

DRAFT CONCESSION AGREEMENT



Between

TOURISM DEPARTMENT, GOVERNMENT OF MEGHALAYA

AND

..... **(Concessionaire)**

AND

..... **(Selected Bidder)**

for

**Development, Operation and Maintenance of 5 Star Luxury Resort,
located at Sohra, Cherrapunjee, East Khasi Hills District, Meghalaya
under Design, Build, Finance, Operate and Transfer (DBFOT) Mode on
Public Private Partnership**

Dated: December 2024

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Volume 2:

Draft Concession Agreement (DCA)

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Part-I: PRELIMINARY

CONCESSION AGREEMENT

THIS AGREEMENT is entered into on the dayof2024 at

BETWEEN

1. The Department of Tourism, Government of Meghalaya (“**GoM**”) represented by the Commissioner and Secretary, and having its principal office at State Secretariate, Main Building Shillong - 793 001 (hereinafter referred to as the “**Authority**” which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **ONE PART**;

AND

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

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

WHEREAS

- A. The Authority is considering private sector participation to augment the tourism facilities in the State of Meghalaya and intends to bring in a private partner to Development, Operation and Maintenance of 5 Star Luxury Resort, located at Sohra, Cherrapunjee, East Khasi Hills District, Meghalaya under Design, Build, Finance, Operate and Transfer (“**DBFOT**”) mode on Public Private Partnership (PPP) (hereinafter referred to as the “**Project**”).
- B. The Authority is in possession of the Project Site, as per Schedule A, and intends to develop the Project on the Project Site on a design, finance, build, operate and transfer (“**DBFOT**”) basis in accordance with the terms and conditions set forth in this Agreement.
- C. The Authority had accordingly invited proposals by its [Request for Proposal No. ***] dated [***] (the “Request for Proposal” or “RFP”) for shortlisting and selection of bidders for undertaking the development, operation and maintenance of the Project on DBFOT basis and had shortlisted certain bidders including inter alia, the {Selected Bidder/consortium comprising and (collectively, the “**Consortium**”) with as its lead member (the “**Lead Member**”)}.
- D. After The Authority had described the technical and commercial terms and conditions and invited bids (the “Request for Proposals” or “RFP”) for undertaking the Project.
- E. Pursuant to the terms of the RFP, bids were received by the Authority on or before [***]. The Selected Bidder had submitted its bid for the Project (the “**Bid**”).

- F. Following the evaluation of the bids submitted by the bidders, including that of the Selected Bidder, the Authority had accepted the Bid. Subsequently, the Authority had issued the letter of award no. [***] dated [***] (the “**Letter of Award**” or “**LOA**”) to the Selected Bidder, inter alia, requiring it to incorporate a private limited company under the Companies Act (as defined hereinafter) and execution of this Agreement within [30 (thirty)] days of the date of issue thereof.
- G. The {Selected Bidder/Consortium} has since incorporated the Concessionaire and has requested the Authority, by its [letter dated _____], to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/Consortium} including the obligation to enter into this Agreement pursuant to the LOA. {The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder/Consortium for the purposes hereof.}
- H. By its letter dated, the Concessionaire has also joined in the said request of the {Selected Bidder / Consortium} to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected bidder / Consortium} including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Consortium for the purposes hereof.
- I. The Selected Bidder/Consortium has, in compliance with the terms of the LoA and as per the RFP, made the following payments on behalf of the Concessionaire to the Concessing Authority:
- a) Upfront premium of INR 5 Cr (Indian Rupees Five Crore only) by NEFT/RTGS/Demand Draft Number _____ by _____ Bank, dated (payable at _____).
 - b) An irrevocable, unconditional, bank guarantee, in the name of the Authority, issued by [name & address of the issuing bank] for an amount equal to INR 9,00,00,000/- (Rupees Nine Crore only), as a guarantee for the performance of its obligation under this Concession Agreement by the Concessionaire in relation to the Project (herein the ‘**Performance Security**’).
- J. In response to the Selected Bidder / Concessionaire complying with the terms of the LoA, the Authority has agreed to the said request of {the Selected Bidder/ Consortium} and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE-1: DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 43) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye-laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a **“person”** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings and sub-headings are for convenience and reference only and shall not be used in and shall not affect, the construction or interpretation of this Agreement;
- (e) the words **“include”** and **“including”** are to be construed without limitation and shall be deemed to be followed by **“without limitation”** or **“but not limited to”** whether or not they are followed by such phrases;
- (f) Reference to **“construction”** or **“building”** include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **“construct”** or **“build”** shall be construed accordingly;
- (g) references to **“development”** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and **“develop”** shall be construed accordingly;

- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to "hour" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday or a statutory holiday as declared by Government of Meghalaya ("**GoM**") on which banks in Meghalaya are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per Gregorian Calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing 'from' a specific date or date and 'till' or 'until' a specific day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) words importing the singular shall include the plural and vice-versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);
- (r) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent.
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause 1.2.1 (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- (t) any Agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hands of duly authorized representative of such party, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and the Recitals of 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;
- (v) references to Recitals, Articles, Sub-Articles, provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sub-Articles, provisos and Schedules of or to this Agreement; reference to an Annexure shall, subject to anything to the contrary specified therein, be construed as a reference to an Annexure to the Schedule in which such reference occurs; and reference to a paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a paragraph of the Schedule or Annexure, as the case may be, in which such reference appears;
- (w) the damages payable by either Party to the other as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty. (the "**Damages**")
- (x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- (y) reference to an "**Accounting Year**" shall mean the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;
- (z) any reference at any time to any agreement, deed, instrument or document of any description shall be construed as reference to that agreement, deed, instrument or other document as amended, varied, supplemented, modified or suspended at the time of such reference; and
- (aa) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection of debtors;

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be

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

- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 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).

1.4 Priority of Agreements, clauses and schedules

- (a) This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
- (i) the Agreement;
 - (ii) all other agreements and documents forming part hereof or referred to herein;
 - (iii) the LOA issued to the Selected Bidder;
 - (iv) written Addenda to the Bid;
 - (v) bid document; and
 - (vi) the Bid.
- (b) Subject to the provisions of Clause 1.4 (a), in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (i) Between two or more Clauses / Articles of this Agreement, the provisions of a specific Clause / Articles relevant to the issue under consideration shall prevail over those in other Clauses/ Articles;
 - (ii) Between the Clauses/ Articles of this Agreement and the Schedules, the Clauses / Articles shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (iii) Between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (iv) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
 - (v) Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
 - (vi) Between any value written in numerals and that in words, the latter shall prevail.

Part-II: THE CONCESSION

ARTICLE 2: SCOPE OF THE PROJECT

- 2.1 The scope of the Project during the Concession Period shall mean and include the following (the “**Scope of the Project**”):
- (a) to design, finance, construct and develop the Project on the Project Site as set forth in Schedule-A, in accordance with the provisions of this Agreement;
 - (b) to develop the Project as specified in Schedule-B, in conformity with the Specifications and Standards set forth in Schedule-C;
 - (c) to operate and maintain the Project in accordance with the provisions of this Agreement;
 - (d) to provide Ancillary Facilities in accordance with the provisions of this Agreement;
 - (e) to transfer the Project to the Authority upon Termination in accordance with the provisions of this Agreement; and
 - (f) to perform and fulfil all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
- 2.2 The Concessionaire shall be responsible for the maintenance, upkeep and security of the Resort and the Project Infrastructure developed by the Concessionaire. The Concessionaire shall ensure that all activities are managed and undertaken in accordance with Applicable Laws and Applicable Permits. The Concessionaire shall also take all precautions for the safety of the Users while using Beach Facilities.

While undertaking development of the Project, the Concessionaire shall adhere to latest amended National Building Code of India, other relevant IS Codes and practices, Development Control Regulations, Building By-laws of Meghalaya, FAR Limits, statutory requirements, laws of land, the principles of good industry practices and any other norms as applicable from time to time.

ARTICLE 3: GRANT OF CONCESSION

3.1 The Concession

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

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

- (a) the Right of Way, access and leave and license rights to use the Project Site for the purpose of developing the Project, to the extent conferred by the provisions of this Agreement;
- (b) design, finance, construct the Project during the Construction Period;
- (c) achieve Project COD in accordance with the provisions of Clause 15.1 and subsequently, manage, operate and maintain the Resort and Project Infrastructure throughout the Concession Period;
- (d) provide Hospitality Services in accordance with the standards and terms set out in this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice;
- (e) demand, collect and appropriate Revenue from the Users for using the Resort and availing of the Hospitality Services in accordance with this Agreement;
- (f) pay Project Consideration to the Authority in accordance with the provisions of this Agreement;
- (g) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
- (h) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (i) appoint Contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Agreement in accordance with its terms;
- (j) upon Termination of the Concession Period transfer the Project to the Authority in accordance with the terms of this Agreement;

- (k) neither assign, transfer or sublet, or create any lien or Encumbrance on this Agreement, or on the Concession hereby granted, or on the whole or any part of the Project; nor sell, transfer, exchange, lease or part with the possession of the Project Site thereof, save and except as expressly permitted by this Agreement;
- (l) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for safety, security, development, management, operation or maintenance of the Project and the Project Site, subject only to the terms of this Agreement and in accordance with Applicable Permits, Applicable Laws and Good Industry Practice;
- (m) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to implement, manage, operate and maintain the Project;
- (n) do all things incidental or related thereto or which the Concessionaire considers desirable and appropriate to be carried out in connection therewith during the Concession Period; and

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

3.2 Concession Period

- (a) Subject to early termination of this Agreement in accordance with its terms, the term of this Agreement is 60 (sixty) years from Appointed Date (the “**Concession Period**”).
- (b) Not Used
- (c) The Authority shall, at any time prior to the date of expiry of the Concession Period, have the right to grant concession with respect to the Project for a period which it may determine, in its sole discretion, after the expiry of the Concession Period, through international competitive bidding amongst developers other than the Authority and any undertaking owned by it. The Authority further agrees that the Concessionaire shall have the right to participate in such competitive bidding and make its offer in accordance with the terms thereof. In the event that the Concessionaire is not the highest bidder, it shall have the first right of refusal to accept the concession.

ARTICLE 4: CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 7, 8, 9, 10, 11, 16, 23, 26, 29, 35, 36, 38, 41, 42, 43 and any related Schedules or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

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

- (a) procured for the Concessionaire the right of way of the Project Site, free from encumbrances in accordance with ARTICLE-10; and
- (b) procured all Applicable Permits as provided in Schedule E including permits in relation to environmental protection and conservation, if applicable.

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

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 120 (one hundred and twenty) days from the Execution Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided the Performance Security to the Authority pursuant to Article-9;
- (b) executed and procured execution of the Escrow Agreement and opened and operationalised the Escrow Account in accordance with Article 26;
- (c) executed and procured execution of the Substitution Agreement
- (d) procured all Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Applicable Permits, have been fulfilled as on date the Concessionaire claims satisfaction of all the Conditions Precedent under this Agreement;

- (e) delivered to the Authority from the Selected Bidder and respective Consortium Members, if any, confirmation, in original, of the correctness of its representation and warranties set forth in Sub-Clause (l), (m) and (n) of Clause 7.1;
- (f) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- (g) delivered to the Authority the copies (certified as true copies by an authorised officer of the Concessionaire) of the constitutional documents of the Concessionaire;
- (h) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a director of the Concessionaire;
- (i) delivered to the Authority, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (j) delivered to the Authority copies (certified as true copies by a director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorising the execution, delivery and performance by the Concessionaire of the Agreement;
- (k) provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire.

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

- 4.1.4 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least [once a month] on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.
- 4.1.6 The Concessionaire shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, notify the Authority of the occurrence of the Appointed Date.

4.2 Damages for delay by the Authority

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

4.3 Damages for delay by the Concessionaire

In the event that: (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that 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 Concessionaire shall pay Damages to the Authority of an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment or waiver of such Conditions Precedent, up to the maximum amount equal to the Bid Security and upon reaching such maximum amount, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due and payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Commencement of Concession Period

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

4.5 Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of 180 (one hundred and eighty) days from the Execution Date or the extended period provided in accordance with this Agreement, then all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire and the Agreement may be terminated by the non-

defaulting Party. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security or the Bid Security, as the case may be, of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General Obligations of the Concessionaire

- (a) Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the development, engineering, procurement, up-gradation, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- (b) The Concessionaire shall arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities for the construction, development, operation and maintenance of the Project, including procuring connection for and supply of electricity, water, gas and other utilities as may be necessary or required for the operation of the Project. The Concessionaire shall obtain all Applicable Permits and comply with the conditions thereunder for the procurement and use of such infrastructure facilities and utilities.
- (c) During the Concession Period, the Concessionaire shall obtain from the relevant Government Instrumentalities, the Applicable Permits (other than the Applicable Permits required to be obtained by the Authority under Clause 4.1.2) and keep in force and comply with the conditions of all Applicable Permits for the development, operation and maintenance of the Project and upon Termination, the transfer of the Project to the Authority.
- (d) The Concessionaire shall comply with all Applicable Laws and conditions of all Applicable Permits (including keeping them valid and in force as required) while performing its obligations under this Agreement. Further, the Concessionaire shall ensure and procure that its Contractors, if any, comply with all Applicable Permits and Applicable Laws during their performance of any of the Concessionaire's obligations under this Agreement.
- (e) Subject to the provisions of Clause 5.1(a) and 5.1(b) above, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- (f) The Concessionaire shall pay the Concession Fee, Annual Lease Rental and Revenue Share to the Authority in accordance with the terms and conditions of the Agreement.
- (g) The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (i) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- (ii) perform and fulfil its obligations under the Financing Agreements;
- (iii) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (iv) not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
- (v) ensure that the Users are treated with due courtesy and consideration and provided with ready access to services and information;
- (vi) Ensure employment of the local population during the Concession Period in accordance with Clause 5.17;
- (vii) procure registration from the Department of Tourism, Government of India and Government of Meghalaya, as the case may be;
- (viii) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement or Applicable Laws and Applicable Permits;
- (ix) procure that all equipment and facilities comprising the Project are developed, operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice;
- (x) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (xi) transfer the Project to the Authority upon expiry or termination of this Agreement, in accordance with the provisions thereof; and
- (xii) undertake the Development Works in accordance with the international guidelines including as provided in Schedule C.

