

### Section-III: Draft License Agreement

*(This draft License Agreement will be finalised in terms of RFP conditions (including Addenda), once the Preferred Bidder is selected and meets the Pre-conditions of the Agreement)*

## **TABLE OF ARTICLES**

ARTICLE 1	DEFINITIONS AND INTERPRETATION.....	10
Section 1.1	Definitions .....	10
Section 1.2	Interpretations .....	18
Section 1.3	Measurements and Arithmetic Conventions.....	20
Section 1.4	Ambiguities within Agreement.....	20
Section 1.5	Priority of Documents.....	20
Section 2.3	License Period .....	23
Section 2.4	Additional Period.....	23
ARTICLE 3	CONDITIONS PRECEDENT .....	25
Section 3.1	Conditions Precedent.....	25
Section 3.2	Conditions Precedent for Authority.....	25
Section 3.3	Conditions Precedent for Licensee .....	25
Section 3.4	Obligation to Satisfy Conditions Precedent .....	26
Section 3.5	Non-fulfilment of Conditions Precedent .....	26
ARTICLE 4	PROJECT SITE .....	27
Section 4.1	Access to Site .....	27
Section 4.2	License and Sub- License/Contracts.....	27
Section 4.3	Possession and Use of Project Site .....	28
Section 4.4	Access to Site .....	29
Section 4.5	Information about Project Site .....	30
Section 4.6	Authority's Property at Project Site.....	30
Section 4.7	Reservation .....	30
ARTICLE 5	OBLIGATION OF PARTIES.....	32
Section 5.1	Obligations of the Licensee .....	32
5.1.1	Project Implementation.....	32
5.1.2	Applicable Permits .....	33
5.1.3	Personnel and Labour.....	33
5.1.4	Subcontracting .....	34
5.1.5	Transaction Documents .....	35
5.1.6	Reporting Requirements .....	36
5.1.7	Accidents and Safety and Medical Aid .....	36
5.1.8	Taxes and Charges.....	37
5.1.9	Foreign Exchange Risk.....	37

**Selection of Developers for development of 'Resort, Food Courts and Adventure Zone' at Eco-hill Park, Kothwalguda, Hyderabad on DBFOT mode**

**Request For Proposal - Section III: Draft License Agreement**

**March 2023**

5.1.10	Contractual Arrangements .....	37
5.1.11	Environment, Healthy, Safety and Standards.....	37
5.1.12	Marketing and Branding of the Project Components .....	38
5.1.13	Others .....	38
5.1.14	Additional Obligations during the Construction Period .....	38
5.1.15	Obligations relating to aesthetic quality of the Project Components (Resort)..	39
5.1.16	Obligations related to Operations and Maintenance .....	39
5.1.17	Facilities for children, physically challenged and elderly persons.....	41
5.1.18	Obligations related to Operational Hours for Project Components.....	41
5.1.19	Obligations to adhere to overall norms of Eco-Hill Park .....	41
5.1.20	Specific O&M obligations for Resort.....	41
5.1.21	Specific O&M obligations for Adventure Zone .....	42
5.1.22	Specific O&M obligations for Food Courts.....	43
5.1.23	Specific O&M obligations for Restaurants.....	43
5.1.24	Obligations related to Operation and Maintenance of the Project: O&M Works	43
5.1.25	Obligations related to Operation and Maintenance of the Project: Contractual Arrangements	44
5.1.26	No Liability of Authority for Contractual Arrangements.....	45
5.1.27	Obligations related to Safety, breakdowns and accidents during Operations Period	46
5.1.28	Overriding powers of the Authority .....	46
5.1.29	Restoration of loss or damage to the Project Components .....	46
5.1.30	Safety Requirements.....	46
5.1.31	Maintenance of Complaints and Feedback Register .....	47
5.1.32	Classification for Resort .....	47
5.1.33	Certification for Adventure Zone.....	48
Section 5.2	Obligations of Preferred Bidder .....	48
5.2.1	Shareholding Lock-In .....	48
5.2.2	Funding Obligation .....	48
5.2.3	Obligations relating to management of the Licensee .....	49
5.2.4	Obligations in Respect of the Licensee .....	49
Section 5.3	Obligations of Authority .....	50
5.3.1	Applicable Permits .....	50
5.3.2	Tax Benefits .....	50
5.3.3	Off-site Infrastructure .....	50
Section 5.4	Others .....	50

**Selection of Developers for development of 'Resort, Food Courts and Adventure Zone' at Eco-hill Park, Kothwalguda, Hyderabad on DBFOT mode**

**Request For Proposal - Section III: Draft License Agreement**

**March 2023**

Section 5.5	Obligations relating to refinancing .....	51
Section 5.6	Maintenance Requirements .....	51
ARTICLE 6	PROJECT IMPLEMENTATION .....	52
Section 6.1	DPR and Designs.....	52
Section 6.2	Development of Site and Implementation of Works .....	53
Section 6.3	Project Completion.....	54
Section 6.4	No Breach .....	56
ARTICLE 7	PROJECT MONITORING.....	57
Section 7.1	Nodal Officer or Independent Expert.....	57
7.1.1	Appointment of Independent Expert.....	57
Section 7.2	Reporting and Inspection .....	58
7.2.1	Construction Period Reports .....	58
7.2.2	Operation Period Reports.....	58
7.2.3	Additional Information .....	59
7.2.4	Inspection.....	59
ARTICLE 8	FINANCIAL COVENANTS.....	60
Section 8.1	Financing for Project .....	60
Section 8.2	Escrow Account .....	61
8.2.4	Withdrawals from Escrow Account.....	62
Section 8.3	Payments to Authority .....	63
8.3.1	Annual Fee.....	63
Section 8.4	User Charges for Project Components .....	65
Section 8.5	Audit and Account .....	66
8.5.1	Appointment of Auditors.....	66
8.5.2	Maintenance of Accounts .....	66
ARTICLE 9	PERFORMANCE SECURITY .....	67
Section 9.1	Performance Security.....	67
Section 9.2	Appropriation of Performance Security .....	67
Section 9.3	Release of Performance Security.....	68
ARTICLE 10	THE OWNERSHIP AND CERTAIN RIGHTS.....	69
Section 10.1	Ownership of Assets .....	69
ARTICLE 11	INSURANCE.....	70
Section 11.1	Insurance Cover.....	70
Section 11.2	Evidence of Insurance.....	70
Section 11.3	Application of Insurance Proceeds.....	71
Section 11.4	Distribution of Insurance Proceeds Upon Termination .....	71

