of obligations under this Lease cum Development Agreement;</li><li>(d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;</li><li>(e) 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;</li><li>(f) it is subject to laws of India with respect to this Lease cum Development Agreement and it 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;</li><li>(g) the information furnished in the Bid / Proposal and as updated on or before the date of this agreement is true and accurate in all respects as on the date of this agreement.</li><li>(h) the execution, delivery and performance of this Lease cum Development Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Lessee's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, 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;</li><li>(i) there are no actions, suits, proceedings, or investigations pending or, to the Lessee's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial, Governmental Instrumentality or other authority, the outcome of which may result in the breach of or constitute a default of the Lessee under this Lease cum Development Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Lease cum Development Agreement;</li><li>(j) 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</li></ul>
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	<p>circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;</p> <p>(k) 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;</p> <p>(l) It shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of this Agreement;</p> <p>(m) 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;</p> <p>(n) 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 Lessee pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;</p> <p>(o) all 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 the part of the Lessee or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Lessee 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 Lease cum Development Agreement;</p> <p>(p) 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;</p> <p>(q) no sums, in cash or kind, have been paid or will be paid by or on behalf of the Lessee, to any person by way of commission or otherwise for securing the Lease or entering into this Lease cum Development Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;</p> <p>(r) all information provided by the {Selected Bidder/Consortium Members} 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;</p> <p>(s) 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;</p> <p>(t) 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</p>
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	(u) further representations as may be added depending on the specific circumstances of the Lessee.
<b>53. Representations, warranties and undertaking of Lessor</b>	<p>53.1 The Authority represents warrants and covenants to the Lessee that:</p> <ul style="list-style-type: none"> <li>i. Lessor has full power and authority to grant the Project Site;</li> <li>ii. Lessor has taken all necessary action to authorize the execution, delivery and performance of this Agreement;</li> <li>iii. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.</li> </ul>
<b>54. Disclosure</b>	<p>54.1 In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.</p> <p>54.2 Neither the Authority nor any of its agents or employees shall be liable to the Lessee in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:</p> <ul style="list-style-type: none"> <li>i. any inaccuracy, omission, unfitness for any purpose of inadequacy of any kind whatsoever in the data disclosed by the Authority to the Lessee in relation to the Project; and/or</li> <li>ii. any failure to make available to the Lessee any materials, documents, drawings, plans or other information relating to the Project.</li> </ul>
<b>55. Disclaimer</b>	<p>55.1 The Lessee acknowledges that prior to the execution of this Agreement, the Lessee has, after a complete and careful examination, made an independent evaluation of the Bidding Documents, and all the information provided by AUTHORITY or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by it in course of performance of its obligations hereunder. Save as provided in Clause 53, AUTHORITY makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and / or completeness of the information provided by it and the Lessee confirms that it shall have no claim whatsoever against AUTHORITY in this regard.</p> <p>55.2 The Lessee further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in the above and hereby acknowledges and agrees that AUTHORITY shall not be liable for the same in any manner whatsoever to the Lessee, constituting members of the Lessee and their associates or any person claiming through or under any of them.</p>