5.2 Obligations relating to Project Agreements

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

- 5.2.2 Before finalisation, the Concessionaire shall submit to the Authority the drafts of all Project Agreements and the operation and maintenance contract (if any) or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, to the Concessionaire. Concessionaire shall appropriately consider all such comments/ observations. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For avoidance of doubt, it is agreed that the review and comments/ observations by the Authority on any Project Agreement or failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and/or liabilities under this Agreement in any manner whatsoever nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-lease, sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.
- 5.2.5 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and

accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

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

5.3 Obligations relating to Change in Ownership

- (a) The Concessionaire shall not undertake or permit any Change in Ownership in the Concessionaire, except with the prior written approval of the Authority.
- (b) Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that during the concession period,:
- (i) All acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate 25% (twenty-five per cent) or more of the total Equity of the Concessionaire; or
 - (ii) Acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person, either by himself or together with any person or persons acting in concert with him,

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

For the purposes of this Clause 5.3(b):

- (i) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any

statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire shall constitute acquisition of control directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to management of the Concessionaire

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

- (a) to alter or add to the provisions of the memorandum of association;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Concessionaire;
- (d) to reduce the share capital;
- (e) to commence any new lines of business;
- (f) to consent to a director or his or her relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the Concessionaire;
- (g) to make inter-corporate loans and investments or guarantee or security (except where such security or payment is to be made to the Authority) to be given, if the aggregate amount thereof, exceeds the limit of 30% (thirty per cent) of the Concessionaire's paid-up share capital;
- (h) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016;
- (i) for various other matters pertaining to the winding up of the Concessionaire; and
- (j) any other matter which is required by the Companies Act to be passed by a special resolution of the shareholders of the Concessionaire.

5.5 Obligations relating to Employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/

residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.6 Obligations relating to Employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are duly qualified and at all times properly trained with adequate and state-of-the-art training for their respective functions.

5.7 Obligations relating to medical aid

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

5.8 Obligations relating to aesthetic quality of the Resort

The Concessionaire shall maintain a high standard in the overall appearance and aesthetic quality of the Resort and achieve integration of the Resort with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Concessionaire shall engage professional architects of repute for ensuring that the design of the Resort meets the aforesaid aesthetic standards.

5.9 Sole purpose of the Concessionaire

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

5.10 Branding of the Project

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

5.11 Facilities for physically challenged and elderly persons

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

5.12 EHS Standards and L&FS Standards

5.12.1 The Concessionaire shall at all times and throughout the Concession Period (designing, development, construction, operation and maintenance) comply with Applicable Laws

including the relevant Environmental, Health and Safety (the “EHS”) rules and regulations and life and fire safety Standards (the “L&FS Standards”).

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

- (a) National EHS regulations (<http://www.moef.nic.in/> and others);
- (b) Real Estate (Regulation and Development) Act, 2016;
- (c) National Building Code of India published by BIS (<http://www.bis.org.in/>) and other statutory BIS standards applicable to projects of similar nature; and
- (d) L&FS Standards.

5.13 Obligations relating to Taxes

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

5.14 Obligations relating to Resort

- (a) The Concessionaire shall at all times operate the Resort in accordance with the Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.
- (b) The Concessionaire shall use the Project Site only for the development, operation and maintenance of the Resort and Project Infrastructure and any use thereof in violation of Applicable Laws or this Agreement shall constitute a Concessionaire's Event of Default.
- (c) The Concessionaire shall use the open area reserved for parking of vehicles of the Users and shall not use such area for any paid parking.
- (d) The Concessionaire shall complete the construction of the Resort to achieve Project COD in accordance with the provisions the Agreement
- (e) The Concessionaire shall employ trained personnel for providing Hospitality Services.

5.15 Website of the Resort

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

- (a) availability of the number of Keys in each category;
- (b) Hospitality Services available at the Resort;
- (c) tariff for the Keys of each category;
- (d) availability of conference rooms and rooms for hosting events and the procedure to book them;
- (e) facility for providing feedback, registering complaints etc.;
- (f) address and contact information with email ID and contact number; and
- (g) information for tourists and activities.

5.16 Obligations relating to information

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

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

5.17 Obligations relating to employment of locals

The Concessionaire shall ensure that the following percentages of total personnel employed by it during the Operation Period in the performance of its obligations under this Agreement are local residents of the State of Meghalaya

[Unskilled: [***]]

Semi-skilled: [***]]

Skilled: [***]]

5.18 Obligations relating to other charges

The Concessionaire shall make timely payments for all utility services in respect of the Project Site, including water, sewage, electricity, telecommunication, internet and cable charges etc.

ARTICLE 6: OBLIGATIONS OF THE CONCESSIONING AUTHORITY

6.1 General Obligations

- (a) The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.
- (b) Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform the following:
 - (i) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance on best efforts basis to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operations of the Project; subject to the Concessionaire submitting its applications complete in all respect in a timely manner. The Authority agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Concessionaire;
 - (ii) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
 - (iii) transfer the Project Site on leave and license basis free from Encumbrance to the Concessionaire and ensure that no barriers are erected or placed on or about the Project Site and/or Resort and Project Infrastructure by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of Safety Requirements, Emergency, national security, or law and order;
 - (iv) 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;
 - (v) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (vi) upon written request from the Concessionaire, execute the Substitution Agreement.

- (vii) upon written request from the Concessionaire and subject to the provisions of Clause 5.5, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements. No such assistance or lack thereof by the Authority shall absolve the Concessionaire of its obligations under this Agreement or amount to Force Majeure under this Agreement; and
- (viii) execute a Lease Deed, in accordance with Schedule P of this Agreement, relating to the Project Site in favour of the Concessionaire, prior to the the Appointed Date;

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

6.2 Obligations relating to refinancing

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

ARTICLE 7: REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

7.1 Representations, warranties and undertakings of the Concessionaire

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

- (a) it is duly organised and validly existing under the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Concession and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution & delivery, exercise of rights and performance of obligations under this Concession Agreement;
- (d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (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;
- (f) it is subject to laws of India with respect to this Concession 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;
- (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.
- (h) the execution, delivery and performance of this Concession 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 Concessionaire'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;
- (i) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire'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 Concessionaire under this Concession 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 Concession Agreement;
- (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 circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
 - (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;
 - (l) It shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.4;
 - (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;
 - (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 Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
 - (o) all rights and interests in the Project shall pass to and vest in the Concessioning 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 Concessionaire or the Concessioning Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire 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 Concession Agreement;
 - (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;
 - (q) no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of commission or otherwise for securing the Concession or entering into this Concession Agreement or for influencing or attempting

- to influence any officer or employee of the Concessioneing Authority in connection therewith;
- (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;
 - (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;
 - (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
 - (u) further representations as may be added depending on the specific circumstances of the Concessionaire.

7.2 Representations, warranties and covenants of the Authority

The Authority represents warrants and covenants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary action to authorize the execution, delivery and performance of this Concession Agreement;
- (c) Not used
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against the Concessioneing Authority in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement; and
- (f) it has good, legal and valid right and title to the Project Site and has the power and authority to handover the Project Site to the Concessionaire for the development of the Project in accordance with the provisions of this Agreement.

7.3 Disclosure

- 7.3.1 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.
- 7.3.2 Neither the Authority nor any of its agents or employees shall be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
- i. any inaccuracy, omission, unfitness for any purpose of inadequacy of any kind whatsoever in the data disclosed by the Authority to the Concessionaire in relation to the Project; and/or
 - ii. any failure to make available to the Concessionaire any materials, documents, drawings, plans or other information relating to the Project.

ARTICLE 8: DISCLAIMER

- 8.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of Users and all information provided by the Authority or obtained, procured or gathered otherwise and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and / or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1. above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire or any person claiming through or under any of them.
- 8.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 8.1. above shall not vitiate this Agreement or render it voidable.
- 8.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1. above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 8.4 shall not prejudice the disclaimer of the Authority contained in Article 8.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part-III: DEVELOPMENT AND OPERATIONS

ARTICLE 9: PERFORMANCE SECURITY

9.1 Performance Security

- (a) The Concessionaire shall, for the performance of its obligations hereunder during the Construction/Development Period, provide to the Authority within 30 (thirty) days from the Execution Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. [***] (Rupees [***]) substantially in the format set forth in Schedule-F (the “**Performance Security**”). The Concessionaire shall maintain and keep in force the Performance Security for the entire duration of the Performance Security Period in accordance with this Article 9. This Performance Security shall remain valid till achievement of COD. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- (b) At least 30 days prior to the achievement of COD, the Concessionaire for the performance of its obligations hereunder during the Operation & Maintenance Period, provide to the Authority, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. [***] (Rupees [***]) substantially in the format set forth in Schedule-F (the “**Performance Security**”). The Performance Security shall initially be valid, in force and effective up to a period of 5 (five) years.
- (c) At least 30 (thirty) days prior to expiry of existing Performance Security, the Concessionaire shall submit, to the Authority, a fresh Performance Security, in the form of an irrevocable and unconditional bank guarantee valid for a period of subsequent 5 (Five) years. The value of fresh Performance Security, to be submitted in any period, shall be computed by increasing the Performance Security of the previous period with an escalation at the rate of 100% of WPI for the previous five years.

For Example:

Effective Date:	1 st Jan 2024
Conditions Precedent Period:	180 Days
Appointed Date:	29 th June 2024
Construction Period:	24 months
COD Achieved on:	30 th June 2026
Performance Security (PS) on COD	Rs 2.50 crs

Now, Performance Security (PS_{n+5}) post 5 Years from the original Performance Security (PS_n) will be calculated as under:

$$PS_n = 2.50$$

$$WPI_n = 100$$

$$WPI_{n+5} = 125$$

$$PS_{n+5} = 2.50 * 125 / 100 \text{ Therefore, } PS_{n+5} = 3.125$$

Where,

PSn = Performance Security Paid at the beginning of the 5 year Period

PSn+5 = Performance Security payable the beginning of the 5 year period immediately succeeding the 5 year period for PSn.

WPI_n = WPI at the beginning of Year of submission of PSn

WPI_{n+5} = WPI at the end of 5 year from PSn+5

Note: *The WPI reference shall only be considered for the purpose of Appreciation in the values. Any depreciation as a result of WPI decline shall be treated as no appreciation.*

- (d) Notwithstanding anything to the contrary contained in this Agreement, in the event that the Performance Security is not provided by the Concessionaire within the above specified period, the Authority shall have the right to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent or failure to make any payment which becomes due and payable to the Authority under and in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable as liquidated damages from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent or failure to pay such amounts which are due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement. Upon such encashment and appropriation of the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with this Article 32. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in in accordance with Article 32.

9.3 Validity and Release of Performance Security

The Performance Security shall remain in force and effect for a period of 6 (six) months from the end of the Concession Period (the “**Performance Security Period**”); provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3 and subject to the creation of Deemed Performance Security in accordance with Clause 9.4, the Authority shall release the Performance Security forthwith.

The Concessionaire 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 concession tenure.

9.4 Deemed Performance Security

The Parties expressly agree that at least 15 (fifteen) days prior to release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for the same amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire remaining Concession Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Article 26, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Authority shall have the first and exclusive charge, including to the exclusion of the Senior Lenders, and shall be entitled to appropriate any amount therefrom as if it is an appropriation from the Deemed Performance Security under Clause 9.5. For avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

Upon any amounts becoming due and payable by the Concessionaire to the Authority under and in accordance with the terms of this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the amounts due and payable. For avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6 References to Performance Security

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

ARTICLE 10: RIGHT OF WAY

10.1 The Project Site

The site of the Resort and the Project Infrastructure shall comprise the land as described in Schedule-A, and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire on lease basis under and in accordance with this Agreement (the “**Project Site**”). The ownership of the Project Site shall always remain vested with the Authority.

10.2 Lease, Access to the Project Site

10.2.1 The Authority hereby grants to the Concessionaire, access to the Project Site for carrying out any surveys, investigations and soil test of the Project Site that the Concessionaire 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 Concessionaire on or about the Project Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Concession Fee, Upfront Premium, Revenue Share and Annual Lease Rental, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby agrees to grant to the Concessionaire, commencing from the Appointed Date, lease-hold rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Project Site which is described, delineated and shown in Schedule A hereto, on an "**as is where is**" basis, free of any Encumbrances, to develop, operate and maintain the said premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Project Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The lease, access, Right of Way and all other rights to the Project Site granted under this Agreement by the Authority to the Concessionaire shall always be subject to existing rights of way.

10.2.4 It is expressly agreed that the Concessionaire's rights to the Project Site 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 Concessionaire or its Contractors, the rights of the Concessionaire in respect of the Project Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the rights granted hereunder at any time after the Concession Period has expired or has been Terminated in terms hereof, whichever is earlier, a sufficient proof of which shall be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

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

10.3 Procurement of the Project Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority's Representative and the Concessionaire shall, on a mutually agreed date and time but in any event no later than 10 (ten) days from the Appointed Date, inspect the Project Site and prepare a memorandum containing an inventory of the Project Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Project Site, free from any Encumbrance. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Project Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.1, be deemed to constitute a valid Right of Way to the Concessionaire for free and unrestricted use and development of the Project Site which is vacant and free from any Encumbrance during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For avoidance of doubt, it is agreed that rights, including the Right of Way with respect to the parts of the Project Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2 In case of any dispute between the Concessionaire and the Authority in relation to the survey of the Project Site and the Appendix, the decision of the Authority shall prevail and shall be binding on the Concessionaire.