Section 11.5	Validity of the Insurance Cover .....	71
ARTICLE 12	REPRESENTATIONS AND WARRANTIES.....	72
Section 12.1	Mutual Representations and Warranties .....	72
Section 12.2	Further Representations and Warranties of Licensee .....	72
Section 12.3	Waiver of Sovereign Immunity .....	73
Section 12.4	Disclaimer .....	74
ARTICLE 13	LIABILITY AND INDEMNIFICATION .....	75
Section 13.1	Liability of Licensee.....	75
Section 13.2	Indemnification .....	75
Section 13.3	Indirect or Consequential Losses .....	77
Section 13.4	Business Risks.....	77
ARTICLE 14	FORCE MAJEURE.....	78
Section 14.1	Force Majeure Event.....	78
14.1.1	Force Majeure Event.....	78
14.2.1	For the Authority.....	78
14.2.2	For the Licensee .....	79
Section 14.3	Notice of Force Majeure Event.....	79
Section 14.4	Period of Force Majeure.....	79
Section 14.5	Performance Excused.....	80
Section 14.6	Resumption of Performance.....	80
Section 14.7	Costs, Revised Timetable .....	80
Section 14.8	Termination Due to Force Majeure Event.....	80
ARTICLE 15	EVENTS OF DEFAULT .....	81
Section 15.1	Events of Default.....	81
15.1.1	Licensee Event of Default .....	81
Section 15.2	Parties Rights.....	83
Section 15.3	Consultation Notice .....	83
Section 15.4	Remedial Process .....	83
15.4.1	Suspension upon Licensee Default.....	83
15.4.2	Authority to act on behalf of Licensee .....	84
15.4.3	Revocation of Suspension.....	84
15.4.4	Substitution of Licensee .....	84
15.4.5	Termination .....	84
ARTICLE 16	TERMINATION AND EXPIRY OF AGREEMENT/LICENSE .....	86
Section 16.1	Termination Procedure.....	86
Section 16.2	Obligations During Termination Period .....	86

Section 16.3	Condition Survey .....	86
Section 16.4	Consequences of Termination .....	87
Section 16.5	Vesting Certificate .....	89
Section 16.6	Compensation on Termination .....	90
Section 16.7	Substitution Agreement.....	91
ARTICLE 17	DISPUTE RESOLUTION.....	92
Section 17.1	Amicable Settlement .....	92
ARTICLE 18	MISCELLANEOUS PROVISIONS .....	94
Section 18.1	Governing Law and Jurisdiction .....	94
Section 18.2	Waiver & Remedies .....	94
Section 18.3	Survival .....	94
Section 18.4	Entire Agreements and Amendments .....	94
Section 18.5	Mode of Delivery of Notices .....	95
Section 18.6	Severability.....	95
Section 18.7	No Partnership .....	96
Section 18.8	Language .....	96
Section 18.9	Exclusion of Implied Warranties etc. ....	96
Section 18.10	Counterparts .....	96
Section 18.11	Further Assurances.....	96
Section 18.12	Regulatory Framework for Infrastructure Projects.....	96
Section 18.13	Rights of Parties during road widening.....	96
Section 18.14	Remedies Cumulative .....	96
Section 18.15	Intellectual Property Rights and Confidentiality .....	97
18.15.1	Intellectual Property Rights .....	97
18.15.2	Confidentiality.....	97
Section 18.16	Joint and Several Liability of Preferred Bidder .....	98
Section 18.17	No Liability for Review.....	98
Section 18.18	Depreciation .....	98
Section 18.19	Assignability .....	98
Section 18.20	Interest and Right to Set Off.....	99

**DRAFT LICENSE AGREEMENT FOR**  
**DEVELOPMENT OF 'RESORT, FOOD COURTS AND ADVENTURE ZONE' AT ECO-HILL PARK,**  
**KOTHWALGUDA, HYDERABAD ON DBFOT MODE**

**THIS LICENSE AGREEMENT** (herein after also referred to as "**Agreement**") is made on this the \_\_\_\_\_ day of \_\_\_\_\_ 2023 at Hyderabad, Telangana.

BETWEEN

**HYDERABAD METROPOLITAN DEVELOPMENT AUTHORITY**, having its Office at Chief Engineer, Swarna Jayanti Complex, Ameerpet, Hyderabad – 500038 and being represented herein by \_\_\_\_\_ (authorized in this behalf) (hereinafter referred to as "**HMDA**" or the "**Authority**" which expression shall, unless it be repugnant to the context or meaning thereof, include its subsidiaries, successors and assigns) of the **FIRST PART**;

And

**M/s** \_\_\_\_\_, a company incorporated by the Preferred Bidder, exclusively for the Project, under the Companies Act, 2013, having its Registered Office at \_\_\_\_\_ (hereinafter referred to as the "**Licensee**" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) represented herein through Mr. \_\_\_\_\_, the Authorised Signatory, as authorised vide Board Resolution dated \_\_\_\_\_ or by Power of Attorney dated ----- --- executed in his favor of the **SECOND PART**; *(as Applicable)*

**and**

**M/s** \_\_\_\_\_ having its Registered Office at \_\_\_\_\_, in its capacity as the Confirming Party to this Agreement (hereinafter referred to as the "**Preferred Bidder**<sup>1</sup>" which expression shall, unless the context otherwise requires, include its successors and permitted assigns) represented herein through Mr. \_\_\_\_\_, the Authorised Signatory, as authorised vide Board Resolution dated \_\_\_\_\_ or by a Power of Attorney dated-----executed in his favor of the **THIRD PART**<sup>2</sup>;

<sup>1</sup> Details of the Consortium Members in case the Preferred Bidder was a consortium

<sup>2</sup> In case the Bidder does not have requisite technical experience, and the qualification was based on the MoU or an agreement with another entity that meets the technical qualification requirements, the Bidder shall submit a notarized Binding Agreement with such entity that shall be annexed to this Agreement, indicating that the entity who's qualification has been used for evaluation shall be binding partner in this project during the development and implementation stage. Any failure to submit such agreement shall be considered as a default of the Bidder and may lead to termination.

(Each of the parties of the **FIRST**, **SECOND** and **THIRD** parts are hereinafter, as the context may admit or require, individually referred to as a "**Party**" and collectively as the "**Parties**").