## L. ARTICLE- L: OTHER MISCELLANEOUS PROVISIONS

<p><b>56. Assignment &amp; Charges</b></p>	<p><b>56.1 Restrictions on assignment and charges</b></p> <p>56.1.1 Subject to Clauses 56.2 and 56.3, this Agreement shall not be assigned by the Lessee 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.</p> <p>56.1.2 Subject to the provisions of Clause 56.2 , the Lessee 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 Lessee 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.</p> <p><b>56.2 Permitted assignment and charges</b></p> <p>56.2.1 The restraints set forth in Clause 56.1 shall not apply to:</p> <ul style="list-style-type: none"> <li>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;</li> <li>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 Project and the Project Infrastructure; and</li> <li>c) assignment of rights, interest and obligations of the Lessee 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</li> <li>d) to ensure absolute clarity, in an exercise of prudence and out of an abundance of caution, it is hereby explicitly stipulated that the Lessee is prohibited from mortgaging the land, whether in whole or any part thereof, under any circumstances.</li> </ul> <p>56.2.2 The Lessee shall not, directly or indirectly, transfer, mortgage, pledge, assign, hypothecate, encumber, let or sub-let or part with the occupation of the Project 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 Lessee may permit or sub-let any third party to operate permissible activities in the Project and the Project Infrastructure, or any other facilities within the Project Site for a period that shall be coterminous with or, less than the Lease Period and upon expiry of the Lease 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.</p> <p><b>56.3 Substitution Agreement</b></p> <p>56.3.1 Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Lessee pursuant to the agreement for substitution of the Lessee</p>
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	<p>(the "Substitution Agreement") to be entered into amongst the Lessee, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Addenda-III.</p> <p>56.3.2 Upon substitution of the Lessee under and in accordance with the Substitution Agreement, the Nominated Company substituting the Lessee shall be deemed to be the Lessee under this Agreement and shall enjoy all rights and be responsible for all obligations of the Lessee under this Agreement as if it were the Lessee; provided that where the Lessee 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 Lessee for curing such breach.</p>
<p><b>57. Liability and Indemnity</b></p>	<p><b>57.1 General Indemnity</b></p> <p>57.1.1 The Lessee will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Authority Instrumentalities and Authority owned and/or controlled entities/enterprises, (the "<b>Authority Indemnified Persons</b>") 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 Lessee 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 Lessee to any User or from any negligence of Lessee under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.</p> <p>57.1.2 The Authority will indemnify, defend, save and hold harmless the Lessee 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 Lessee 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 Lessee, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Lessee.</p> <p><b>57.2 Indemnity by the Lessee</b></p> <p>57.2.1 Without limiting the generality of Clause 57.1, the Lessee 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:</p> <ul style="list-style-type: none"> <li>a) failure of the Lessee to comply with Applicable Laws and Applicable Permits;</li> <li>b) payment of taxes required to be made by the Lessee in respect of the income or other taxes of the Lessee's contractors, suppliers and representatives; or</li> </ul>



	<p>c) non-payment of amounts due as a result of materials or services furnished to the Lessee or any of its contractors which are payable by the Lessee or any of its contractors.</p> <p>d) its omissions or acts of fraud, gross negligence and wilful misconduct;</p> <p>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</p> <p>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.</p> <p>57.2.2 Without limiting the generality of the provisions of this Article, the Lessee 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 Lessee or by the Lessee's Contractors in performing the Lessee'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 Lessee shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Lessee shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Lessee is unable to secure such license within a reasonable time, the Lessee 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.</p> <p><b>57.3 Notice and contest of claims</b></p> <p>57.3.1 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 (the "<b>Indemnified Party</b>") it shall notify the other Party (the "<b>Indemnifying Party</b>") 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.</p> <p><b>57.4 Defence of claims</b></p> <p>57.4.1 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</p>
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	<p>or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.</p> <p>57.4.2 If the Indemnifying Party has exercised its rights under Clause 57.3, 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).</p> <p>57.4.3 If the Indemnifying Party exercises its rights under Clause 57.3, 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:</p> <ul style="list-style-type: none"><li>a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party;</li><li>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;</li><li>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</li><li>d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:<ul style="list-style-type: none"><li>i. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or</li><li>ii. that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:</li></ul></li></ul> <p>Provided that if Sub-clauses (b), (c) or (d) of this Clause 57.4 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.</p>
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	<p><b>57.5 No consequential claims</b></p> <p>57.5.1 Notwithstanding anything to the contrary contained in this Article, 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 except as expressly provided in this Agreement.</p> <p><b>57.6 Limitations of Liability</b></p> <p>57.6.1 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 Lessee's liability will be uncapped in case of any liabilities arising due to:</p> <ol style="list-style-type: none"> <li>a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and wilful misconduct;</li> <li>b) breach of any Applicable Laws or any Applicable Permits;</li> <li>c) any claims or loss on account of Intellectual Property rights violation by the Lessee;</li> <li>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</li> <li>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.</li> </ol>
<p><b>58. Governing law and jurisdiction</b></p>	<p>58.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Shillong shall have jurisdiction over matters arising out of or relating to this Agreement.</p>
<p><b>59. Entire Agreement</b></p>	<p>59.1 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 Lessee arising from the RFP, shall be deemed to form part of this Agreement and treated as such.</p>
<p><b>60. Language</b></p>	<p>60.1 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.</p>
<p><b>61. Waiver</b></p>	<p>61.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:</p> <ol style="list-style-type: none"> <li>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:</li> </ol>