10.3.3 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Project Site required and necessary for the Resort and Project Infrastructure. For avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the development of the Resort and Project Infrastructure.

10.3.4 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Project Site and shall

ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.5 Upon receiving Right of Way to and in respect of any land included in the Appendix, the Concessionaire shall complete the Development Works in accordance with the Project Completion Schedule set forth in Schedule G.

10.3.6 The Authority shall procure any additional land that may be required for the Project or for work specified in Change of Scope Order issued under Article 16, in accordance with the provisions of this Agreement, and upon procurement thereof, such land shall form part of the Project Site; provided that no land to be acquired by the Authority hereunder shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with accordingly. For avoidance of doubt, the Parties agree that any land required for the Project, in addition to the land included in Schedule A, shall be acquired at the sole discretion of the Authority and the Concessionaire shall have no right to claim in the event the Authority declines any such acquisition in whole or in part.

10.4 Project Site to be free from Encumbrances

The Project Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances on “**as is where is basis**” and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Project Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Project Site shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Project Site.

10.5 Protection of Project Site from encroachments

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

10.6 Special or temporary Right of Way

The Concessionaire shall bear all costs and charges for any special or temporary Right of Way required by it in connection with access to the Project Site. The Concessionaire shall obtain at its own cost such facilities on or outside the Project Site as may be required by it for the

purposes of the Resort and the Project Infrastructure and the performance of its obligations under this Agreement.

10.7 Access to Concessioneing Authority and Independent Expert

The Right of Way and right to the Project Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, its representatives or authorised personnel, the Independent Expert and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the rights granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Project Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that:

- (a) any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority.
- (b) if required, the Authority shall, at its sole discretion, grant reasonable extension of the Project Completion Schedule for any delay caused as a direct consequence of any discovery.

10.9 Development of Project Site

The Concessionaire may landscape and develop the Project Site and regulate the use thereof in accordance with the Good Industry Practice and in conformity with the provisions of this Agreement.

10.10 Permitted Use

The Concessionaire shall use or cause to be used any or all part of the Project Site for operating, managing and maintaining the Resort and Project Infrastructure as approved for the applicable category of Resorts by the Ministry of Tourism, Govt of India or Department of Tourism, Govt of Meghalaya, as applicable and in accordance with Applicable Laws and Applicable Permits. Any use of the Project Site in violation thereof shall constitute a Concessionaire Default under this Agreement.

ARTICLE 11: UTILITIES AND ASSOCIATED ROADS

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

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

11.3 Felling of Trees

The Authority shall assist the Concessionaire in procuring the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Resort and Project Infrastructure. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall in the sole discretion of the Authority, be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority.

ARTICLE 12: DEVELOPMENT OF RESORT AND PROJECT INFRASTRUCTURE

12.1 Obligation relating to Development Works

12.1.1 Prior to the commencement of Development Works, the Concessionaire shall, along with the Drawings:

- (a) submit to the Authority and the Independent Expert its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule G
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits.

12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Resort and Project Infrastructure, the following shall apply:

- (a) the Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, the copies of all Drawings to the Independent Expert for review. Such Drawings shall be prepared for a Resort of not less than *****Keys**, taking into account the capacities envisaged under the Mandatory Development Obligation;
- (b) by submitting the Drawings for review to the Independent Expert, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering are in conformity with the Scope of the Project, the Specifications and Standards, Applicable Laws and Good Industry Practice;
- (c) within 15 (fifteen) days of the receipt of the Drawings, the Independent Expert shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the scope of Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Expert on the Drawings submitted pursuant hereto beyond the specified period and may begin or continue Development Works at its own discretion and risk;

- (d) if the aforesaid observations of the Independent Expert indicate that the Drawings are not in conformity with the Scope of Project and the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Expert for review within 7 (seven) days. The Independent Expert shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) no review or observation of the Independent Expert and/or its failure to review or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Expert or the Authority be liable for the same in any manner;
- (f) without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the location and layout of the Resort, Project Infrastructure and general arrangement drawings thereof and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply *mutatis mutandis* to the review and comments thereunder;
- (g) within 90 (ninety) days of the Project COD, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and its editable digital format or in such other medium as may be acceptable to the Authority, reflecting the Resort and the Project Infrastructure, as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Resort and Project Infrastructure and setback lines, if any, of the buildings and structures forming part of the Project. It is clarified that the Concessionaire shall submit the Drawings in accordance with Schedule D.

12.2.1 Notwithstanding anything to the contrary contained in this Clause 12.2 above, the Concessionaire shall have the sole right to determine design, specifications and development phasing for Resort and the Project Infrastructure Facilities including demolition of existing structure, wherever applicable, subject to compliance with Applicable Regulations. Provided further that the Concessionaire shall by notice inform the Authority of any such modification before commencing the construction thereof.

12.3 Construction and Development of Project

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake development of the Project on the Project Site as specified in Schedule B, and in conformity with the Specifications and Standards set forth in Schedule C (the “**Mandatory Development Obligations**”). The Concessionaire shall undertake the Mandatory Development Obligations, where the Development Works shall commence from the Appointed Date and shall be completed in accordance with the proposed Project Completion Schedule as set forth in Schedule G.

12.3.2 The Concessionaire shall develop and construct the Project in accordance with the Project Completion Schedule set forth in Schedule G. In the event that the Concessionaire fails to achieve any Project Milestone within 30 (thirty) days from the date set forth for such Project Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons solely and directly attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the **rate of 0.2% (zero point two per cent)** of the amount of Performance Security for delay of each day until such Project Milestone is achieved up to a **maximum of 20% (twenty per cent)** of the amount of Performance Security; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule G has been amended as above; provided further that in the event Project COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, or otherwise including the right of Termination thereof.

12.3.3 In the event that the Development Works pertaining to the Mandatory Development Obligation is not completed within 180 (one hundred and eighty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to Terminate this Agreement. Without prejudice to the Authority's rights under this Agreement and/or any other right that it may have under Applicable Law or equity, the Authority may in its sole discretion choose not to Terminate this Agreement after the said period of 180 (one hundred and eighty) days and allow for a weekly extension beyond such period of 180 (one hundred and eighty) days; provided that the Concessionaire agrees and pays in advance, the Damages calculated in accordance with Clause 12.3.2 above, for each day of such extension. To the extent that the Authority has agreed to allow for an extension and the Concessionaire has paid the Damages in advance as stated above, the Authority shall not terminate this Agreement in accordance with the provisions of this Clause 12.3.3. Notwithstanding the foregoing, the Parties agree that this Article shall not prejudice, in any manner whatsoever, the Authority's right of Termination under any other provision of this Agreement.

12.4 Tests

12.4.1 No later than 30 (thirty) days prior to the likely completion of the Development Works, the Concessionaire shall notify the Independent Expert of its intent to subject the Resort and Project Infrastructure to Tests. The date and time of each of the Tests shall be determined by the Independent Expert in consultation with the Concessionaire and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Expert may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Expert failing

to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates, but with not less than 10 (ten) days' notice to the Independent Expert.

12.4.2 All Tests shall be conducted in accordance with Schedule H at the cost and expense of the Concessionaire. The Independent Expert shall observe, monitor and review the results of the Tests to determine compliance of the Resort and Project Infrastructure with the Specifications and Standards and if it is reasonably anticipated or determined by the Independent Expert during the course of any Test that the performance of the Resort and/or Project Infrastructure or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Expert shall provide to the Concessionaire and the Authority, copies of all Test data including detailed Test results. For avoidance of doubt, it is expressly agreed that the Independent Expert may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Resort and Project Infrastructure with the Specifications and Standards.

12.5 Safety certification prior to Project COD

12.5.1 The Concessionaire shall, not later than 15 (fifteen) days prior to the likely Project COD, notify the Authority and the Independent Expert of the compliance or Safety Requirements and invite them to observe any or all the Tests that may be specified by the Independent Expert in accordance with Applicable Laws, Applicable Permits and Good Industry Practice to determine that the Resort and Project Infrastructure is safe for entering into commercial service, and the costs of such Tests shall be borne by the Concessionaire and in case of failure in any Test requiring repetition thereof, the cost of such or subsequent Test shall also be borne entirely by the Concessionaire.

12.6 Optional Development Obligation

12.6.1 The Concessionaire shall have the right but not the obligation to construct and develop any unutilised land which forms part of the Project Site for building any facility which may include permanent and temporary structures, extension of the building façade, construction of facilities for recreation , etc., except increasing the number of Keys, for the benefit of the Users which by its nature may increment the Hospitality Services and may lead to the potential increase in the Revenue from the Project on or after the Project COD during the period up to 5(five) years prior to the expiry of the Concession Period (the “**Optional Development Obligation**”), provided, that it obtains a prior written approval from the Authority for undertaking the Optional Development Obligation. In the event that the Concessionaire exercises its right to undertake the Optional Development Obligation, it shall do so at its own risk, cost and expense provided that such obligation does not affect the existing Resort and the Project Infrastructure. All the terms, conditions, rights and obligations of the Concessionaire in relation to construction and operation of the Mandatory Development Obligation including submission of Drawings in accordance with Clause 12.2

shall apply *mutatis mutandis* for the construction, development and operation of any facility as part of the Optional Development Obligation including, submission of periodic reports and other relevant documents to the Independent Expert under Article 13, Article 14, and Article 15.

- 12.6.2 It is clarified that in the event that the Authority approves the construction and development of any Optional Development Obligation proposed to be developed by the Concessionaire in accordance with Clause 12.6.1, the Authority shall be bound to perform all its obligations under this Agreement with respect to such Optional Development Obligation, including its obligations to pay Termination Payments to the Concessionaire in accordance with the provisions of this Agreement.

ARTICLE 13: MONITORING OF DEVELOPMENT WORKS

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, within 7 (seven) days after the close of every month, furnish to the Authority and the Independent Expert a monthly report on progress of the Development Works and shall promptly give such other relevant information as may be required by the Authority and/or Independent Expert. The provisions of this Article 13 shall apply *mutatis mutandis* to the Development Works undertaken for the Mandatory Development Obligation and the Optional Development Obligation.

13.2 Inspection

During the construction of Development Works, the Independent Expert shall inspect the Resort and Project Infrastructure, at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Notwithstanding the foregoing, such inspection or submission of Inspection Report by the Independent Expert shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

- 13.3.1 For determining that the Development Works conform to the Agreement and Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out or cause to be carried out Tests, at such time and frequency and in such manner as may be specified by the Independent Expert from time to time in accordance with Good Industry Practice for quality assurance. The size of sample for such Tests shall, to the extent possible not exceed 10% (ten per cent) of the quantity and/or number of Tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the Tests in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. One half of the costs incurred on such Tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire. Provided however, that the Independent Expert may, instead of carrying out the Tests specified hereunder, at its option decide to witness, or participate in, any of the Tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Expert for discharging its functions hereunder. For avoidance of doubt, the

costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

- 13.3.2 In the event that results of any Tests conducted under this Clause 13.6 establish any defects or deficiencies in the Development Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Expert in this regard. The Independent Expert shall require the Concessionaire to carry out or cause to be carried out Tests to determine that such remedial measures have brought the Development Works into compliance with Specifications and Standards, and the procedure under Clause 13.6 shall be repeated until such Development Works conform to the Specifications and Standards. For avoidance of doubt, it is agreed that the Tests pursuant to this Clause 13.6 shall be undertaken in addition to and independent of the Tests carried out by the Concessionaire for its own quality assurance in accordance with Applicable Laws, Applicable Permits and Good Industry Practice. It is also agreed that a copy of the results of such Test shall be sent by the Concessionaire to the Independent Expert forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.1, if the rate of progress of Development Works is such that the Mandatory Development Obligation is not likely to be completed within the time period stipulated, the Concessionaire shall inform the Independent Expert at fortnight intervals, in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project COD.

13.5 Video Recording

The Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 1 (one) hour digital video covering the status of the progress of Development Works in that quarter. The first such video recording shall be provided to the Authority within 15 (fifteen) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

ARTICLE 14: COMPLETION CERTIFICATE

14.1 Provisional Certificate

If the Project is complete and the Concessionaire certifies in writing that the Tests are successful and all the facilities required for rendering Hospitality Services, can be safely and reliably placed in commercial operation, even though certain works or things forming part thereof which do not affect the use and safety of the Project, or any part of the Project, for their intended purpose, are outstanding and are to be completed (the “**Punch List**”), the Independent Expert may, at the request of the Concessionaire, issue a provisional completion certificate, specifying the details of the Punch List which the Concessionaire shall be required to complete before issuance of a Completion Certificate (the “**Provisional Certificate**”). Upon issuance of such Provisional Certificate the Concessionaire shall be entitled to demand and collect the Revenue for rendering such Hospitality Services in accordance with this Agreement.

14.2 Completion Certificate

14.2.1 List of all Punch List items appended to the Provisional Certificate, if any, shall be completed by the Concessionaire within 180 (one hundred and eighty) days of the date of issue of such Provisional Certificate. When Concessionaire considers it has achieved completion of Punch List, it must request the Independent Expert for issuance of the Completion Certificate.

14.2.2 Within 10 (ten) days after receiving the request and upon being satisfied by the documents provided by the Concessionaire, the Independent Expert shall inspect the Project for Punch List items and either:

(a) issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule I (the “**Completion Certificate**”), if the Punch List items as provided under the Provisional Certificate have been completed; or

(b) issue a written notice to Concessionaire listing the Punch List items remaining to be completed along with the timelines to complete them.

14.2.3 In the event the Concessionaire fails to complete the Punch List items within the timeline mentioned in this Article, then the Authority without prejudice to any of its rights under this Agreement including Termination thereof, may waive of completion of such Punch List items. Authority's decision in this regard shall be at its discretion and shall be final and binding.