## WHEREAS

- A. HMDA (hereinafter referred to as the "**Authority**"), to create tourism activity is developing developing an "Eco-Hill Park at Kothwalguda near Himayat Sagar, Hyderabad" as prestigious Public Park for the city of Hyderabad in an overall area of 105 acres located near Himayat Sagar Lake with various components being developed on PPP and non-PPP basis. HMDA intended to select private developer for the development, operation and maintenance of '**Resort, Food Courts and Adventure Zone**' at Eco-hill Park, Kothwalguda, Hyderabad on DBFOT mode on design, build, finance, operate and transfer ("**DBFOT**") basis (hereinafter referred to as the "**Project**").
- B. In view of selecting the private sector participant that would implement the said project, HMDA undertook a transparent competitive bidding process (the '**Bidding Process**') for selecting the entity which would undertake the development of the Project and, accordingly, invited Request for Proposal (RFP) documents dated \_\_\_\_\_.
- C. After evaluation of the Bids received, HMDA accepted the Bid of the \_\_\_\_\_<sup>3</sup> and issued the Letter of Intent reference no. \_\_\_\_\_, dated \_\_\_\_\_, 2023 annexed hereto as **Appendix A** (hereinafter the '**LOI**') declaring it the Preferred Bidder in accordance with the terms of the RFP.
- D. Since then, the Preferred Bidder has incorporated the Licensee as its wholly owned subsidiary, exclusively to implement the Project, in accordance with the provisions of the RFP and requested HMDA to accept the Licensee as the entity which shall enter into and undertake the Project and perform the obligations including the obligation to enter into this License Agreement for implementing the Project.
- E. This Agreement and HMDA has, pursuant to the provisions of the RFP, agreed to grant the License for the implementation of the said project to the Special Purpose Company.
- F. The Licensee acknowledges and confirms that it has undertaken a due diligence exercise of all aspects of the Project including its technical and financial viability, legal due diligence, and on the basis of its independent satisfaction hereby accepts the License and agrees to implement the Project at its own cost, risk and expense in accordance with the terms and conditions of this Agreement.
- G. Following the issuance of Lol, the Preferred Bidder in accordance with the terms and conditions as specified in the RFP Section- I, as being the pre-condition to the execution of this Agreement, has made a non-refundable, irrevocable payment of (i) Rs. **55,00,000 (Rupees Fifty Five lakhs only)** plus applicable taxes, duties and levies to HMDA towards payment of the Project Development Fee. The Preferred Bidder (for and on behalf of the Licensee) has also furnished an irrevocable and unconditional Bank Guarantee No ..... dated \_\_\_\_\_ drawn from ..... Bank, \_\_\_\_\_ Branch, in favor of \_\_\_\_\_, HMDA for an amount of **Rs. 2,75,00,000 (Rupees Two Crores Seventy Five Lakhs Only)** valid up to \_\_\_\_\_, 20\_\_\_\_ as guarantee for the

---

<sup>3</sup> Insert the name of the Selected Bidder.



performance by the Licensee of its obligations in relation to the Project (“**Performance Security**”). In light of the compliance by the Licensee of the pre-conditions to the execution of the License Agreement, HMDA has agreed to enter into this License Agreement vesting the rights for the implementation of the Project with the Licensee on the terms, conditions and covenants hereinafter set forth in this Agreement.

- H. The Preferred Bidder has undertaken to ensure that the Licensee shall duly discharge its obligations under this Agreement and implement the Project and has joined in and is executing this Agreement as a Confirming Party to the arrangement envisaged and detailed herein under and agrees to undertake and comply with the terms and conditions hereof as binding terms.

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

### Section 1.1 Definitions

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

- (a) **“Accounting Year”** means the financial year commencing on 1<sup>st</sup> April in each year and ending on 31<sup>st</sup> March in the next 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 signing of License Agreement to the immediately following, 31<sup>st</sup> March. In the last year of subsistence of this Agreement, it means the period from 1<sup>st</sup> April to the Transfer Date;
- (b) **“Affiliate”** or **“Associate”** means with respect to a specified Person, any Person which is a holding company or subsidiary of such specified Person, or any Person which directly or indirectly, (i) owns or controls such specified Person, (ii) is owned or controlled by such specified Person, or (iii) is owned or controlled by the same Person, who, directly or indirectly, owns or controls such specified Person. For the purposes of this Agreement, the terms "holding company" and "subsidiary" shall have the meaning ascribed to them under Section 4 of the Companies Act, 2013 and the term "control" shall mean:
  - i. control over the composition of majority of board of directors of a company; or
  - ii. control of more than 50% (fifty percent) of the issued equity share capital of a company
  - iii. 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
- (c) **“Agreement”** means this Agreement as of date hereof, including recitals, Appendices and attachments hereto as may be amended, supplemented or modified in accordance with the provisions hereof;
- (d) **“Appendix”** means any of the schedules, supplements or documents, appended to this Agreement;
- (e) **“Applicable Laws”** means any statute, law, regulation, ordinance, notification, rule, regulation, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of GOI, GOT or by any Government Authority or instrumentality thereof, as may be in effect on the date of this Agreement and during the subsistence thereof;
- (f) **“Applicable Permits”** means any or all permissions, clearances, Concessions, consents, no-objections, approvals of or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations or fulfillment of the purposes contemplated by this Agreement (attached hereto as *Appendix- F*);
- (g) **“Annual Fee”** means the license fee payable by the Licensee to HMDA annually for the Project Site in accordance with the provisions hereof.
- (h) **“License Period”** shall have the meaning specified in Section 2.3;

- (i) **“Licensee”** means M/s ( ) and shall include its successors and permitted assignees;
- (j) **“License”** shall have the meaning set forth in Article 2.2;
- (k) **“Bank”** means any Nationalized/Scheduled (excluding Cooperative) Banks having operations in the twin cities of Hyderabad & Secunderabad, Telangana.
- (l) **“Business Day”** means a day on which banks are generally open in Hyderabad for transaction of normal banking business;
- (m) **“Commercial Operations”** means the occupancy and use of the relevant Project Facility, Project Components by Users, against payment of User Charges;
- (n) **“Commercial Operations Date”** or **“COD”** means the date on which the Authority issues the Completion Certificate, as the case may be, in respect of the entire Project or any particular Project Facility/Project Component (as per MDOs), upon receipt of which, the Licensee commences Commercial Operations of the respective Project Facility in accordance with the provisions hereof;
- (o) **“Completion Certificate”** means the certificate issued by Authority in the manner set out in Section 6.3;
- (p) **“Compliance Date”** shall mean the later of the dates, within a period of ninety (90) days from the Execution Date, by which both the Parties hereto have fulfilled their respective Conditions Precedent in accordance with Article 3 hereof, and upon which this Agreement becomes unconditional and effective;
- (q) **“Condition Precedent”** means the conditions set out in Article 3 hereof;
- (r) **“Construction Contract”** means the one or more contracts that are entered into by the Licensee with the relevant Contractors in relation to the construction of the Project Facilities
- (s) **“Construction Period”** means the period from the Execution Date up to the date of Project Completion (i.e., when the Completion Certificate has been issued for all the Project Components);
- (t) **“Contractor”** means a reputed Person with whom the Licensee has entered into/ may enter into a contract relating to the Works and subcontractors, including contractors for engineering, procurement and construction of all or any part of the Project Components, as the context may require, service providers, suppliers and/or any other contractors and sub-contractors, manufacturers or suppliers of Works or part thereof, as the context may admit or require;
- (u) **“Contractual Arrangements”** shall mean and include all and any, licensing, tenancy, franchising and similar arrangements that may be entered into by the Licensee, in accordance with and subject always to the terms and conditions of this License Agreement, with such Persons selected by it for enabling such Persons to occupy or use or market the whole or part of the Project Facilities including built-up floor areas/spaces, advertising spaces, car parking areas and infrastructure facilities. *Provided that* the Licensee cannot sell title of the Site or the Project Facilities.
- (v) **“Contractual Counter-Parties”** shall have the meaning specified in Section 5.1.24;
- (w) **“Debt Service”** means all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Lenders under the Financing Documents;