	<ul style="list-style-type: none"> <li>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;</li> <li>ii. shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and</li> <li>iii. shall not affect the validity or enforceability of this Agreement in any manner.</li> </ul> <p>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</p>
<b>62. Survival</b>	<p>62.1 Termination of this Agreement shall:</p> <ul style="list-style-type: none"> <li>a) not relieve the Lessee or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and</li> <li>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.</li> </ul> <p>All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.</p>
<b>63. Severability</b>	<p>63.1 If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth Article 39 or otherwise.</p>
<b>64. Exclusion of implied warranties</b>	<p>64.1 This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.</p>
<b>65. No partnership</b>	<p>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.</p>
<b>66. Third Parties</b>	<p>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</p>

	create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.
<b>67. Successors and Assigns</b>	This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
<b>68. Confidentiality</b>	<p>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.</p> <p>b) Sub-Clause (a) shall not apply in the following circumstances:</p> <ol style="list-style-type: none"> <li>i. any disclosure required by Applicable Laws or in respect of information already in the public domain;</li> <li>ii. any disclosure required by any applicable stock exchange listing rule; and</li> <li>iii. disclosure to under a Financing Agreement, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.</li> </ol> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
<b>69. Joint and several liability (for consortium)</b>	Members of the Consortium which is found successful, shall be jointly and severally liable to the Authority for execution of the Project/Agreement in accordance with the Conditions of the Agreement. Consortium members shall also be liable jointly and severally for the loss, damages caused to the Authority during the course of execution of the Agreement or due to non-execution of the Agreement or part thereof.
<b>70. Capacity Augmentation and Additional Facilities</b>	<p>70.1 The Lessee is mandated to provide and maintain all Project Assets as per the Minimum Development Obligations &amp; Minimum Service Obligations specified and as per terms of this Agreement.</p> <p>70.2 The Lessee may undertake capacity augmentation and development of additional facilities, with written approval from the Lessor, for the Project at the specified project site if:</p> <ol style="list-style-type: none"> <li>i. The augmentation / increase in capacity does not alter the basic nature and objective of the Project, Project Site and Project Assets.</li> <li>ii. Does not adversely impact the ability of Lessee to fulfil its Minimum Development Obligations &amp; Minimum Service Obligations.</li> </ol>

<p><b>71. Notices</b></p>	<p>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:</p> <p>a) in the case of the Lessee, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Lessee may from time to time designate by notice to the 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 Lessee may from time to time designate by notice to the Authority.</p> <p>{Name: Designation: Address: Fax No.: E-mail ID:}</p> <p>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 Lessee; provided that if the Lessee 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.</p> <p>{Name: Designation: Address: Fax No.: E-mail ID:} and</p> <p>c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.</p>
<p><b>72. Completion Certificate</b></p>	<p><b>72.1 Inspection</b></p> <p>72.1.1 At least 15 (fifteen) days prior to the likely completion of the Project, the Lessee shall notify DOT of the same and shall give notice to DOT requesting it to conduct inspection of the Project Facility by DOT or any other official or agency designated by DOT for the purpose of monitoring. DOT shall give notice of its intention to conduct inspection at least 7 (seven) days prior to the actual date of inspection. Further, the Lessee shall arrange inspections of the Project Facility in accordance with Applicable Law and Applicable Permits.</p>