14.3 Deemed Completion Certificate

In the event that upon successful determination by the Independent Expert of the successful completion of all Tests in accordance with Clause 12.4 above, the Independent Expert fails to issue the Completion Certificate to the Authority and the Concessionaire

within the time specified in Clause 14.2, at the end of such period, such Completion Certificate shall be deemed to have been issued to the Authority and the Concessionaire in accordance with the provisions of this Clause 14.2 (the “**Deemed Completion Certificate**”).

14.4 Rescheduling of Tests

If the Independent Expert certifies to the Authority and the Concessionaire that it is unable to certify the completion of the facilities required for rendering Hospitality Services or issue the Completion Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire at its own cost and expense, shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable. The provisions of this Clause 14.4 shall apply *mutatis mutandis* to such re-scheduled Tests.

ARTICLE 15: ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date

- 15.1.1 The Mandatory Development Obligations shall be deemed to be complete when the Completion Certificate or the Deemed Completion Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date, shall be the date on which such Completion Certificate or the Deemed Completion Certificate, as the case may be, is issued (the **“Project COD”**). The Mandatory Development Obligations shall enter into commercial service on Project COD whereupon the Concessionaire shall be entitled to provide Hospitality Services and charge Revenue from the Users, subject to compliance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement.

ARTICLE 16: CHANGE OF SCOPE

16.1 Change of Scope

- (a) The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- (b) If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Hospitality Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- (c) Any works or services which are provided under and in accordance with this Article 16 shall form part of the Resort and Project Infrastructure and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documents in support of:
 - (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period;
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, any impact on the operations or the cost of operation of the Resort and Project Infrastructure, along with the proposed premium or discount on such rates; provided that the cost incurred by the Concessionaire in providing such information

shall be reimbursed by the Authority to the extent such cost is certified by the Independent Expert as reasonable; and

(c) its likely impact on the Gross Revenue and profitability of the Project.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance, thereupon of the Independent Expert, make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute.

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

16.3 Payment for Change of Scope

16.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Expert. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documents as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Expert, as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure in Article 39.

16.4 Restrictions on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay the Project COD; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such order shall not be reckoned for the purposes of determining completion of the Project and issuing the Completion Certificate or Deemed Completion Certificate.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the estimated market value of the buildings comprising the Resort and the Project Infrastructure in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of such market value at any time during the Concession Period.

16.5 Financing by the Concessionaire

Notwithstanding anything to the contrary contained in this Article 16, the Parties may, subject to this Clause 16.5 agree on determining the Change of Scope which may be financed partly or entirely by the Concessionaire, if such arrangement enables the Concessionaire to provide the financing and undertake its recovery in accordance with the provisions of this Agreement.

ARTICLE 17: OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Resort and Project Infrastructure in accordance with this Agreement by itself, and/or through an O&M Contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire shall include:

- (a) ensuring safe, hygienic and efficient Hospitality Services and maintaining a high standard of cleanliness and hygiene in the Resort.
- (b) undertaking operation and maintenance of the Project Facilities in an efficient, coordinated and economical manner, in compliance with the Specification and Standards;
- (c) undertaking operation and maintenance of the Project Infrastructure in accordance with the Specification and Standards, operation and maintenance manual provided by the original equipment Manufacturers (OEMs) and the terms of this Agreement to ensure that the Concessionaire is able to optimally use the Project Infrastructure during the Operation Period such that the Project is self-sustained.
- (d) carrying out periodic preventive maintenance of the Resort and Project Infrastructure
- (e) undertaking routine maintenance including prompt repairs of all elements and components of the Resort and Project Infrastructure so as to ensure compliance with the Maintenance Requirements and the Specification and Standards;
- (f) undertaking major maintenance, replacement of components and parts, repairs to structures, and repairs and development of associated facilities, including the Project Infrastructure;
- (g) providing round the clock security at the Project Site and preventing with the assistance of the concerned law enforcement agencies, any encroachments on or authorised entry on the Project Site;
- (h) protection of environment and provision of equipment and materials therefor in accordance with the Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice;

- (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Resort and Project Infrastructure and for providing Hospitality Services in conformity with the Good Industry Practice;
 - (j) maintaining a public relations unit to interface with and attend to suggestions from the Users, Government Instrumentality, media and other agencies;
 - (k) complying with the Safety Requirements
 - (l) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement and
- 17.1.2 The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and wastewater), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.
- 17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice and Applicable Laws and Applicable Permits, all stretches of approach roads, or other structures situated on the Project Site.
- 17.1.4 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Authority. For avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to and independent of the Damages payable under this Agreement. In the event the Authority is required to pay any penalty to the Government Instrumentality under any Applicable Laws then the Authority shall be entitled to be indemnified by the Concessionaire under this Agreement under Article 37.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Resort and the Project Infrastructure are maintained in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the “**Maintenance Requirements**”), as more specifically set out in Schedule-J.

17.3 Safety, breakdowns and accidents

- 17.3.1 The Concessionaire shall ensure safe conditions at the Project Site for the Users and Authority, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures in conformity with the provisions of this

Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In the event of occurrence of any damage, breakdowns and/or accidents, the Concessionaire shall undertake removal of obstruction and debris without delay.

- 17.3.2 Concessionaire's responsibility for rescue operations in the Resort and Project Infrastructure shall include safe evacuation of all Users, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction, which may endanger or interrupt the Hospitality Services.

17.4 Overriding powers of the Authority

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

- 17.4.2 In the event the Concessionaire, upon notice under Clause 17.4.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Article 17 along with the Damages specified therein.

17.5 Restoration of loss or damage to the Resort and the Project Infrastructure

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever other than Force Majeure Event, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

17.6 Modifications to the Resort and Project Infrastructure

The Concessionaire shall not carry out any material modifications to the Resort and the Project Infrastructure, save and except where such modifications are necessary for the Resort and the Project infrastructure to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Expert of the proposed

modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions which the Independent Expert may make within 15 (fifteen) days of receiving Concessionaire's proposal. For avoidance of doubt if the modification has a Material Adverse Effect on the safety thereof or the safety of Users and other persons, the same shall be subjected to tests and certification specified in Clause 13.3. For avoidance of doubt all modifications hereunder shall comply with the safety requirements, Specifications and Standards, Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice.

17.7 Excuse from performance of obligations

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

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

Provided, that any such event and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Expert without any delay.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Resorts open to Users provided that Hospitality Services can be provided safely.

17.8 Authority's right to take remedial measures

In the event the Concessionaire does not maintain, repair and/or rectify any defects and deficiencies in the Resort and/or the Project Infrastructure or any part thereof in conformity with the Maintenance Requirements and fails to commence remedial works within 15 (fifteen) days of receipt of the **O&M Inspection Report** or notice in this behalf from the Authority or the Independent Expert, as the case may be, the Authority, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For avoidance of doubt, the rights of the Authority under this Clause 17.8 shall be without prejudice to its rights and remedies under Clause 17.3.

ARTICLE 18: SAFETY REQUIREMENTS

18.1 Safety Requirements

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice for securing the safety of the Resort, Project Infrastructure, safety of the Users and other persons present in the premises. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Resort and the Project Infrastructure and shall comply with the safety requirement set forth in Schedule K (the “**Safety Requirements**”).

18.2 Expenditure on Safety Requirements

Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

ARTICLE 19: MONITORING OF OPERATION AND MAINTENANCE

19.1 Annual Status Reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of every Accounting Year, furnish to the Authority and the Independent Expert an annual report stating in reasonable detail the condition of the Resort and the Project Infrastructure including its compliance or otherwise with the Maintenance Requirements and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Expert. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Inspection

The Independent Expert may through its Authorized Representatives inspect the Resort and the Project Infrastructure at any time during the O&M Period and at least once a year. It shall make a report of such inspection (**the "O&M Inspection Report"**) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.3 Tests

For determining that the Resort and the Project Infrastructure conforms to the Maintenance Requirements, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Expert and furnish the results of such tests forthwith to the Independent Expert. One half of the cost incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire.

19.4 Remedial measures

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

19.4.2 The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project

into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4.2 shall be repeated until the Project conforms to the Maintenance Requirements.

ARTICLE 20: SAFETY AND SECURITY

20.1 Security obligations of the Concessionaire

- 20.1.1 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Resort and the Project Infrastructure and shall be responsible for the security arrangements for the Resort in order to maintain safe and orderly conduct of its business and the security thereof.
- 20.1.2 The Concessionaire shall install and operate a closed-circuit television system to monitor the Resort and the Project Infrastructure and such other parts of the Resort and Project Infrastructure as may be necessary and expedient for safe operations of the Resort and Project Infrastructure in accordance with Good Industry Practice.
- 20.1.3 The Concessionaire shall engage and depute trained personnel for maintaining the security and safety of Users inside the Project Site in accordance with Good Industry Practice.
- 20.1.4 The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority's actions or the actions of any organization authorised by the Authority other than those resulting from wilful or grossly negligent acts and omissions of the Authority. The Authority agrees that it shall cause the relevant organization to take such actions as reasonably deemed necessary by them for the security of the Resort and Project Infrastructure, without unduly disrupting the operations of the Resort or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organization authorised by the Government in discharge of their obligations for and in respect to the security of the Resort and the Project Infrastructure.
- 20.1.5 The Concessionaire shall abide by and implement any instructions of the Authority and the Independent Expert for enhancing the security within and around the Resort and Project Infrastructure. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the implementation of any instruction of the Authority or the Independent Expert.

ARTICLE 21: HOSPITALITY SERVICES

21.1 Quality of Hospitality Services

- (a) The Concessionaire shall procure that all Users in the Resort receive quality services in accordance with the provisions of this Agreement and Good Industry Practices.
- (b) The Concessionaire shall procure and ensure that all personnel engaged in the provision of Hospitality Services, are suitably qualified and receive sufficient training and instructions in accordance with Good Industry Practice and standards of their relevant professional body, if any, for execution of their duties, which shall at a minimum, be compliant with the performance standards set out at Schedule C. The Concessionaire shall regularly supervise and monitor the performance of the personnel to ensure that they comply with this Agreement, Applicable Laws and Good Industry Practice.
- (c) The Concessionaire shall address to any complaints received by the Users in a prompt and effective manner and take all reasonable efforts to accommodate the requests of the Users.

21.2 Special Services

The Concessionaire agrees and undertakes to develop special services as follows Specialities):

- (a) arranging pickups and drops to and from the Resort ;
- (b) maintaining laundry services;
- (c) maintaining a gymnasium for the Users with high end equipment as per Good Industry Practice;
- (d) maintaining a swimming pool for the Users; and
- (e) maintaining spa facility, salon, retail stores and recreational activities.

For avoidance of doubt, it is clarified that the Specialties specified in Clause 21.2 are the minimum Specialties to be provided and the Concessionaire may, at its sole discretion, cost and expense, provide any other additional services in accordance with the terms of this Agreement.

ARTICLE 22: INDEPENDENT EXPERT

22.1 Independent Expert

The Authority shall appoint, no later than 90 (ninety) days from the Execution Date, a third-party agency (the “**Independent Expert**”) for the Concession Period. Provided that the Authority shall have the right to appoint any of its agencies or departments to monitor the Project until the Independent Expert is appointed in accordance with this Clause 22.1. The provisions of this Agreement with respect to the Independent Expert shall apply *mutatis mutandis* to such agency or department until the Independent Expert is appointed in accordance with the provisions of Schedule L and this Clause 22.1 and such provisions shall be repeated after expiry of each appointment.

22.2 Duties and functions

- (a) The Independent Expert shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule L.
- (b) The Independent Expert shall submit regular periodic reports at least once every month to the Authority in respect of its duties and functions set forth in Schedule L.
- (c) A true copy of all communications sent by the Authority to the Independent Expert and by the Independent Expert to the Authority shall be sent forthwith by the Independent Expert to the Concessionaire.
- (d) A true copy of all communications sent by the Independent Expert to Concessionaire and by the Concessionaire to the Independent Expert shall be sent forthwith by the Independent Expert to the Authority.

22.3 Authorised signatories

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

22.4 Remuneration

The remuneration, cost and expenses of the Independent Expert shall be paid by the Authority, one-half of such remuneration, cost and expense shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

22.5 Termination

- 22.5.1 The Authority may, in its discretion, terminate the appointment of the Independent Expert at any time, but only after the appointment of another Independent Expert in accordance with Clause 22.1 above.
- 22.5.2 If the Concessionaire has reason to believe that the Independent Expert is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Expert. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and the Independent Expert for an amicable resolution of the Dispute and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure in Article 39. In the event that the appointment of the Independent Expert is terminated hereunder, the Authority shall appoint forthwith another Independent Expert in accordance with Clause 22.1 above.

22.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Expert, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure in Article 39.

Part-IV: FINANCIAL COVENANTS

ARTICLE 23: FINANCIAL CLOSE

23.1 Financial Close

- 23.1.1 The Concessionaire shall provide to the Authority 3 (three) copies of the Financial Package and Financial Model furnished by it to the prospective Senior Lenders. As and when such Financial Package is agreed with the Senior Lenders, with or without modifications, and such agreement is confirmed by the signing of the agreed Financial Package by both the Concessionaire and the Senior Lenders, a copy of the same shall be furnished by the Concessionaire to the Authority forthwith.
- 23.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire covenants with the Authority that it shall achieve Financial Close within 120 (one hundred and twenty) days from the Execution Date. If the Concessionaire shall fail to achieve Financial Close within the said 120 (one hundred and twenty) days period, the Concessionaire shall be entitled to a further period of 60 (sixty) days, subject to an advance weekly payment by the Concessionaire 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 Concessionaire, if the Concessionaire fails to pay in advance the Damages to the Authority under and in accordance with this Sub-Article.
- 23.1.3 Notwithstanding anything to the contrary contained in this Agreement, if the Financial Close does not occur within 180 (one hundred and eighty) days including the extended period as set forth in Clause 23.1.2 above, all rights, privileges, claims and entitlements, if any, of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Concessionaire. It is clarified that in such an event, notwithstanding anything contained herein or otherwise agreed between the Parties, the Authority shall not be liable to the Concessionaire in any manner whatsoever.
- 23.1.4 Upon Termination of this Agreement under Clause 23.1.2 and 23.1.3, the Authority shall be entitled to encash the Performance Security or the Bid Security, as the case may be, and appropriate the proceeds thereof as Damages for failure to achieve Financial Close in accordance with this Clause 23.1.