- (x) **“Demand Draft or DD”** means the instrument issued by any Nationalized/Scheduled (Excluding Cooperative) Banks having operations in Hyderabad, Telangana.
- (y) **“Detailed Project Report”** or **“DPR”** means the detailed Designs and Drawings for the Project, as indicated in the Article-6
- (z) **“Depreciated Historic Cost”** or **“DHC”** means the depreciated historic cost as computed in accordance with Appendix R
- (aa) **“Designs and Drawings”** means the conceptual and detailed designs, drawings and engineering, project master plans, detailed costing, backup technical information required for the Project Facilities and all calculations, samples, patterns, models, specifications and other technical information relating to the Project, submitted by the Licensee from time to time for approval in accordance with the provisions of this Agreement;
- (bb) **“Development Controls”** means the Applicable Laws, guidelines and controls for development and implementation of the Project Facilities;
- (cc) **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified/directive issued by the HMDA to the Licensee and any modification, extension or replacement thereof from time to time in force.
- (dd) **“Dispute Resolution Procedure”** means the procedure for resolution of disputes set forth in Article 17;
- (ee) **“Easement”** means all easements, reservations, rights-of-way, utilities and other similar rights as to the use of real property, which are necessary or appropriate for the conduct of activities of the Licensee related to the Project;
- (ff) **“Encumbrances”** means any encumbrance such as a mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other obligation or restriction and shall include physical or legal obstructions or encroachments on the whole or any part of the Project Site or Third Party claims or rights of any kind attaching to the whole or any part of the Project Site;
- (gg) **“Event of Default”** means an Licensee Event of Default or a Authority Event of Default or both, as the context may require or admit;
- (hh) **“Expert”** means any person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement, appointed by the Parties by mutual consent, also referred to as third party expert;
- (ii) **“Execution Date”** or **“Date of Execution”** means the date on which this License Agreement is signed by the Parties.
- (jj) **“Escrow Account”** means the bank account in the Escrow Bank into which all the revenue inflows and outflows of the Licensee that accrue or arise under, in connection with or pursuant to the Project (including amounts received from User Charges) shall be credited and debited, as the case may be, in accordance with the provisions hereof and of the Escrow Agreement and shall include the sub-accounts of such account, more specifically defined in Section 8.2;

- (kk) **“Escrow Agreement”** means the agreement to be entered into by and among the Authority, the Licensee the Lenders/Lenders’ representative, and the Escrow Bank, in relation to the opening and operation of the Escrow Account;
- (ll) **“Escrow Bank”** means the bank, mutually agreed upon by the Authority, the Licensee and the Lenders/Lenders’ representative, for the purpose of opening the Escrow Account;
- (mm) **“Financial Assistance”** means the aggregate amounts provided by way of loan, advances, guarantees or otherwise by the Lenders to the Licensee for the implementation of the Project and shall include all related financial charges, fees and expenses of all kinds under the Financing Documents relating to the Project;
- (nn) **“Financial Closure”** means the date on which the Financing Documents providing for Financial Assistance by the Lenders have become effective and the Licensee has access to such Financial Assistance;
- (oo) **“Financing Documents”** means, collectively, the documents executed in favor of or entered into with the Lenders, by the Licensee in respect of the Financial Assistance, including loan agreements, all the security documents (such as mortgage deed, hypothecation deed etc.) that create security in respect of the Financial Assistance, notes, indentures, or arrangements, guarantees and acceptable letters of credit and other agreements evidencing any obligation of the Licensee and other necessary undertakings required pursuant to the respective terms thereof, relating to or securing the repayment of the Financial Assistance or any part thereof (including refinancing) provided by the Lenders to the Licensee for the Project;
- (pp) **“First Right of Refusal” or “Right of First Refusal”** shall have the meaning ascribed to it in the Section 2.4 of this Agreement
- (qq) **“Force Majeure Event”** shall have the meaning ascribed to it in Section 14.1 of this Agreement;
- (rr) **“Gross Annual Turnover” or “Gross Revenue”** means the pre-taxation gross revenues of the Licensee from all sources or amounts of money by whatever name called, that arise, accrue to and/or are received for any period including all amounts received (or which would have been received) by the Licensee from the operation of the Project/any or all Project Components/Project Facilities including without limitation the monies towards the User Charges collected demanded, levied, received by from the Users and all other net amounts which fall (or would fall) to be credited to the profit and loss account of the Licensee for the Accounting Year in which the relevant period falls excluding (i) insurance proceeds except insurance indemnification for loss of revenue; (ii) payments and/or monies collected by the Licensee for and on behalf of any Government Authorities under Applicable Laws; and (iii) All statutory applicable indirect Taxes such as GST, expenditure tax, and the like by whatever name called now or in future, which the Licensee is bound to pay. It is clarified that the amounts payable to the Authority under this Agreement shall not be deducted from Gross Revenue/Gross Annual Turnover;
- (ss) **“GoT”** means Government of Telangana
- (tt) **“Gol”** means the Government of India;
- (uu) **“Government Authority”** means Gol, GoT or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Licensee , the Project, the Project Assets and the Works or any part thereof or the performance of all or any of

the services, obligations or covenants of Licensee under or pursuant to this Agreement or any portion thereof;

- (vv) **“Good Industry Practice”** means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of engineering, procurement, construction, equipment, safety, operation and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced construction contractor and/or operator, in a project of the type and size similar to the Project;
- (ww) **“Independent Expert/Consultant”** means the Independent Expert/Consultant that may be appointed as referred to in Section 7.1. It is hereby clarified that wherever in this Agreement any certification or verification has been stated to be needed or undertaken by the Independent Expert, the same shall be done or undertaken by the Nodal Officer in the event no Independent Expert has been appointed under Article 7.1;
- (xx) **“Kothwalguda Eco-hill Park”** or **“Eco-hill Park”** means and includes the prestigious public park developed by HMDA in about 105 acres of land, located near Himayat Sagar Lake and located adjacent to the Outer Ring Road (ORR) comprising various components including the country's largest Aviary, country's largest Aqua Marine Park, Butterfly Park, Viewing points, Boardwalk of around 2.50 kms, Adventure zone, Amphitheatres, Children's play area, Suspension Bridge to connect the sites across the ORR, Luxury Resort with mini convention centre and Infinity pool, Food Courts and Restaurants and various other entertainment facilities developed in a combination of public-financed and PPP modes.
- (yy) **“Lenders”** means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes financial institutions, banks, non-banking financial companies, funds, trusts who provide for Financial Assistance (including refinancing) to the Licensee and includes subscribers to/trustee for the holders of the debentures/bonds or other securities issued by the Licensee to meet the debt component of the cost of the Project and whose identity has been notified to Authority by the Licensee from time to time. It is clarified that **“Lenders”** for the purposes of this Agreement, shall not include promoter entity or Affiliates of the Preferred Bidder or the Licensee ;
- (zz) **“Material Adverse Effect”** means circumstances which may or do (i) render any right vested in a Party by the terms of this Agreement ineffective or (ii) adversely affect or restrict or frustrate the ability of any Party to observe and perform in a timely manner its obligations under this Agreement or the legality, validity, binding nature or enforceability of this Agreement;
- (aaa) **“Material Breach”** means a breach of the obligations, terms and conditions of this Agreement or covenants by a Party, which materially and substantially affects the performance of the transactions contemplated by this Agreement or/ has a Material Adverse Effect.
- (bbb) **“Minimum Development Obligations”** (MDOs) shall mean Minimum Development Obligations-1 (MDO-1) and Minimum Development Obligations-2 (MDO-2) which are mandatory development and maintenance obligations for the Project as detailed in Appendix C and Appendix D.
- (ccc) **“Nodal Officer”** means the officer from the Engineering Department of HMDA nominated as the “nodal officer” under Section 7.1 of this Agreement.
- (ddd) **“Operations Period”** means, in relation to a particular Project Component, the period commencing from COD of the relevant Project Component and ending on the expiry or prior

termination of the License Period and in relation to the Project means the period commencing from issuance of the Completion Certificate in relation to all the Project Components and ending on the expiry of prior termination of the License Period;