	<p>72.1.2 DOT shall have the right to suspend or postpone any inspection if it is reasonably anticipated or determined during the course of the inspection that the design, quality or any other aspect of the Project Facility or any part thereof does not meet the development guidelines for the phase in consideration or is not in compliance with Applicable Law or the provisions of this Agreement.</p> <p>72.1.3 The official or agency designated by DOT for the purpose of monitoring shall record results of the inspection(s) to determine the compliance of the Project Facility with the Minimum Development Requirements, Applicable Law and provisions of this Agreement.</p> <p><b>72.2 Completion Certificate</b></p> <p>72.2.1 During implementation, DOT or any other official or agency designated by DOT for the purpose of monitoring – may, at the request of the Lessee issue a provisional certificate of completion (the "<b>Provisional Certificate</b>") if the inspection reveals that the parts of Project Facility as required in consideration, can be legally, safely and reliably opened for commercial operation or use though certain works forming part thereof are not yet complete. In such an event, Provisional Certificate shall have appended thereto a list of outstanding items hereinafter referred to as the <b>Punch List</b> signed jointly by the official or agency designated by DOT for the purpose of monitoring and the Lessee. All items within the Punch List shall be completed by the Lessee within 120 (one hundred and twenty) days of the date of issue of such Provisional Certificate. Upon completion of all activities in the Punch List to the satisfaction of the DOT, DOT shall issue a completion certificate to the Lessee certifying the completion of construction or implementation or development activities as applicable, for which the Provisional Certificate had been issued - can be legally, safely and reliably opened for commercial operation or use (the "<b>Completion Certificate</b>") under intimation to DOT. In the event of the Lessee's failure to complete the items in the Punch List within the said period of 120 (one hundred and twenty) days, DOT may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk of and cost to the Lessee. The Lessee shall reimburse to DOT on demand the entire costs incurred by DOT in completing the items in the Punch List.</p> <p>72.2.2 Upon successful completion of inspections for the project, DOT will forthwith issue to the Lessee a Provisional Certificate or Completion Certificate, as the case may be.</p> <p>72.2.3 The Lessee shall bear all the expenses relating to all inspections under this Agreement.</p>
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	<p>72.2.4 Upon issuance of such Provisional Certificate the Lessee shall be entitled to demand and collect the Revenue for rendering such Hospitality Services in accordance with this Agreement.</p>
<b>73. Commercial Operation</b>	<p><b>73.1 Commercial Operation Date for Phases</b></p> <p>73.1.1 The Project shall be deemed to be complete when the Completion Certificate is issued under the provisions of clause, and accordingly the commercial operations date shall be the date on which such Completion Certificate is issued. The Project Facilities as required by the Minimum Development Requirements shall be open for commercial operations on COD.</p> <p>73.1.2 Commercial operations shall commence not later than the applicable Scheduled Completion Date.</p> <p>73.1.3 Subject to the provisions of this Agreement, in case of delay in commencement of commercial operations, unless the delay is on account of reasons solely attributable to DOT or due to Force Majeure, the Lessee shall pay damages to DOT calculated at the rate of` Rs 1,00,000 (Rupees One Lakh) for delay of each day until start of commercial operations is achieved</p>

## **SECTION II. SPECIAL CONDITIONS OF LEASE CUM DEVELOPMENT AGREEMENT (SCA)**



<b>ARTICLE- A: DEFINITIONS AND INTERPRETATIONS</b>	
<b>ARTICLE- B: PROJECT DEVELOPMENT</b>	
<b>ARTICLE- C: LEASE TERM/ PERIOD</b>	
<b>ARTICLE- D: PAYMENTS, GUARANTEES &amp; USER CHARGES</b>	
GCA 11.1	Performance Security to be submitted by the Lessee would be INR.....
GCA 12.4 Disputed Amounts.	<p><b>Disputed Amounts:</b> The Authority shall, within 10 (ten) days of receiving the Revenue Share or Annual Land Lease Rental, as the case may be, notify the Lessee of the disputed amounts along with details thereof (the “<b>Disputed Amounts</b>”). Within 7 (seven) days of receiving such notice, the Lessee 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 Lessee for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure in accordance with the agreement shall apply.</p> <p>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 12.5.</p>
GCA 12.5 Delayed Payments.	<p><b>Delayed Payments:</b> 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 4% (four per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.</p>
GCA 13.1	<p>The Annual Land Lease Rent for the first year shall be INR .....</p> <p>[ Note: The Annual Land Lease Rent shall be the amount quoted by the Successful Bidder]</p>
GCA 13.4	30 days
GCA 13.5	Bank name and branch:

	<p>Account number:</p> <p>Type of account:</p> <p>IFSC Code:</p>
<b>ARTICLE- E: OBLIGATIONS AND UNDERTAKINGS</b>	
GCA 16.1	<p>16.1.1 The Conditions Precedent would be:</p> <p>Save and except as may be expressly provided herein, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the Conditions Precedent specified herein. Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 16.1.</p> <p><b>16.1.1 (i) The Conditions Precedent for the Authority</b></p> <p>The Lessee may, upon providing the Performance Security to the Authority in accordance with this Agreement 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 herein, 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:</p> <p style="padding-left: 40px;">(a) procured for the Lessee the right of way of the Project Site, free from encumbrances</p> <p><b>16.1.1 (ii) The Conditions Precedent for the Lessee</b></p> <p>The Conditions Precedent required to be satisfied by the Lessee within a period of 120 (one hundred and twenty) days from the Execution Date shall be deemed to have been fulfilled when the Lessee shall have:</p> <p style="padding-left: 40px;">(a) provided the Performance Security to the Authority</p> <p style="padding-left: 40px;">(b) executed and procured execution of the Substitution Agreement</p> <p style="padding-left: 40px;">(c) procured all Applicable Permits as per this Agreement 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 Lessee claims satisfaction of all the Conditions Precedent under this Agreement;</p> <p style="padding-left: 40px;">(d) delivered to the Authority from the Selected Bidder and respective Consortium Members, if any, confirmation, in original, of the correctness of its representation and warranties set forth in this Agreement</p> <p style="padding-left: 40px;">(e) delivered to the Authority a legal opinion from the legal counsel of the Lessee with respect to the authority of the Lessee to enter into this Agreement and the enforceability of the provisions thereof;</p> <p style="padding-left: 40px;">(f) delivered to the Authority the copies (certified as true copies by an authorised officer of the Lessee) of the constitutional documents of the Lessee;</p> <p style="padding-left: 40px;">(g) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a director of the Lessee;</p>

	<p>(h) delivered to the Authority, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Lessee, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;</p> <p>(i) provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Lessee.</p> <p><b>16.1.2 Damages for delay by the Authority</b></p> <p>In the event that: (i) the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 16.1.1(i) within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Lessee or due to Force Majeure Event, the Authority shall extend the Lease Period for a period reckoned on a day to day basis, equivalent to the number of days of delay attributable to the Authority.</p> <p><b>16.1.3 Damages for delay by the Lessee</b></p> <p>In the event that: (i) the Lessee does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 16.1.1(ii) within the period specified in that Clause; 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 Lessee 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 11, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 16.1.1(i), no Damages shall be due and payable by the Lessee under this Clause 16.1.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 16.1.1(i).</p>
GCA 17.1	5 (five) years
GCA 18.2	<p><b>Project Completion Schedule:</b></p> <p>Construction Period: 12(twelve) months from the Appointed Date</p> <p>Operations Period: period commencing from COD and ending at the expiry of the Lease Period.</p> <p>Note: Project Completion Schedule in the Lease cum Development Agreement will be updated as per the terms of the RFP and any addendum issued.</p>
<b>ARTICLE- F: INSURANCES</b>	
GCA 26	<p><b>26.1 Remedy for failure to insure</b></p> <p>If the Lessee shall fail to effect and keep in force all insurances for 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 Lessee, 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 Lessee.</p>

GCA 26	<p><b>26.2 Waiver of subrogation</b></p> <p>All insurance policies in respect of the insurance obtained by the Lessee pursuant to this Article F 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.</p>
GCA 26	<p><b>26.3 Lessee’s waiver</b></p> <p>The Lessee 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 Lessee 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 Lessee 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.</p>
<b>ARTICLE- G: FORCE MAJEURE</b>	
<b>ARTICLE- H: EVENTS OF DEFAULT AND TERMINATION</b>	
<b>ARTICLE- I: HANDOVER AND DEFECT LIABILITY</b>	
<b>ARTICLE- J: DISPUTE RESOLUTION</b>	
<b>ARTICLE- K: REPRESENTATIONS, WARRANTIES AND DISCALIMER</b>	
<b>ARTICLE- L: OTHER MISCELLANEOUS PROVISIONS</b>	

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

SIGNED SEALED AND DELIVERED

For and on behalf of the **Authority**

By:

SIGNED SEALED AND DELIVERED

For and on behalf of the **Lessee**

By:

(Signature)

(Name)

(Designation)

(Signature)

(Name)

(Designation)

IN PRESENCE OF WITNESS

1.

2.

## **SCHEDULE-I: MINIMUM DEVELOPMENT AND SERVICE OBLIGATIONS**

*Please refer to the RFP- Vol-II*

## **SCHEDULE-II: PAYMENT SCHEDULE OF ANNUAL LAND LEASE RENT**

*To be Finalized at a later stage on selection of the successful bidder.*



## **ADDENDA-I: LAND LEASE DEED**

[The Land Lease Deed to be entered between the Lessor/Authority and the Selected Bidder will be communicated at a later stage]

## ADDENDA-II: PERFORMANCE SECURITY

### PERFORMANCE SECURITY

#### UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE

Bank Guarantee No.: \_\_\_\_\_

Dated: \_\_\_\_\_

#### **ISSUER OF BANK GUARANTEE:**

\_\_\_\_\_ (Name of the Bank)

(Hereinafter referred to as the "Bank")

#### **BENEFICIARY OF BANK GUARANTEE:**

The Managing Director

Meghalaya Tourism Development Corporation Ltd (MTDC Ltd)

Address:

#### **DETAILS OF THE BANK OF THE BENEFICIARY**

Bank: <>

Branch: <>

IFSC Code: <>

#### **NATURE OF BANK GUARANTEE:**

Unconditional and irrevocable Bank Guarantee.