23.2 Termination due to failure to achieve Financial Close

- (a) Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 23.1.2 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the

concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

- (b) Upon Termination under Clause 23.2(a), the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.5. For avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 24: PROJECT CONSIDERATIONS

24.1 Project Considerations

In consideration of the grant of the Concession, the Concessionaire shall during the Concession Period, pay to the Authority the following as per terms of this Agreement.

- (a) Upfront Premium of Rs as per Clause 24.2
- (b) Annual Concession Fee (ACF) a sum of Rsas per Clause 24.3
- (c) Revenue Share @1% of Gross Revenues for each accounting, as per Clause 24.4 and
- (d) Annual Lease Rent - As quoted by the Selected Bidder/ Consortium above minimum threshold of INR 2 crore, escalated @ 10% in every three years, as per Clause 24.5.

24.2 Upfront Premium

24.2.1 In consideration of grant of the Concession, the Concessionaire is liable to make an upfront payment of INR 5,00,00,000/- (Rupees Five Crore only) at the time of or prior to executing this Agreement. This amount is not refundable in any circumstances except if the Concession Agreement is terminated due to Authority not being able to complete its Condition Precedents as per timelines mentioned in this Agreement and termination thereof as per terms of this Agreement.

24.2.2 The Upfront Premium payable under this Clause 24.2, shall be deemed to be part of the Project Consideration for the purposes of this Agreement.

24.3 Annual Concession Fee

24.3.1 Annual Concession Fee (“ACF”): In consideration of the grant of the Concession, the Concessionaire shall during the Concession Period, pay to the Authority by way of concession fee a sum of Rs. 1,00,000/- (Rupees One Lakhs) per annum, payable on or before the Appointed Date escalated @ 10% in every three years

24.3.2 First payment of ACF shall be made on a pro-rata basis (calculated as the number of days between the Appointed Date and 31st March of the following year. The payment shall be due on or before the 1st Anniversary of the Appointed Date, i.e. due date for the first payment of ACF. Every subsequent payment of ACF shall be due and payable within 15 (fifteen) days of the commencement of the Accounting Year.

24.3.3 The Annual Concession Fee payable under this Clause 24.3, shall be deemed to be part of the Project Consideration for the purposes of this Agreement.

24.4 Revenue Share

24.4.1 The Concessionaire agrees to pay to the Authority, for every year of the Concession 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 “**Revenue Share**”). The Revenue Share shall be calculated and payable in the following manner:

(a) the Revenue Share shall be **payable in monthly instalments**. Within 7 (seven) days of the end of each month, the Concessionaire 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 Concessionaire, shall be made within 120 (one hundred and twenty) days of completion of the respective Accounting Year.

24.4.2 The Concessionaire shall furnish to the Authority audited quarterly statements within 30 days of the end of a quarter. The Authority may, additionally, ask the Concessionaire furnish its book of accounts from time to time to verify the sanctity of records. If any discrepancy is found in the report of Gross Revenues by the Concessionaire, the Authority would be entitled to:

- (i) Recover any payments due from the Concessionaire due to discrepant reporting of the Gross Revenues with a penal interest rate of 18% p.a.; and / or
- (ii) Terminate the Agreement due to Concessionaire Default in accordance with this Agreement.

24.4.3 The Revenue Share payable under this Clause 24.4, shall be deemed to be part of the Project Consideration for the purposes of this Agreement.

24.5 Annual Lease

24.6 Rental

24.6.1 In consideration of the lease of the Project Site and the rights appurtenant thereto in favor of the Concessionaire, the Concessionaire shall, during the Concession Period, in terms of this Agreement and the Project Site Lease Deed, make payments to the Authority by way of annual lease rentals (the “**Annual Lease Rentals**”) at per annum. (as quoted by the Selected Bidder).

24.6.2 First payment of Annual Lease Rental 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 3 (three) years from the Appointed Date) or COD, whichever is earlier and 31st March of the year or following year, which ever applicable and payment to be made within 15th April of the year concerned. Every subsequent payment of Annual Lease Rental shall be due and payable within 15 (fifteen) days of the closure of the subsequent Accounting Year. The subsequent payments shall be due and payable within 15 (fifteen) days of every subsequent accounting year.

24.6.3 Lease Moratorium: No Annual Lease Rental to be paid during the construction period i.e. which shall be a period of 3 (three) years from the Appointed Date. In-case of Construction Period extends beyond three years, the lease moratorium period will not be extended

beyond the three year period. If the Commercial Operation Date (COD) is achieved within the designated Construction Period of three years, the lease moratorium period concludes on the date of COD achievement.

- 24.6.4 Annual Lease Rent -As quoted by the bidder above minimum threshold, will be escalated @ 10% in every three years.
- 24.6.5 The Annual Lease Rentals payable under this Clause 25.4, shall be deemed to be part of the Project Consideration for the purposes of this Agreement.
- 24.6.6 The Concessionaire shall, with each payment of the Project Considerations, shall submit:
- (i) a certificate that the amounts paid are correct and in accordance with the provisions of the Agreements;
 - (ii) detailed calculations of the Revenue Share based on the Gross Revenue;
 - (iii) details in respect of Taxes/duties payable/reimbursable in accordance with the provisions of this Agreement;
 - (iv) details in respect of other Damages payable in accordance with the provisions of this Agreement; and
 - (v) net amount payable under the provisions of this Agreement.

24.7 Delayed Payments

All amounts due and payable by the Concessionaire under the provisions of this Agreement shall be paid on or before the time period stipulated in Clause 24.2, 24.3, 24.4 and 24.5. In the event of delay beyond such period the Concessionaire shall pay interest for the period of delay, calculated at the rate specified in Clause 42.4.

24.8 Disputed Amounts

- 24.8.1 The Authority shall, within 10 (ten) days of receiving the Project Consideration, notify the Concessionaire of the disputed amounts along with details thereof (the “**Disputed Amounts**”). Within 7 (seven) days of receiving such notice, the Concessionaire shall present any information or evidence as may be reasonably required for determining that such Disputed Amounts are not payable. The Authority may, if necessary, meet a representative of the Concessionaire for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure in accordance with Article 39 shall apply.
- 24.8.2 If any amount is payable by either Party upon determination of a dispute regarding any Disputed Amount such amount shall be deemed to be payable on the date when it first became due and interest for the period of delay shall be due and payable at the rate specified in Clause 42.4.

24.9 Set-off

- 24.9.1 Except as provided in Article 25, the Concessionaire shall not be entitled to retain or set-off any amount due to the Authority by it, but the Authority may retain or set-off any amount owed to it by the Concessionaire under this Agreement which has fallen due and payable against any amount due to the Concessionaire under this Agreement.
- 24.9.2 If the payment or deduction of any amount pursuant to Article 24 is disputed, then any undisputed element of that amount shall be paid, and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure in Article 39.

24.10 Verification of Gross Revenue

- 24.10.1 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Gross Revenue in an honest and faithful manner, depute its representatives to the Resort and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary to ascertain the actual Revenues.
- 24.10.2 If the verification of Revenues pursuant to this Clause 24.9 demonstrates that the Gross Revenue is more than the amount reported by the Concessionaire, the Authority shall, for the purpose of determining the average daily Revenues, be entitled to undertake sampling of Revenue receipts of a continuous period of 15 (fifteen) days. The Parties hereto agree that if the average daily Revenue exceeds the average daily Revenue reported by the Concessionaire during the preceding 2 (two) months by 5% (five per cent) thereof, the difference between such daily Revenue and daily Gross Revenue shall be multiplied by 60 (sixty) and the product thereof shall be paid as Damages by the Concessionaire to the Authority, and in the event of any Dispute relating to such sampling, the Dispute Resolution Procedure in Article 39 shall apply. For avoidance of doubt it is agreed that seasonal variations in Revenue shall be determined by the Independent Expert on the basis of past trends and other relevant information and due weightage shall be assigned to such variations in computing the Gross Revenue under Clause 24.9.

ARTICLE 25: TARIFF

25.1 Tariff Structure

- 25.1.1 The Concessionaire may determine the tariff structure for different categories of Keys and other services in such manner as it deems fit; provided however, that such tariffs shall not be combined with any facility or service that is not directly connected with the Resort.
- 25.1.2 The Concessionaire may offer such special discounted tariffs or charges to any individual or class of clients as it may deem necessary for promotion of its business. Provided, however, that it shall formulate a policy for offering such discounts and submit it to the Authority before operationalising that policy.
- 25.1.3 The Concessionaire may, for occupancy of Keys in the Resort by Users, levy and recover such tariffs as it may determine from time to time and shall also be entitled to charge market related rates for other services such as telephone, telefax, laundry, food, beverages, liquor, recreation amenities (outdoor pool, health club, spa, sauna, fitness facility etc.), outdoor catering, vending machines, Wi-Fi services and any other service (the “**Associated Services**”). The Concessionaire may also recover rent or fee for use of commercial or other spaces of every description and kind, provided by the Concessionaire.

25.2 Service Charges

The Concessionaire may levy and recover an additional service charge for and in respect of any facility or service as it may deem fit.

25.3 Taxes and duties

All Taxes and duties shall be paid by the Concessionaire.

25.4 Tariffs payable by the Authority

- 25.4.1 The Authority may, by notice of at least 2 (two) days, require the Concessionaire to provide up to 4 (four) Keys for use of the Authority or of persons nominated by it. Provided, however, that the Authority may require the Concessionaire to provide up to 6 (six) Keys and other common facilities, such as conference hall and dining room, with a notice of at least 30 (thirty) days. The tariff payable by the Authority shall be computed with references to the lowest tariff payable for the concerned Keys and facilities on any day during the immediately preceding 3 (three) months.

Provided further that in the event that the Concessionaire is unable to provide the Keys and/or facilities specified in this Clause 25.4.1, it shall procure and provide similar Keys and/or facilities in an equivalent or superior nearby Resort, upon prior approval from the Authority, at its own cost and expense, and may recover tariffs and charges therefore from the Authority at the tariff specified earlier in this Clause 25.4.1.

ARTICLE 26: ESCROW ACCOUNT

26.1 Escrow Account

26.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank, acceptable to the Authority (the “**Escrow Bank**”) in accordance with this Agreement, read with the Escrow Agreement.

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

26.2 Deposits into Escrow Account

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

- (a) all funds constituting the Financial Package;
- (b) all Revenues from the usage of Resort and its Associated Services; and
- (c) all payments by the Authority, if any,

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

26.3 Withdrawals during Concession Period

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

- (a) all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) Project Consideration (Lease Rental including the Annual Concession Fee and Revenue Share) due and payable to the Authority.
- (f) monthly proportionate provision of Debt Service including but not limited to interest and principal repayment due in an Accounting Year;

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

26.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 26.3.1 above except with the prior written approval of the Authority.

26.4 Withdrawals upon Termination

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

- (a) all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90%(Ninety per cent) of the Debt Due including subordinate debt;
- (c) Outstanding Project Consideration
- (d) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Concessionaire;
- (e) retention and payments relating to the liability for defects and deficiencies;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) Balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriation shall be made under Sub-Clause (i) of this Clause 26.4.1 until a Vesting Certificate has been issued by the Authority under the provision of Article 33.

26.4.2 The provisions of this Article 20 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 20.4.1 has been discharged.

ARTICLE 27: INSURANCE

27.1 Insurance during Concession Period

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

27.2 Insurance Cover

27.2.1 Without prejudice to the provisions contained in Clause 27.1, the Concessionaire shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

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

27.3 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 27. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure in Article 39 shall apply.

27.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 27 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

27.5 Remedy for failure to insure

If the Concessionaire 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 Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

27.6 Waiver of subrogation

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

27.7 Concessionaire's waiver

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

27.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall notwithstanding anything to contrary contained in this Agreement, apply all proceeds towards payment of damages and balance remaining, if any,

shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement in the Resort and the Project Infrastructure, in accordance with the provisions contained in this behalf in the Financing Agreement.

27.9 Compliance with conditions of insurance policies

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

ARTICLE 28: ACCOUNTS AND AUDIT

28.1 Audited accounts

- 28.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including the Revenues from the Keys, restaurants, sale of food and provision of Associated Services, and all incomes derived or collected by it from or on account of the Resort and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the Revenue records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority only for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 28.1.2. The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 28.1.3. On or before the 31st (thirty-first) day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on Revenues and such other information as the Authority may reasonably require.

28.2 Appointment of Auditors

- 28.2.1 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm having at least 5 (five) practicing Chartered Accountants on its rolls. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 28.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed in accordance with the Clause 28.2.1.
- 28.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right but not the obligation, to appoint at its cost from time to time and at any time, another firm of Chartered Accountants (the “**Additional Auditors**”) to audit and verify

all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

28.3 Certification of claims by Statutory Auditors

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

28.4 Set off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 28.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

Part-V: FORCE MAJEURE AND TERMINATION

ARTICLE 29: FORCE MAJEURE

29.1 Force Majeure

29.1.1 As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clause 29.2, 29.3, 29.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event:

- (a) is beyond the reasonable control of the Affected Party, and
- (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and
- (c) has Material Adverse Effect on the Affected Party.