- (eee) **“Person”** means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity
- (fff) **“Performance Security”** shall mean the irrevocable and unconditional bank guarantee of an amount equivalent to Rs. 2,75,00,000 (Rupees Two Crores Seventy Five Lakhs only) provided by the Preferred Bidder/ Licensee from a Nationalized /Scheduled (Excluding Cooperative) Bank in favor of HMDA, in the form, manner and content, more particularly specified under Clause 9.1 hereto., as a security for the performance of its obligations by the Licensee, in respect of the Project.
- (ggg) **“Preferred Bidder”** shall mean the entity defined as such in the Name Clause of this Agreement.
- (hhh) **“Prohibited Activities”** means the activities not permitted, as per the GO.Ms No.168, dated 07.04.2012 issued by Municipal Administration and Urban Development Department, GoT
- (iii) **“Project”** means the construction, development operation and maintenance of the Project Components and undertaking Minimum Development Obligations related to Project Components on a DBFOT basis in accordance with the provisions of this Agreement at Eco-hill Park, Kothwalguda, Hyderabad on DBFOT mode and shall mean and include, subject to the provisions of this Agreement, the (i) designing, financing, construction, implementation, completion, commissioning, marketing, operation, management and transfer of the Project Facilities and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Licensee during the License Period; (ii) the demanding, charging, collecting, retaining and appropriating and revision of User Charges by the Licensee in relation to the Project Components/Project Facilities and (iii) the transfer of the Project Components/Project Facilities by the Licensee to Authority or its nominated agency at the end of the License Period by efflux of time or prior termination; Unless otherwise referred specifically, Project shall include and refer to all Project Components.
- (jjj) **“Project Assets”** shall mean and comprise of all tangible and intangible assets relating respectively to the Project, as the case may be excluding land but including and not limited to, (a) rights over the Site in the form of license, right-of-way or otherwise; (b) each of tangible assets comprising the Project Facilities such as foundation, substructures and superstructures, pavements, over-bridges, works, subways, drainage facilities, sign boards, equipment, electrical works for lighting of and telephone and communication equipment; (c) financial assets, such as receivables, cash and investments; (d) rights under the Project Contracts and other agreements relating to the Project entered into by the Licensee and (e) proceeds from insurance policies taken by the Licensee in relation to the Project Facilities.
- (kkk) **“Project Completion”** shall have the meaning specified in Section 6.3 (a);
- (III) **“Project Components”** shall mean Resort, Adventure Zone, Restaurants, Food Court to be developed under this Agreement and the term Project Components shall mean one or more of these components and together with Project Assets and Project Facilities shall constitute Project.

- (mmm) **“Resort”** for the purpose of this Project shall mean wooden cottages in the area identified in the Appendix B and C, which are at least of 3 star rated equivalent of the Ministry of Tourism, GoI, at least 50 number of keys of at least 500 sq. ft each, in addition to all associated facilities, amenities and infrastructure including reception office, clubhouse, gym and spa facilities, infinity swimming pool, walk ways, landscaping, in-house restaurants, along with Hospitality Services such as such as reception of Users, provision of food and beverages, room services and any other services performed by the Licensee towards creating Revenue from the Resort in accordance with the standards and terms set out in this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice
- (nnn) **“Adventure Zone”** for the purpose of this Project shall mean and include 5.4 acres of land spread across Eco-hill Park for various adventure sports and related adventure activities as per the Applicable Permits and Applicable Laws and Good Industry Practice, and more elaborately defined in the project information memorandum of RFP and Appendix B and C of this Agreement.
- (ooo) **“Food Court”** for the purpose of this Project shall mean and include development of 0.9 acre of land as identified in Appendix B and C, earmarked for the purpose in the Eco-hill Park masterplan, comprising at least 20 kiosks along with related facilities and amenities such as water connection, sewage, electricity, solid waste management, etc., to be licensed out to multiple food and beverage providers, as per the Applicable Laws.
- (ppp) **“Restaurants”** for the purpose of this Project shall include development of Restaurants in as identified in Appendix B and C including i) Glass Restaurant: Fine-dine multi-cuisine restaurant with glass façade in a dome or rectangular shape with an all-side transparent view in an area of one (1) acre and ii) Resto-bar in a 0.75 acre of land fully utilizing the quarry area identified within the Eco-hill park for the purpose, as per the Designs approved by the Authority.
- (qqq) **“Project Contracts”** means collectively this Agreement, the Construction Contract, O&M Contracts (if any) and any other material contract (other than the Financing Documents) entered into or may hereafter be entered into by the Licensee in connection with the Project;
- (rrr) **“Project Facilities”** means collectively all the amenities and facilities proposed/developed in the Project Site as per the MDOs that the Licensee is authorised to undertake and develop, operate and maintain on the Project Site (Appendix-B). “Project Facility” can refer to any one of them, as the context may require;
- (sss) **“Project Implementation Schedule”** means implementation schedule for the Project to be finalized as part of the DPR in accordance with Section 6.1(b) of this Agreement;
- (ttt) **“Project Site” or “Site”** means multiple plots of vacant land specifically earmarked for the purpose of developing resort, adventure zone, food court and restaurants in the Kothwalguda Eco-hill Park masterplan, together comprising an area admeasuring approximately 17.65 acres, more particularly identified and detailed in Appendix-B;
- (uuu) **“Proposal” or “Bid”** means the entire set of technical, financial, qualifying and other documents that comprise the proposal submitted by the Preferred Bidder in response to the RFP;
- (vvv) **“Request for Proposal” or “RFP”** means the Request for Proposal dated \_\_\_\_\_ issued by the Authority as part of the competitive bidding process inviting bids from interested



applicants, for implementing the Project on PPP basis, and includes any addendum / clarifications issued in respect thereof by the Authority;