#### **Context of Bank Guarantee**

WHEREAS:

- A. .... (the "LESSEE") and the ....., ..... (the "AUTHORITY") have entered into a Lease cum Development Agreement dated ..... (the "Agreement") whereby the Authority has agreed to the Lessee undertaking the development of the "Development, Operation and Maintenance of Luxury Tented Accommodation located at Multiple Locations in Meghalaya under Design, Build, Finance, Operate and Transfer (DBFOT) Mode on Public Private Partnership (PPP) (the "Project") on Lease cum Development basis, subject to and in accordance with the provisions of the Agreement.
- B. The Agreement requires the LESSEE to furnish a Performance Security to the Authority in a sum of Rs. .... cr. (Rupees ..... crore) (the "Performance Bank Guarantee") as security for due and faithful performance of its obligations, under and in accordance with the Lease cum Development Agreement, during the Lease Period (as defined in the Lease cum Development Agreement).
- C. We, ..... through our Branch at ..... (the "Bank") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Lessee'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 Lessee, such sum or sums up to an aggregate sum of the Performance Bank 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 ..... in the Authority, that the Lessee 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 Lessee is in default in due and faithful performance of its obligations during the Lease Period under the Lease cum Development Agreement and its decision that the Lessee is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Lessee, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Lessee 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 Lessee 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 Lessee 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 Lessee 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 Lessee, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Lease cum Development 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 Lessee 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 Lessee under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Performance Bank Guarantee Amount and this Guarantee will remain in force for a period of three (3) years initially from the date of submission to the Authority and post that the Performance Security in the form of a bank guarantee for each subsequent year should be submitted to the Authority by the Selected Bidder at least 30 days before the expiry of the existing bank guarantee,

thereby ensuring that the Performance Security is valid during the Lease Period and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period equivalent to the Lease Period mentioned in the Lease cum Development Agreement or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
11. This Bank Guarantee is issued by the Bank having its office at \_\_\_\_\_ but as per the Authority's requirement, this Guarantee can be encashable / negotiable at the Bank's branch at Shillong having address at \_\_\_\_\_.

Notwithstanding any contained herein:

- 1) Our liability under this Bank Guarantee shall not exceed Indian INR \_\_\_\_\_ (Rupees \_\_\_\_\_ only).
- 2) This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. \_\_\_\_\_ to \_\_\_\_\_.
- 3) We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Authority, serves upon us a written claim or demand on or before \_\_\_\_\_.

\_\_\_\_\_  
**Authorized Signatory (Bank)**

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.

### **ADDENDA-III: SUBSTITUTION AGREEMENT**

[The Substitution Agreement to be entered between the Lessor/Authority, Senior Lender and the Selected Bidder will be communicated at a later stage]

## ADDENDA-IV: VESTING CERTIFICATE

{Meghalaya Tourism Development Corporation (the “**Authority**”) refers to the Lease cum Development Agreement dated ..... (the “**Agreement**”) entered into between the Authority and ..... (the “**Lessee/Developer**”) for “Development, Operation and Maintenance of Luxury Tented Accommodation located at Multiple Locations in Meghalaya under Design, Build, Finance, Operate and Transfer (DBFOT) Mode on Public Private Partnership (PPP) (the “**Project**”).

The Authority hereby acknowledges compliance and fulfilment by the Lessee of the Divestment Requirements set forth in this 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 Lessee 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 Lessee to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Lessee in any manner of the same.

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

AGREED, ACCEPTED AND SIGNED	SIGNED, SEALED AND DELIVERED
For and on behalf of	For and on behalf of
Lessee by:	Authority by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

## **ADDENDA-V: BID PROPOSAL**

[The copies of the Request for Proposal ("RFP"), Selected (Successful) Bidder's bid documents, Lol and subsequent letter of acceptance sent by the Selected Bidder vide letter dated..... are collectively annexed hereto]