29.2 Non-Political Event

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

- (a) 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 Resort and Project Infrastructure);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees / representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Resort and Project Infrastructure for a continuous period of [24 (twenty four)] hours and an aggregate period exceeding [7 (seven)] days in an Accounting Year, and not being an Indirect Political Event, as set forth in Clause 29.3.
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas Contractor to deliver any critical equipment required for the Resort and Project Infrastructure and not available in India if such delay or failure is caused outside India by any event specified in Sub- Clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permits (ii) on

account of breach of any Applicable Law or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through an inspection of the Project Site; or
- (g) any other event or circumstance of a nature analogous to the foregoing.

29.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction, operations or management of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7(seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents collection of Commercial Charges by the Concessionaire for an aggregate period of 7 (seven) days in an Accounting Year;
- (e) failure of the Authority to permit the Concessionaire 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;
- (f) 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 Concessionaire by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

29.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 36 and its effect, in financial terms, exceeds the sum specified in Clause 36.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

29.5 Duty to report Force Majeure Event

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

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

- 29.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 29.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 29.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

29.6 Effect of Force Majeure on the Concession

- 29.6.1 Upon occurrence of any Force Majeure Event prior to Appointed Date, the period set forth in Clause 4.1 for fulfilment of the Conditions Precedent, and in Clause 23.1 for achieving the Financial Close, shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 29.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:
- (a) before the Project COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
 - (b) after the Project COD, whereupon the Concessionaire is unable to provide the Resort and Project Infrastructure services despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the aforesaid services during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period equal in length to the period during which the Concessionaire was prevented from providing the aforesaid services on account thereof; provided that in the event of reduction in Resort and Project Infrastructure services on account of partial suspension of services which cause the Gross Revenue to decline below 75% (seventy five per cent) of the Average Daily Gross Revenue for the corresponding period over the preceding 2 (two) years, the Authority shall extend the Concession Period in proportion to the loss of such Gross Revenue due to Force Majeure. For avoidance of doubt, loss of 25% (twenty five per cent) in Gross Revenue for 4 (four) days as compared to the Average Daily Gross Revenue for the corresponding period during the preceding 2 (two) years shall entitle the Concessionaire to the extension of 1 (one) day in the Concession Period.

29.7 Allocation of costs arising out of Force Majeure

- 29.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
- 29.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Resort and Project Infrastructure (the “**Force Majeure Costs**”) shall be allocated and paid as follows:
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any cost arising out of any such Force Majeure Event;
 - (b) upon occurrence of an Indirect Political Event, all the Force Majeure Costs costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover one half of such excess shall be reimbursed by the Authority to the Concessionaire;
 - (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.
- 29.7.3 For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&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 room charges, restaurants and sale of food and all incomes derived or collected by it from or on account of the Resort, Project Infrastructure and Associated Services or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent it is relevant.
- 29.7.4 Save and except as expressly provided in this Article, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands, and proceedings relating to or arising out of occurrence or existing of any Force majeure Event or exercise of any right pursuant hereto.

29.8 Termination Notice for Force Majeure Event

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.

29.9 Termination Payment for Force Majeure Event

- 29.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.
- 29.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:
- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
 - (b) 110% (one hundred and ten per cent) of the Adjusted Equity.
- 29.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 32.3.2 as if it were an Authority Default.

29.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the Dispute Resolution procedure as under Article 39, provided however that the burden of proof as to the occurrence or existence of such Force Majeure event shall be upon Party claiming relief and/or excuse on the account of such Force Majeure Event.

29.11 Excuse from performance of obligations

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

29.12 Relief for Unforeseen Events

- 29.12.1 Upon occurrence and continuance of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (“**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred and is continuing, and upon reaching agreement on occurrence thereof deal with it in accordance with the provisions of this Clause 29.12.
- 29.12.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.
- 29.12.3 The conciliation tribunal referred to it Clause 29.12.2 shall conduct its proceedings in accordance with the provisions of Article 39 as if it is an arbitration proceeding under that Article, save and except as provided in Article 29.12.
- 29.12.4 The conciliation tribunal referred to in this Clause 29.12 shall conduct preliminary proceedings to satisfy itself that:
 - (a) an Unforeseen Event has occurred;
 - (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
 - (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part,and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 29.12.
- 29.12.5 Upon completion of the conciliation proceedings referred to in this Clause 29.12, the conciliation tribunal may by a reasoned order make recommendations which shall be:

- (a) based on a fair and transparent justification;
 - (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
 - (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
 - (d) quantified and restricted in terms of relief or remedy.
- 29.12.6 Within 15 (fifteen) days of receiving the order referred to in Clause 29.12.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “**MoU**”) setting forth the agreement reached hereunder, and the terms of such MoU shall have the force and effect as if they form part of the Agreement.

ARTICLE 30: COMPENSATION FOR BREACH OF AGREEMENT

30.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 30.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 30.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

30.2 Compensation for default by the Authority

Subject to the provisions of Clause 30.4, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss on account of Revenues from room charges, restaurants and sale of food and all incomes derived or collected by it from or on account of the Resort, Project Infrastructure and Associated Services, debt repayment obligations, or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

30.3 Extension of Concession Period

Subject to the provisions of Clause 30.4, in the event that a material breach or default of this Agreement set forth in Clause 30.2 causes delay in achieving COD or leads to reduction in the realisation of Gross Revenues, as the case may be, the Authority shall, in addition to payment of compensation under Clause 30.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or Gross Revenue was reduced on account thereof, as the case may be; and in the event of reduction in Gross Revenue to decline below 75% (seventy five per cent) of the Average Daily Gross Revenue for the corresponding period during the preceding 2 (two) years, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Gross Revenue. For avoidance of doubt, loss of 25% (twenty five per cent) in realisation of Gross Revenue for 4 (four) days, as compared to the Average Daily Gross Revenue for the corresponding period during the preceding 2 (two) years shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period.

30.4 Compensation to be in addition

Compensation payable under this Article 30 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

30.5 Mitigation of costs and damage

The non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of the Agreement by the other Party.

ARTICLE 31: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

31.1 Suspension upon Concessionaire Default

Upon occurrence of Concessionaire Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to: (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive any Revenues from room charges, restaurants and sale of food and all other incomes received by it from or on account of the Resort, Project Infrastructure and Associated Services pursuant hereto; and (b) exercise such rights itself and perform the obligations hereunder or authorised any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lender's Representative, the Authority shall extend the aforesaid 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

31.2 Authority to act on behalf of Concessionaire

- 31.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 26.3
- 31.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire, and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby 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 Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

31.3 Revocation of Suspension

- 31.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it may revoke the Suspension forthwith and restore all rights of the Concessionaire 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.
- 31.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

31.4 Substitution of Concessionaire

- 31.4.1 At any time during the period of Suspension, the Lenders' Representative, on behalf of the Senior Lenders, shall be entitled to substitute the Concessionaire under an and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 31.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of the Senior Lenders.

31.5 Termination

- 31.5.1 At any time during the period of Suspension under this Article 31, the Concessionaire may by notice request the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake the substitution in accordance with the provisions of this Agreement and within the period specified in Clause 25.9, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Clause 32 as if it is a Concessionaire Default under Clause 32.1.
- 31.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 31.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a termination Notice had been issued by the Authority upon occurrence of Concessionaire Default.

ARTICLE 32: TERMINATION

32.1 Termination for Concessionaire Default

32.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the "**Concessionaire Default**"), 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:

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule G and continues to be in default for 90 (ninety) days;
- (d) the Concessionaire abandons or manifests intention to abandon the development or operation of the Resort and the Project Infrastructure without the prior written consent of the Authority;
- (e) Project COD does not occur on or before the Scheduled Completion Date
- (f) the Concessionaire is in breach of the Maintenance Requirements or Safety Requirements, as the case may be;
- (g) The Concessionaire has failed to make payment to the Authority including the Project Consideration within the period specified in this Agreement;
- (h) upon occurrence of a Financial Default, the Lender's Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (i) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

- (j) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (k) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (l) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (n) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (o) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (p) the Concessionaire has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect: provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that::
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at COD; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (q) occurrence of any Insolvency Event;;
- (r) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (s) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

- (t) the Concessionaire has failed to fulfil any obligation, for which failure, Termination has been specified in this Agreement;
- (u) the Concessionaire issues Termination Notice in violation of the provisions of this Agreement; or
- (v) the Concessionaire commits a default in complying with any other provision of this Agreement if such default cause a Material Adverse Effect on the Authority.

32.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 32.3.3.

32.1.3 The Authority shall, if there are Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 32.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement.

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire: Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

32.2 Termination for Authority Default

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

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

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment due to the Concessionaire, and the Concessionaire is unable to recover any unpaid amounts through the adjustment in the Project Consideration payable by it to the Authority;
- (c) the Authority fails to provide any land which is necessary and required for construction of any essential element or part of the Resort and/or the Project Infrastructure; or
- (d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;

32.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

32.3 Termination Payment

32.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) 90% (ninety per cent) of Debt Due less Insurance Cover; and
- (b) 70% (seventy per cent) of the amount representing the Additional Termination Payment:

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 70% (seventy per cent) of such unpaid claims shall be included in the computation of Debt Due.

For avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to the Project COD, save and except as provided in Clause 32.3.3.

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

- (i) Debt Due;
- (ii) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
- (iii) 115% (one hundred and fifteen per cent) of the amount representing the Additional Termination Payment.

32.3.3 Upon Termination on account of the Concessionaire Default at any time prior to Project COD, no Termination Payment shall be due and payable for expenditure comprising the first 40% (forty per cent) of the Total Project Cost and in the event of the expenditure exceeding such 40% (forty per cent) and forming part of Debt Due, the provisions of Clause 32.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such [40% (forty per cent)]. For avoidance of doubt and by way of illustration, if the total expenditure incurred prior to the Transfer Date is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five per cent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 32.3.3 Total Project Cost shall mean the amount specified in Sub-Clause (b) of the definition of Total Project Cost in Clause 43.1. The Parties also agree that for determining the Termination Payment under this Clause 32.3.3, the expenditure comprising the latest Project Milestone shall also be reckoned.

32.3.4 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 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.

32.3.5 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire; provided that in the event any Project Assets, essential for the efficient, economic and safe operation of the Resort and Project Infrastructure, shall have been acquired and installed after the 25th (twenty fifth) anniversary of Project COD, with prior written consent of the Authority (which consent shall not be unreasonably denied), a Termination Payment equal to 50% (fifty per cent) of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Clause 35.2.1, be made by the Authority to the Concessionaire.

32.3.6 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.3.5, in the event any Project Assets, essential for the efficient, economic and safe operations of the Resort and the Project Infrastructure, shall have been acquired and installed after the 25th (twenty fifth) anniversary of the Appointed Date, with prior written consent of the Authority, which consent shall not be unreasonably denied, a sum equal to 75% (seventy five per cent) of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.

32.3.7 The Concessionaire expressly agrees that Termination Payment under this Article 32 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

32.4 Certain limitations on Termination Payment

32.4.1 Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost, in accordance with the provisions of this Agreement. For avoidance of doubt, it is agreed that within a period of [60 (sixty)] days from Project COD, the Concessionaire shall notify to the Authority, the Total Project Cost and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that, notwithstanding anything contained in this Agreement, for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 70% (fifty per cent) of the Total Project Cost.

32.4.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 32.4.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of the Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment.

32.4.3 Additional Termination Payment due and payable in respect of Specified Assets, forming part of the Resort or the Project Infrastructure, as the case may be, which are constructed, acquired or installed after the 5th (fifth) anniversary of Project COD, but no later than the 30th (thirtieth) anniversary of the Appointed Date, shall be limited to the lowest of:

- (a) Adjusted Depreciated Value;
- (b) the replacement value thereof, as assessed by the Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
- (c) 40% (forty per cent) of the sum of the Total Project Cost.

32.5 Other rights and obligations of the Authority

32.5.1 Upon Termination for any reason whatsoever, the Authority shall:

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

32.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.3.7, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 33: DIVESTMENT OF RIGHTS AND INTEREST

33.1 Divestment Requirements

33.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

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

33.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations

under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

33.2 Inspection and cure

33.2.1 Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Expert may verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 34 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 33.

33.3 Cooperation and assistance on transfer of Project

- (a) The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the users, other members of the public or the lawful occupiers of any part of the Project Site.
- (b) The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Expiry by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- (c) The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value, determined by a reputed firm mutually agreed upon and appointed by the Parties, and free from any Encumbrance all or any part of Resort and Project Infrastructure but which does not form part of the assets specified in Clause 33.1.1 and is reasonably required in connection with operation of the Project. For avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure in Article 39 shall apply.

33.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule N (the "**Vesting Certificate**"), which will have the effect of constituting

evidence of divestment by the Concessionaire of all of its rights, title and interest in the Resort 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 Resort and the Project Infrastructure on the footing that all Divestment Requirements have been complied with by the Concessionaire.

33.5 Divestment costs

- (a) The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- (b) In the event of any dispute relating to matters covered by and under this Article 26, the Dispute Resolution Procedure in Article 39 shall apply.