- (www) **“Scheduled Project Completion Date”** shall have the meaning specified in Section 6.3 (c);
- (xxx) **“Security Interest”** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;
- (yyy) **“Specifications and Standards”** means collectively or singularly, as the context may admit or require, the Development Controls, the Technical Specifications and the Performance Standards as per Good Industry Practice;
- (zzz) **“Special Purpose Company”** or **“SPC”** shall mean the company incorporated under the Companies Act 2013 specifically for implementation of the Project and shall mean the Licensee.
- (aaaa) **“Substitution Agreement”** shall have meaning attributed to in Section 16.7;
- (bbbb) **“Tax”** means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value, goods, services, works, import, export, production or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions including property tax, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and/or levies of any nature whatsoever, whether by Gol, the Authority or Government Authorities, and in respect of any Person and all penalties, charges, costs and interest relating to it;
- (cccc) **“User Charges”** shall mean and include the rentals, license fees, deposits, advances, prices, fees, charges, user charges, charges relating to facility management services, maintenance charges, parking fees, advertisement fees, and all other amounts of money by whatever name called, that are (i) determined, charged, demanded, collected, retained and appropriated by the Licensee under this Agreement from the Users for the use any of the Project Components, as well as for maintenance and upkeep of Project Facilities; and/or (ii) payable at any time and from time to time by any Person to the Licensee in respect of the Project Facilities;
- (dddd) **“Termination”** means prior termination of this Agreement pursuant to Termination Notice but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course;
- (eeee) **“Termination Period”** shall have the meaning specified in Section 16.1;
- (ffff) **“Tests”** means the tests to be carried out pursuant to this Agreement and include the test to determine the completion of the Construction Works and certification thereof by the Authority/Independent Expert/Consultant prior to Commercial Operations;
- (gggg) **“Third Party”** means any Person, real or legal, or entity other than the Parties to this Agreement;
- (hhhh) **“Transfer Date”** means either: (i) the date of expiry of License Period by efflux of time, including extension thereto or (b) in the event of an earlier termination thereof, the date on which

the Project Facilities are transferred to the Licensee in accordance with the provisions of Article 16;

- (iii) **“Transaction Documents”** means collectively the Project Contracts and the Financing Documents but does not include the Escrow Agreement;
- (jiii) **“Vacant Possession”** means delivery of possession of the land comprising of the Site, free from all Encumbrances, restrictions or impediments and the grant of all Easements and all other rights appurtenant or in relation thereto;
- (kkkk) **“Vesting Certificate”** shall have the meaning specified in Section 16.5;
- (llll) **“Year”** means a period of 12 consecutive calendar months;
- (mmmm) **“Works”** mean the works under and in accordance with the provisions of this Agreement relating to design, development of Site, construction, completion, testing and commissioning of the Project Facilities (the **“Construction Works”**), and the operation, management and maintenance, rectifying and remedying of defects therein (the **“O&M Works”**), collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project/Project Facilities and any other permanent, temporary or urgent works required hereunder.

## Section 1.2 Interpretations

In this Agreement, unless the context otherwise requires,

- a. reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
- 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. words importing singular shall include plural and vice versa, and words importing the masculine shall include the feminine gender;
- e. the table of contents and headings are for convenience of reference only, and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- f. terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the terms and words defined in the Appendices and used therein shall have the meaning ascribed thereto in the Appendices;
- g. words “include” and “including” are to be construed without limitation;
- h. any reference to any point in time shall mean a reference to that point according to Indian Standard Time;

- i. any reference to day shall mean a reference to a calendar day; any reference to month shall mean a reference to a calendar month;
- j. Appendices to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- k. reference to this Agreement or any other agreement, deed, instrument, License or document of any description shall be construed as reference to such agreement, deed, instrument, License or other document as the same may from time to time be amended, varied, supplemented, modified, notated or suspended;
- l. references to "development" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and "develop" shall be construed accordingly;
- m. references to recitals, articles, sections, sub-sections, appendices in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, articles, sections, sub-sections, appendices of or to this Agreement;
- n. any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; 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. references to any date, period or Milestone Dates shall mean and include such date, period or Milestone Date as may be extended pursuant to this Agreement or by mutual consent of the Parties hereto;
- p. references to "construction" or "building" include, unless the context otherwise requires, investigation, design, development of Site, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;
- q. wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate, agreement, License proposal, communication, information or report or determination by any Party and/or the Independent Expert/Consultant/Consultant/ Expert, unless otherwise specified, such notice, endorsement, consent, approval, certificate, agreement, License proposal, communication, information or report or determination shall be in writing under the hand of the duly authorized representative of such Party and/or the Independent Expert in this behalf;
- r. unless otherwise provided, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement;
- s. any word or expression used in this Agreement shall, unless defined or construed in this Agreement, bear its ordinary English meaning;
- t. the damages payable by a Party to the other Party as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage/liquidated damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

- u. "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);

### **Section 1.3 Measurements and Arithmetic Conventions**

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

### **Section 1.4 Ambiguities within Agreement**

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) Between two Articles of this Agreement, the provisions of specific Article relevant to the issue under consideration shall prevail over those in the other Article;
- (b) Between the provisions of this Agreement and the Appendices, the Agreement shall prevail, save and except as expressly provided in the Agreement or the Appendices;
- (c) Between the written description on the drawings and detailed engineering and the Specifications and Standards, the latter shall prevail; and
- (d) Between any value written in numerical and that in words, the latter shall prevail.

### **Section 1.5 Priority of Documents**

The documents forming part of the bidding process leading to this Agreement shall be relied upon and interpreted in the following descending order of priority:

- (a) This Agreement
- (b) The Appendices to the Agreement
- (c) Any Supplementary Agreements to this Agreement
- (d) The Lol issued to the Preferred Bidder
- (e) Written addenda to the RFP
- (f) Written clarifications to the RFP
- (g) The RFP
- (h) The Preferred Bidder's Bid.

## ARTICLE 2 LICENSE

### Section 2.1 Scope of the Project

2.1.1 The scope of the Project during the License Period shall mean and include the following (the “**Scope of the Project**”):

- (a) to design, finance, and construct the Project on the Project Site set forth in Appendix B, in accordance with the provisions of this Agreement;
- (b) to develop the Project and achieve Minimum Development Obligations as specified in Appendix C, in conformity with the Specifications and Standards set forth in Appendix D;
- (c) to operate and maintain the Project in accordance with the provisions of this Agreement;
- (d) to obtain and maintain the certifications and classifications for the Resort and Adventure Zone as per the terms of this Agreement;
- (e) to provide all associated facilities and amenities for the smooth operations of each of the Project Components, in accordance with the provisions of this Agreement;
- (f) to transfer the Project to the Authority upon Termination in accordance with the provisions of this Agreement; and
- (g) to perform and fulfil all other obligations of the Licensee 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 Licensee under this Agreement.

2.1.2 The Licensee shall be entitled to develop the various facilities in the identified land parcels of the Project Site for providing Project Components and Project Facilities. The Licensee shall be responsible for the maintenance, upkeep and security of any such Project Components and Project Facilities developed by it. The Licensee shall ensure that all activities are managed and undertaken in accordance with Applicable Laws and Applicable Permits. The Licensee shall also take all precautions for the safety of the Users while using Project Components and Project Facilities.

Notwithstanding anything contrary contained in this Agreement, the Licensee shall not obstruct or cause to obstruct, access to the other components of the Eco-hill Park, where the Project Facilities have been developed by the Licensee, to the public, which shall be governed by the Applicable Laws and Applicable Permits.

### Section 2.2 Grant of License

- (a) Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws, the terms of Applicable Permits, and Good Industry Practice, the Authority hereby grants to the Licensee, and the Licensee hereby accepts the exclusive right, authority and authorization to undertake, during the License Period, the development, design, engineering, financing, procurement, completion, commissioning, implementation, marketing, management, administration operation and maintenance of the Project Facilities at the Site and exercise and enjoy the rights, powers, privileges, concessions and entitlements as set forth in this Agreement (collectively the “**License**”) and the Licensee hereby accepts the License and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- (b) Subject to and in accordance with the provisions of this Agreement, the License granted herein includes, subject to the provisions hereof, shall oblige or entitle (as the case may be) the Licensee to:

- i. 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;
- ii. make at its cost and expense such development and improvements in the Site as may be necessary to implement the Project and establish the Project Facilities thereat subject to and in accordance with the provisions of this Agreement;
- iii. Design, develop, finance, design, construct, market, manage, administer, operate and maintain the Project Facilities in conformity with the Specifications and Standards as per the Good Industry Practice;
- iv. achieve Completion Certificate in accordance with the provisions of this Agreement and subsequently, manage, operate and maintain the Project Components throughout the Concession Period;
- v. provide services to the Users in accordance with the standards and terms set out in this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice
- vi. To apply for, procure & maintain all requisite Applicable Permits for the development of Project Facilities on the Project Site as well as for the O&M thereof, including plans for construction thereon for such uses and purposes as permitted under this Agreement; and
- vii. Operate and maintain the Project and regulate the use thereof by Third Parties in accordance with the provisions of this Agreement and Applicable Laws
- viii. Determine, demand, revise, charge, collect, retain and appropriate User Charges in various applicable forms for various project components;
- ix. Enter into Contractual Arrangements in relation to the Project Facilities
- x. Appoint Contractors/sub-contractors for discharging any of its obligations under this Agreement, carrying on its business of implementing, constructing, managing, marketing, operating and/or maintaining the Project;
- xi. exercise all rights and remedies available under the Applicable Laws to recover the User Charges in compliance with the requirements of the Applicable Laws, terms of Applicable Permits or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf ; and
- xii. make timely payments to the Authority in accordance with the terms of this Agreement towards, *interalia*, the Annual Fee;
- xiii. upon Termination of the License Period transfer the Project to the Authority in accordance with the terms of this Agreement;
- xiv. neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the License rights hereby granted or on the whole or any part of the Project Site, nor sell, transfer, exchange, lease or part possession thereof;
- xv. 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;
- xvi. Perform and fulfill all of the Licensee's obligations under and in accordance with this Agreement, Carry out such other activities incidental to the foregoing or proper or desirable for the safe, efficient and economic implementation and operations of the Project, in accordance with Applicable Laws & Good Industry Practice
  - xvii. Exercise and/or enjoy all the rights, powers, privileges, authorizations and entitlements as set forth in this Agreement
- (c) The Licensee has no right to sell or mortgage the title of the Site or any of the whole or part thereof and it shall, on the Transfer date, transfer and hand over the Site along with the Project Facilities and Project Assets to the Authority or its nominated agency in accordance with the provisions hereof.
- (d) The Licensee is not authorised and shall not assign, transfer or sublet or part with or create any Encumbrances on the whole or any part of the Project Site save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Licensee to appoint Contractors, to enter into Contractual Arrangements.
- (e) 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 Licensee to undertake designing, construction, finance, development, operation and maintenance of the additional facilities as provided in Appendix C 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. Provided, however, that the Licensee shall not, in any event, commence the operation and/or use of the Ancillary Facilities prior to the Project COD.

### **Section 2.3 License Period**

The period of License shall commence on the Execution Date of this agreement and shall if not terminated earlier or extended by HMDA in accordance with the terms and conditions hereof, remain valid for a period of 15 (fifteen) years from such date or as extended as per the Section 2.4 of this Agreement and unless terminated earlier under any conditions of this Agreement, during which the Licensee is authorized to implement the Project in accordance with the provisions of this Agreement (the "**License Period**"). For the avoidance of doubt, the License Period shall include the Construction Period.

### **Section 2.4 Additional Period**

- 2.4.1 Subject to and in accordance with provisions of this Agreement, and upon completion of the License Period by efflux of time, the Authority shall, in the event it determines to undertake the continued management, operation and maintenance of the Project Facilities through PPP structure, may at its discretion extend the License Period by an additional maximum period of 5 (five) years through the 'Right of First Refusal' mechanism.
- 2.4.2 In such cases, the Authority shall, at any time prior to the date of expiry of the License Period, have the right to grant License with respect to the Project for a period which it may determine, in its sole discretion, after the expiry of the License Period, through competitive bidding amongst developers other than the Authority and any undertaking owned by it. The Authority

further agrees that the Licensee 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 Licensee is not the highest bidder, it shall have the first right of refusal (“**ROFR**”) to accept the concession, if it is able to match the highest bid. Provided that the Licensee shall be entitled to exercise such first right of refusal only in case the aggregate amounts paid by the Licensee to the Authority during the License Period in the nature of liquidated damages in accordance with the terms of this Agreement, are not more than 15% (fifteen per cent) of the amount of the Performance Security or not more than 5 (five) incidents of Licensee Default shall have occurred during the entire License Period. For the purposes of this Section 2.4, the aggregate amounts of liquidated damages paid by the Licensee to the Authority during the License Period shall be calculated at the present value, which shall be taken as on the Execution Date.



## CONDITIONS PRECEDENT

### Section 3.1 Conditions Precedent

Save and except as may otherwise be expressly provided herein, the obligations of a Party under this Agreement shall be subject to the satisfaction in full of the Conditions Precedent relating to the other Party (the "Conditions Precedent").

### Section 3.2 Conditions Precedent for Authority

The obligations of the Licensee hereunder are subject to the satisfaction in full of the following Conditions Precedent for the Authority: The Authority shall

- have handed over to the Licensee, the Vacant Possession of the Site free from all encumbrances, on "as is where is basis" accordance with the terms of this Agreement;
- issue necessary notification/government orders, if any, required for development of the Project Facilities as mentioned in the RFP.

### Section 3.3 Conditions Precedent for Licensee

The obligations of the Authority are subject to the satisfaction in full of the following Conditions Precedent for the Licensee. The Licensee shall have:

- (a) provided the Performance Security to the Authority pursuant to Article 9;
- (b) made all the applications at its cost and procured the Applicable Permits as per the indicative list set out in *Appendix-F* required for commencing construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are in full force and effect and the Licensee is in compliance with the conditions of grant thereof and they are valid and effective;
- (c) provided the Authority notarised true copies of its constitutional documents and board resolutions authorising the execution, delivery and performance of this Agreement by the Licensee;
- (d) executed and procured execution of the Escrow Agreement
- (e) achieved Financial Closure and provided notarised true copies of the Financing Documents to the Authority along with soft copies;
- (f) prepared, finalised and procured approval of the Authority for the Detailed Project Report in accordance with the provisions of **Section 6.1** hereof;
- (g) procured consent for establishment and operation/environmental clearance etc from the State/Central Agencies/Authorities, as may be required under Applicable Law, after having completed preparation of the Detailed Project Report as required
- (h) confirmed in writing that all the representations and warranties of the Preferred Bidder/Licensee set forth in the Proposal and forming part of this Agreement are true and correct as on the Execution Date and the Compliance Date
- (i) provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Licensee.
- (j) executed and procured execution of the Substitution Agreement;

Provided that upon request in writing by the Licensee, the Authority may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this **Section 3.3**.