ARTICLE 34: DEFECTS LIABILITY AFTER TERMINATION

34.1 Liability for Defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Resort and the Project Infrastructure for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Expert in the Resort and the Project Infrastructure during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Resort and the Project Infrastructure conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 34.2 or from the Performance Guarantee provided thereunder. For avoidance of doubt, the provisions of this Article 34 shall not apply if Termination occurs prior to Project COD

34.2 Retention of Gross Revenue

- 34.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.2.3, a sum equal to the average of monthly Gross Revenue during the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 180 (one hundred and eighty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 34.1.
- 34.2.2 Without prejudice to the provisions of Clause 34.2.1, the Independent Expert shall carry out an inspection of the Resort and the Project Infrastructure at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Resort and Project Infrastructure is such that the sum larger than the amount stipulated in Clause 34.2.1 should be retained in Escrow Account and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount recommended by the Independent Expert shall be retained in the Escrow Account for the period specified by it.
- 34.2.3 The Concessionaire may, for the performance of its obligations under this Article 34, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 34.2.1 or Clause 34.2.2. as the case may be, and for the period specified therein, substantially in the form set forth in Schedule F (the "**Performance Guarantee**"), to be modified, *mutatis-mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking

the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 34. Upon furnishing of the Performance Guarantee under this Clause 34.2.3, the retention of funds in Escrow Agreement in terms of Clause 34.2.1 or 34.2.2, as the case may be, shall be dispensed with.

Part-VI: OTHER PROVISIONS

ARTICLE 35: ASSIGNMENT AND CHARGES

35.1 Restrictions on assignment and charges

- 35.1.1 Subject to Clauses 35.2 and 35.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 35.1.2 Subject to the provisions of Clause 35.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.2 Permitted assignment and charges

- 35.2.1 The restraints set forth in Clause 35.1 shall not apply to:
- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project or liens or encumbrances required by any Applicable Law;
 - (b) mortgages, pledges or hypothecation of goods or assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Resort and the Project Infrastructure; and
 - (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements
 - (d) to ensure absolute clarity, in an exercise of prudence and out of an abundance of caution, it is hereby explicitly stipulated that the Concessionaire is prohibited from mortgaging the land, whether in whole or any part thereof, under any circumstances.
- 35.2.2 The Concessionaire shall not, directly or indirectly, transfer, mortgage, pledge, assign, hypothecate, encumber, let or sub-let or part with the occupation of the Resort or the Project Infrastructure or any part thereof and/or the benefits arising out of this Agreement or any part thereof in any manner whatsoever to any person, without the prior written

consent of the Authority. The Concessionaire may permit or sub-let any third party to operate permissible activities in the Resort and the Project Infrastructure such as offices, retail areas, gymnasium, spa, restaurant, coffee shops, banquet halls, or any other facilities within the Project Site for a period that shall be coterminous with or, less than the Concession Period and upon expiry of the Concession Period or Termination of the Agreement, all such permissions granted to third parties to operate or maintain any facilities or amenities as aforesaid shall automatically cease and terminate forthwith.

35.3 Substitution Agreement

35.3.1 Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule O.

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

35.4 Assignment by the Authority

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

35.4.2 Any assignment under this Article 35 shall be subject to the approvals and consents required therefore under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

35.5 Mortgage of Project Assets

35.5.1 Notwithstanding anything to the contrary contained in this Agreement upon request made in this behalf by the Lender's Representative the Authority and the Concessionaire shall jointly execute a mortgage deed (the "**Mortgage Deed**") forthwith for the benefit of the Senior Lenders to provide inter alia for the following:

- (a) as security for Debt Due all Project Assets (the “**Mortgaged Assets**”) shall stand mortgaged in favour of Senior Lenders subject to the terms specified in the Mortgage Deed;
 - (b) Senior Lenders shall not exercise or enforce any rights or title over the Mortgaged Assets at any time prior to the expiry of 180 (one hundred and eighty) days from the Transfer Date;
 - (c) the charge created over the Mortgaged Assets shall stand released and extinguished upon the Authority making the Termination Payment in accordance with the terms of the Agreement;
 - (d) in the event that Termination Payment is not made before expiry of 180 (one hundred and eighty) days from the Transfer Date the Senior Lenders shall have the right and entitlement to use or dispose of the Mortgaged Assets for recovery of Termination Payment and any recovery in excess of the Termination Payment shall be due and payable by the Senior Lenders to the Authority;
 - (e) upon taking over of the Mortgaged Assets by the Senior Lenders in accordance with the Mortgage Deed, the rights and title of the Senior Lenders and Concessionaire for and in respect of recovery of Termination Payment shall be deemed to be extinguished and the Termination Payment shall be deemed to have been made in full by the Authority under and in accordance with the provisions of the Agreement;
 - (f) the Mortgage Deed shall expire and cease to have any force or effect upon the earlier of (i) repayment of Debt Due by the Concessionaire and (ii) the 20th (twentieth) anniversary] of Project COD or any other date as maybe approved by the Authority.
- 35.5.2 Pursuant to the provisions of Clause 35.5.1, the Lender's Representative shall prepare a draft Mortgage Deed substantially in conformity with this Clause 35.5.2 and furnish copies to the Authority and the Concessionaire for their review and comments. The Lender's Representative shall consider such comments and send a revised draft to the Authority and the Concessionaire for negotiations in good faith. In the event such negotiations do not conclude in the form of an agreed Mortgage Deed to be executed in 60 (sixty) days of furnishing the first draft hereunder, the Dispute Resolution Procedure in Article 39 shall apply.

ARTICLE 36: CHANGE IN LAW

36.1 Increase in costs

36.1.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 25 lakh (Rupees twenty-five lakh) in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

36.1.2 Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure in accordance with Article 39. For avoidance of doubt, it is agreed that this Clause 36.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

36.2 Reduction in costs

36.2.1 If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. 25 lakh (Rupees twenty-five lakh) in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

36.2.2 Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the

same shall be settled in accordance with the Dispute Resolution Procedure in accordance with Article 39. For avoidance of doubt, it is agreed that this Clause 36.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

36.3 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 36 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

36.4 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users for and in respect of the services utilised by such Users.

ARTICLE 37: LIABILITY AND INDEMNITY

37.1 General indemnity

37.1.1 The Concessionaire 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 “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

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

37.2 Indemnity by the Concessionaire

37.2.1 Without limiting the generality of Clause 37.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

- (d) its omissions or acts of fraud, gross negligence and wilful misconduct;
- (e) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (f) loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

37.2.2 Without limiting the generality of the provisions of this Article 28, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

37.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 37 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within [15 (fifteen)] days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

37.4 Defence of claims

- 37.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 28, 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.
- 37.4.2 If the Indemnifying Party has exercised its rights under Clause 37.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 37.4.3 If the Indemnifying Party exercises its rights under Clause 37.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party;
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
 - (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

- (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 37.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

37.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 37, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature except as expressly provided in this Agreement.

37.6 Limitations of Liability

37.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, save and except where amounts exceeding the Total Project Cost are specifically prescribed in this Agreement as Termination Payment, shall not exceed the Total Project Cost. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to:

- a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and wilful misconduct;
- b) breach of any Applicable Laws or any Applicable Permits;
- c) any claims or loss on account of Intellectual Property rights violation by the Concessionaire;
- d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- e) any loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

37.7 Survival on Termination

The provisions of this Article 37 shall survive Termination.

ARTICLE 38: RIGHTS TO THE SITE

38.1 Rights to the Project Site

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

38.2 Access rights of the Authority and others

38.2.1 The Concessionaire shall allow free access to the Project Site at all times to the Authority Representatives, Senior Lenders, the Independent Expert, and to the persons duly authorised by any Government Instrumentality to inspect the Resort and the Project Infrastructure and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

38.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11 allow free access to the Project Site at all times for the authorised persons and vehicles of the relevant Government Instrumentality

38.3 Property taxes

All property taxes with respect to the Project Site shall be payable by the Authority as owner of the Project Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Project Site including taxes relating to the buildings constructed on the Project Site shall not be reimbursed or payable by the Authority. The Parties agree that stamp duties, if any, due and payable on the grant of lease comprising the Agreement shall be paid by the Concessionaire which shall be reimbursed by the Authority within 15 (fifteen) days of receiving the demand thereof.

38.4 Restriction on sub-letting

The Concessionaire shall not sub-lease, sub-license or sub-let the whole or any part of the Project Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for development, operation and maintenance of all or any part of the Resort and the Project Infrastructure.

ARTICLE 39: DISPUTE RESOLUTION

39.1 Dispute Resolution

- (a) Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 39.2.
- (b) The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

39.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert, as the case may be, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, as the case may be, either Party may require such Dispute to be referred to the Principal Secretary of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 39.1 (a) or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 39.3.

39.3 Arbitration

- (a) Any Dispute which is not resolved amicably by conciliation, as provided in Clause 39.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 39.3 (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.
- (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.

- (c) The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 39 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- (d) The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- (e) This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any adjudication proceedings hereunder.

39.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 39.3, 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.

ARTICLE 40: DISCLOSURE

40.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement and the Maintenance Requirements (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the project location and Concessionaire's registered office and the Resort. The Concessionaire shall prominently display at the Resort and Project Infrastructure, public notices stating the availability of the Specified Documents for such inspection and shall provide copies of the same to any person upon payment of copying charges on a no profit no loss basis.

40.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire's Project Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a no profit no loss basis.

40.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 40.1 and 40.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in ARTICLE 31 and Article 31.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 41: REDRESSAL OF PUBLIC GRIEVANCES

41.1 Complaints Register

- a) The Concessionaire shall maintain a public relations office at the Resort where it shall keep a register (the **"Complaint Register"**) open to public access at all times for recording of complaints by any person (the **"Complainant"**) in compliance with the minimum standards set out in Clause 21.1. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Resort and its website so as to bring it to the attention of all Users.
- b) The Complaint Register shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- c) Without prejudice to the provisions of Clause 41.1 (a) and (b), the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

41.2 Redressal of complaints

- a) The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- b) Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Expert a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 42: MISCELLANEOUS

42.1 Governing law and jurisdiction

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

42.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

42.3 Depreciation and interest

- (a) For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.
- (b) Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rates.

42.4 Delayed payments

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

42.5 Waiver

- (a) Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.

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

42.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

42.7 Exclusion of implied warranties

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or

any representation by either Party not contained in a binding legal agreement executed by both Parties.

42.8 Survival

Termination shall:

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

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

42.9 Entire Agreement

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

42.10 Severability

If for any reason 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.

42.11 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon

either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

42.12 Third Parties

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

42.13 Successors and Assigns

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

42.14 Notices

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

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

{Name:
Designation:
Address:
Fax No.:
E-mail ID:}

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

{Name:
Designation:

Address:
Fax No.:
E-mail ID:} and

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

42.15 Language

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

42.16 Confidentiality

- (a) Each Party shall keep the Confidential Information confidential and shall not disclose the same to any other person without the prior written consent of the other Party.
- (b) Sub-Clause (a) shall not apply in the following circumstances:
- (i) any disclosure required by Applicable Laws or in respect of information already in the public domain;
 - (ii) any disclosure required by any applicable stock exchange listing rule; and
 - (iii) disclosure to under a Financing Agreement, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.
- (c) Either Party shall have the right to disclose Confidential Information pursuant to this Agreement or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.
- (d) In the event a disclosure is required by Applicable Law, upon reasonable request by the non- disclosing Party, the disclosing Party shall use all reasonable efforts and cooperate with other Party's efforts to obtain confidential treatment of material so disclosed.
- (e) Each Party shall utilise the same degree of care to preserve and protect the other Party's Confidential Information from disclosure that they use to protect their own Confidential Information, which shall not be less than reasonable care.
- (f) Confidential Information disclosed shall be and remain the property of the disclosing Party. The obligations of the Parties to protect Confidential Information shall survive 3 (three) years from Termination.

42.17 Stamp Duty

Any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Authority.

42.18 Counterparts

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

ARTICLE 43: DEFINITIONS

43.1 Definitions

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

“Accounting Year” shall mean the Financial Year commencing from the first day of April of any calendar year and ending on the 31st (thirty-first) day of March of the next calendar year;

“Additional Auditors” shall have the meaning set forth in Clause 28.2.3;

“Additional Termination Payment” shall mean the amount payable upon Termination in respect of Specified Assets, if any, as limited by the provisions of Clause 32.4.3;

“Adjusted Depreciated Value” shall mean the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three per cent) based on the written down value method) to reflect the variation occurring in the WPI between the date of purchase thereof and the Transfer Date;

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

- (a) on or before Project COD of the Resort and Project Infrastructure, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Effective Date and the Reference Date;
- (b) from Project COD, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by zero point one eight five percent (0.185%) 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;

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

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

“Agreement” shall mean this Agreement, its Recitals, the Schedules, hereto and any amendments thereto made in accordance with the provisions of this Agreement;

“Ancillary Facilities” shall have the meaning set forth in Clause 3.1.3;

“Appendix” shall have the meaning set forth in Clause 10.3.1

“Applicable Laws” shall mean all laws, brought into force and effect by Government of India (“GOI”) or Government of Meghalaya (“GoM”) including rules, regulations, notifications, directives, policies and office memorandums, made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect on or before the Bid Date;

“Applicable Permits” shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the implementation of the Project during the subsistence of this Agreement and upon termination, the transfer of the Resort and Project Infrastructure to the Authority;

“Appointed Date” shall mean the date on which Financial Close is achieved and the Conditions Precedent are either satisfied and/or waived in accordance with the terms of this Agreement, and shall be deemed to be the date of commencement of the Concession Period;

“Approved Valuer” shall mean a firm of valuers recognised as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rupees one hundred crore) each in value;

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

“Associates” or **“Affiliate”** shall mean, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“Associated Services” shall have the meaning set forth in Clause 25.1.3;

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

“Authority Default” shall have the meaning set forth in in Clause 32.2.;

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

“Average Daily Gross Revenue” shall mean the average daily Gross Revenue determined upon division of the annual Gross Revenue of the preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by 5% (five per cent); provided that the Average Daily Gross Revenue for any period prior to completion of the first Accounting Year

following 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;

“Award” shall have the meaning set forth in Clause 39.3;

“Bank” shall mean a bank incorporated in India and having a minimum net worth of 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;

“Bank Rate” 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;

“Bid” 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;

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

“Bid Security” shall mean the security provided by the Selected Bidder to the Authority along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“Board of Directors of the Concessionaire” shall mean the board of directors of the [_____];

“Change in Law” shall mean the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Indian law as applicable to the Project;
- (b) the repeal, modification or re-enactment of any existing Applicable Law;
- (c) the commencement of any Indian law which has not entered into effect until the Bid Date;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” shall mean a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {existing promoters/Selected Bidder/Consortium Members}, together with {its/their} Associates in the total equity to decline below: (i) Each of the consortium members of the Selected Bidder, whose experience has been evaluated for Technical Capacity and /or Financial Capacity evaluation at the time of selection of the Selected Bidder, shall hold at least 26% (twenty six percent) of the total Equity till a period of 5 (five) years following COD; and (ii) however, the Lead Member nominated at the time of submission of the Proposal, shall

continue to hold for the Concession Period with a minimum shareholding of 26% till the 10th anniversary of COD.

“Companies Act” shall mean, as applicable, the Companies Act, 1956 and the Companies Act, 2013 as amended from time to time;

“Completion Certificate” shall have the meaning set forth in Clause 14.2.2.(a);

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

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

“Concessionaire Default” shall have the meaning set forth in Clause 32.1.1;

“Concession Period” shall have the meaning set forth in Clause 3.2;

“Conditions Precedent” shall have the meaning set forth in Clause 4.1;

“Construction Period” shall mean the period beginning from the Appointed Date and ending on Project COD and subject to the provisions of this Agreement, which shall be a period of 3 (the) years from the Appointed Date, provided the Construction Period of the Optional Development Obligation, if any, shall be mutually agreed by the Parties;

“Contractor” shall mean the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other agreement or contract for construction, operation and/or maintenance of the Resort and the Project Infrastructure or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire.

“Covenant” shall have the meaning set forth in Clause 5.2.5;

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

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

“Damages” shall have the meaning set forth in Clause 1.2.1 (w);

“DBFOT” shall have the meaning set forth in Recital (B);

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

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "**principal**") but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-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 Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

provided further that the Debt Due, on or after the Project COD, shall in no case exceed 70% (seventy per cent) of the Total Project Cost;

"Debt Service" shall mean the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements

"Deemed Completion Certificate" shall have the meaning set forth in Clause 14.3;

"Deemed Performance Security" shall have the meaning as set forth in Clause 9.4;

"Development Works" shall mean all construction works and things necessary to complete the Mandatory Development Obligation and Optional Development Obligation, if applicable in accordance with this Agreement;

"Dispute Resolution Procedure" shall mean the procedure for resolution of Disputes set forth in Article 39;

"Divestment Requirements" shall mean the obligations of the Concessionaire for and in respect of Termination as set forth in Article 33;

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

"Drawings" shall mean all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule D, and shall include as built drawings of the Resort and Project Infrastructure;

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

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

“Emergency” shall mean a condition or situation that is likely to endanger the security of the individuals on or about the Project Facilities, including Users thereof, or which poses an immediate threat of material damage to any Project Assets;

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

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

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

“Escrow Agreement” shall have the meaning set forth in Clause 26.1.2;

“Escrow Bank” shall have the meaning set forth in Clause 26.1.1;

“Execution Date” shall mean the date on which this Agreement is executed by the Parties;

“FAR” shall mean the Floor Area Ratio, as defined in the Meghalaya Building Bye-laws.

“Finance” shall mean the funds required to design, built, operate, maintain and manage the Project and its components.

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

“Financial Default” shall have the meaning set forth in Schedule O;

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

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

“Financial Year” shall mean the year commencing from 1st April of any calendar year to 31st 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 31st March of the next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.

“Financing Agreements” shall mean the Agreements executed by the Concessionaire 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 Clause 5.2.3;

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

“Force Majeure Costs” shall have the meaning ascribed to it in Clause 29.7;

“Force Majeure” or **“Force Majeure Event”** means an act, event, condition or occurrence specified in the ARTICLE 23.

“FSI Area” of any building, expressed in square feet, shall have the same meaning as prescribed in the building bye laws of Meghalaya.

It is further clarified that the aggregate FSI Area of all buildings planned, developed or to be developed on the Project Site shall in no case exceed the applicable FSI as per regulations applicable on the Project Site.

“GOI” shall mean the Government of India;

“GOM” shall mean the Government of Meghalaya ;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced developer or operator engaged in similar type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits and includes prudent Resort and Project Infrastructure practices generally accepted by the Resort and Hospitality Industry for ensuring reliable, safe, economical and efficient construction, operation and maintenance of the Resort and the Project Infrastructure.

“Government Instrumentality” shall mean any department, division or sub-division of the Government of India or the State Government of Meghalaya and includes any commission, board, authority, agency or municipal and other local authority or statutory body including

Panchayat under the control of the Government of India or the State Government of Meghalaya, as the case may be, and having jurisdiction over the Resort and the Project Infrastructure or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

"Gross Revenue" for any Financial Year shall mean the total amount of 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 Concessionaire/ Operating Partner from the operation of the Resort and its facilities, and provision of Associated Services, Hospitality Services and/or any other activity related to the Project, as certified by the statutory auditors of the Concessionaire, and shall include Revenue and receipts, including but not limited to receipts from room occupancy charges, telephone, telefax and telex charges, laundry, sale of food, 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 Concessionaire/ Operating Partner to the users / guests of the said Project, which are availed/ realized by the Concessionaire from outside party(ies) at a consideration but shall exclude and be arrived at after deducting the following:-

- (a) All statutory applicable indirect taxes such as GST, expenditure tax and the like by whatever name called now or in future, which the Concessionaire is bound to pay;
- (b) Any revenue earned by the Concessionaire on sale of assets of capital nature owned by the Concessionaire; and
- (c) interest income from investments made.

For the avoidance of doubt, Gross Revenue shall also include any amount received by the Affiliate to whom the Concessionaire/ Operating Partner has contracted any Associated Services, Hospitality Services and/or any other activity related to the Project, and any amount received by the Concessionaire/ 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;

"Resort" shall mean the Resort which is at least [5 (five) star] rated by Ministry of Tourism, Government of India, with [at least [***]] number of Keys and required to be built at the Project Site and includes the Project Infrastructure ;

"Hospitality Services" 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 Concessionaire/ Operating Partner towards creating Revenue from the Resort;

"Indemnified Party" shall mean the Party entitled to the benefit of an indemnity pursuant to Article 37;

"Indemnifying Party" shall mean the Party obligated to indemnify the other Party pursuant to Article 37;

"Independent Expert" shall have the meaning set forth in Article 22;

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

“Insolvency Event” in respect of a Party shall mean:

- (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party's ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 (the **“Code”**); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or
- (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking: (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts; (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days; or (C) directions with the same or similar effect happen under the provisions of the Companies Act or the Code in relation to the winding up of the company;

“Insurance Cover” shall mean the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 27, and includes all insurances required to be taken out by the Concessionaire under Clause 27.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“Keys” shall mean a room with maximum occupancy of two persons;

“L&FS” shall have the meaning set forth in Clause 5.12;

“L&FS Standards” shall mean the standards prescribed under the National L&FS Standards and at least one internationally accepted L&FS standards such as US Life Safety Code (NFPA), as amended from time to time;

“Lease Deed” means the lease deed entered into between the Concessionaire and the Authority for the Project Site as per the format provided in the Schedules to this Concession

Agreement.

“Lead Member” shall have the meaning as set forth in Recital (C);

“Lease Rental” means as defined in Article 19 of this Agreement.

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

“LOA or Letter of Award” shall mean the letter of award referred to in Recital (F);

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

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

“Mandatory Development Obligations” shall have the meaning set forth in Clause 12.2.1 and shall mean the investment of 100% (one hundred per cent) of the Total Project Cost and adherence to the norms of Resort & Restaurant Approval & Classification Committee (HRACC) applicable for at least a 4-Star Category Facility;

“Nominated Company” shall mean a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

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

“Operations Period” or **“O&M Period”** means the period commencing from the COD and terminating at the Transfer Date.

“O&M” shall mean the operation and maintenance of the Resort and the Project Infrastructure and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Revenue in accordance with the provisions of this Agreement;

“O&M Contract” shall mean the operation and maintenance contract that may be entered into between the Concessionaire and an O&M Contractor for performance of the O&M obligations in accordance with this Agreement;

“O&M Contractor” shall mean a contractor with whom the Concessionaire has entered into an O&M Contract, if any;

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

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

“Project” shall mean the planning, set-up, design, construction, redevelopment, finance, operation and maintenance of the Resort and Project Infrastructure and undertaking Mandatory Development Obligation on a DBFOT basis, as per the terms and conditions of the RFP and this Concession Agreement and Schedules hereof and transfer of the same to the Concessioneing Authority at the end of the Concession Period or prior on termination of the Concession Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Assets” shall means all physical and other assets relating to and forming part of the of the Resort, Project Infrastructure and the Project Site including:

- (a) Rights over the Project Site in the form of lease, Right of Way or otherwise;
- (b) Tangible assets such as civil works and equipment including foundations, embankments, pavements, interchanges, bridges, drainage works, electrical systems, communication systems, rest areas and administrative offices;
- (c) Ancillary facilities situated on the Project Site;
- (d) Buildings and immovable fixtures or structures forming part of the Resort and the Project Infrastructure;
- (e) All rights of the Concessionaire under the Project Agreements;
- (f) Financial assets, such as receivables, security deposits etc;
- (g) Insurance proceeds and
- (h) Applicable Permits, Clearances, Approvals and authorisations relating to or in respect of the Project.

“Project Agreements” shall mean this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to Rs. 1 crore (Rupees one crore) for each such agreement;

“Project Completion Schedule” shall mean the progressive Project Milestones set forth in Schedule G for completion of the Resort and Project Infrastructure on or before the Scheduled Completion Date;

“Project Infrastructure” shall mean collectively the captive facilities to be developed at the Project Site for the exclusive use of the Resort, the trunk infrastructure (water treatment plant, sewage treatment plant; the power facility etc) and the infrastructure to carry out the Associated Services.

“RFP” or **“Request for Proposal”** means the Request for Proposal document issued by the Concessioneing Authority. The terms **“RFP”** and **“Request for Proposal”** are synonymous with **“Tender Documents”** and **“Bidding Documents”**.

“Reference Exchange Rate” shall mean, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate

as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“Revenue” shall mean all amounts charged and recovered by the Concessionaire from the Users on mutually agreed terms and shall include user charges for use of the Resort and Hospitality Services by the Users and shall also include but not be limited to all charges, rent, license fees, tariff, fee, compensation, benefits, deposits (whether long term or short term and whether refundable or not), capital receipts, insurance claims, or any other similar payment by whatever name called, received by or paid to the Concessionaire or receivable by the Concessionaire or payable to the Concessionaire or due and realisable by the Concessionaire, for or with respect to use of the Resort and any of the Hospitality Services;

“Revenue Share” shall have the meaning set forth in Article 24 ;

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

“Rs.” or “INR” or “Rupees” or “Indian Rupees” shall mean the lawful currency of the Republic of India;

“Schedules” shall mean the Schedules to this Concession Agreement.

“Specifications and Standards” shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Resort and Project Infrastructure, as set forth in Schedule C, and any modifications thereof, or additions thereto, as included in the design and engineering for the Resort and Project Infrastructure submitted by the Concessionaire to, and expressly approved by, the Authority;

“State” means the State in which the headquarters of the Authority are situated and “State Government” means the government of that State;

“Senior Lender” 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 Concessionaire under any of the Financing Documents for meeting all or part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire.

“Statutory Auditors” shall mean a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 28.2;

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

- (a) the principal amount of debt provided by lenders to the Concessionaire for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date; further, all penal interest or penalties for delayed principal repayments or any other defaults will not be included.

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

“Substitution Agreement” shall have the meaning set forth in Clause 35.3;

“Selected Bidder” means the shortlisted Bidder after evaluation as per RFP, to whom Letter of Award is issued by the Authority.

“Taxes” shall mean any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Resort and Project Infrastructure charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For avoidance of doubt, Taxes shall not include taxes on corporate income;

“Termination” shall mean the expiry or termination of this Agreement and the Concession hereunder;

“Termination Notice” means the communication issued in accordance with this Concession Agreement by a Party to the other Party for terminating this Concession Agreement.

“Termination Payment” shall mean the amount payable by the Authority to the Concessionaire, under and in accordance with this Agreement, upon Termination other than upon expiry;

“Tests” shall mean the tests set forth in Schedule H to determine the completion of Project in accordance with the provisions of this Agreement;

“Total Project Cost” shall mean the capital cost incurred on construction and financing of the Project and shall be limited to the lowest of:

- a. the capital cost of the Project as set forth in the Financial Package;
- b. the assessment of the Concessionaire's investment as made by the Approved Valuer to be appointed by the Authority; or
- c. a sum of Rs. [_____] (Rupees [_____]) The amount to be suitably inserted based on the specifics of the Project.

provided that in the event WPI increases, on an average, by more than [3% (three per cent)] per annum for the period between the Bid Date and Project COD, the amount mentioned in (a) and (b) above shall be increased such that the effect of increase in WPI, in excess of such

3% (three per cent), is reflected in the Total Project Cost;

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

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

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

“Unforeseen Events” shall have the meaning as set forth in Clause 29.12.1;

“Users” shall mean the third parties which use the Resort or any part thereof, in accordance with the provisions of this Agreement and Applicable Laws;

“Vesting Certificate” shall have the meaning set forth in Clause 33.4

“Works” or **“Construction Works”** means to set-up, design, build, redevelop, upgrade, finance, operate and maintain the Project as the context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Concession Agreement.

“WPI” shall mean the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than [30 (thirty)] days prior to the date of consideration hereunder.

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 **Concessionaire**

By:

(Signature)

(Name)

(Designation)

(Signature)

(Name)

(Designation)

IN PRESENCE OF WITNESS

1.

2.