#### **Section 3.4 Obligation to Satisfy Conditions Precedent**

- (a) Each Party shall make all reasonable endeavours at its respective cost and expense to comply in full with the Conditions Precedent relating to it within a period of 90 (ninety) days from the Execution date, or any extension agreed to between the Parties.
- (b) The later of the dates within such 90 (ninety) days when the Authority and the Licensee fulfil their respective Conditions Precedent (unless Authority waives the same for the Licensee) shall be the date from which the obligations of the Parties hereunder shall commence (the "**Compliance Date**").

#### **Section 3.5 Non-fulfilment of Conditions Precedent**

- (a) In the event the Conditions Precedent for a Party have not been fulfilled within the stipulated time and the Authority has not waived, fully or partially, such conditions relating to the Licensee, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and HMDA shall not be liable in any manner whatsoever to the Licensee or Persons claiming through or under it.
- (b) In the event that possession of the Site has been delivered to the Licensee prior to the fulfilment in full of the Conditions Precedent, upon the termination of this Agreement pursuant to clause 3.5 (a) above, the Site shall immediately revert to the Authority, free and clear from any Encumbrances and along with all Easementary Rights, irrespective of any outstanding mutual claims between the Parties and the Licensee and the Persons, claiming through or under it, shall immediately remove itself from the Project Site, without any demur or delay.
- (c) In the event this Agreement is terminated due to non-fulfilment of the Licensee's Conditions Precedent and the same is not due to Authority's default or Force Majeure event, Authority shall retain the Project Development Fee and forfeit Performance Security/Bid Security as damages.
- (d) In the event this Agreement is terminated due to non-fulfilment of the Authority's Conditions Precedent, the Authority shall upon such termination return/refund in full the Performance Security received from the Licensee, without any interest, provided there are no outstanding claims of the Authority on the Licensee, unless such Authority's failure to fulfil its Conditions Precedent is a result of the Licensee's default.
- (e) Without prejudice to the foregoing, the Parties may, instead of terminating the Agreement, extend the time for fulfilling the Conditions Precedent by mutual agreement.
- (f) In case of any delays in getting Applicable Permits or approvals for construction and execution of the Project due and attributable to the concerned Government Authority and provided such delay is not due to any default or negligence or omission on the part of the Licensee or Persons claiming through or under it, there may be a commensurate extension of the Conditions Precedent, as certified by the Independent Expert/Consultant and as approved by the Authority.

## ARTICLE 4 PROJECT SITE

### Section 4.1 Access to Site

- (a) The Authority shall on the date of execution of this Agreement, grant the Licensee with the access to the Site for the period from the date hereof to the Compliance Date for the limited purpose of carrying out site investigations, surveys, inspections etc at the Licensee's cost, risk and consequence. The Authority or any Government Authority shall have no liability whatsoever in this behalf. For the avoidance of doubt, the rights granted herein are only in the nature of a bare authorisation for the limited purpose of inspection and investigation of the Project Site. The Licensee shall ensure at its cost and consequence that during such period no damage is caused to the Project Site by its activities thereat.
- (b) The Parties shall, within 7 (seven) days of the Authority's notice in this behalf to the Licensee, prior to the date of signing of License Agreement, carry out through their duly authorised representative, a joint inspection and verification of all the Project Site and record the report thereof in a memorandum duly signed by the Parties/their representatives. The participation of the Licensee in such joint inspection shall be mandatory. The Licensee shall carry out at its cost a due diligence of all encumbrances at, on or under the Site and notify the same to the Authority, which shall take prompt action for removing the same.
- (c) The Authority shall bear all the costs of making available the Project Site to the Licensee and be liable to remove/relocate at its cost all Persons that may have to be displaced from the Project Site, including the payment of compensation, if any, to such Persons or litigation pursuant thereto and the Licensee shall not be liable in this behalf.
- (g) The Authority shall handover the Site to the Licensee on an "as is where is basis" for the License Period.
- (d) The Authority shall on or before the Compliance Date and, upon satisfaction of the Conditions Precedents detailed in Section 3.3 hereof, handover the vacant possession of the Project Site unto the Licensee on an "as is where is basis" and together with the full and free right and liberty of way and passage and other rights in relation thereto, for the purpose of implementing the Project in accordance with the provisions of this Agreement.
- (e) Not Used.
- (f) Not Used
- (g) Following delivery of possession of the Project Site, the Licensee and the Persons claiming through or under it shall keep the Project Site free from any trespass or encroachment and keep the Authority informed thereof and take appropriate and timely legal and remedial action.

### Section 4.2 License and Sub- License/Contracts

Notwithstanding anything to the contrary contained in this Agreement, the Licensee shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on any of the Project Assets or Project Site 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. In addition, the following may be noted:

- a) No Sub-Lease of Land**

The Licensee shall not sub-lease the whole or any part of the land comprising the Project Site to any person in any form or under any arrangement, device or method. This is an essential condition of this Agreement, the breach of which shall constitute an Licensee Event of Default that shall entitle the Authority to terminate this Agreement in accordance with the provisions of Article 16 hereof.

**b) License of Built-up Area/Space on the Project Site**

For the purpose of exercising its rights pursuant to Article 2 of this Agreement, the Licensee shall, subject to the provisions hereof, however be allowed to license any built-up area within the Project Site, and it shall have the right, subject to the provisions of this Agreement, to enter into Contractual Arrangements with third parties in relation to any part of the Built-up Area or Space in the Project Site provided the terms and conditions of such Contractual Arrangements shall not be inconsistent or contrary to the provisions of this Agreement and that such Contractual Arrangements shall be co-terminus with this Agreement.

**Section 4.3 Possession and Use of Project Site**

- (a) Upon the Licensee observing and performing its obligations, the several covenants, conditions and agreements herein contained and on the part of the Licensee to be observed and performed, the Licensee shall remain in peaceful possession and enjoyment of the Project Site during the License Period.
- (b) The Licensee shall not without prior written consent or approval of the Authority, use the Site for any purpose other than for the purposes of implementing the Project in accordance with the provisions of this Agreement and purposes incidental thereto or as may otherwise be approved in writing by the Authority. The Licensee acknowledges, accepts, confirms and agrees that this is an essential condition of this Agreement.
- (c) The Licensee shall maintain vigil over the Site during the License Period to prevent encroachments or occupation of the Site and in case of any encroachment or occupation forthwith remove the same at its cost and expense and inform the Authority thereof.

The Licensee shall shift the utilities at, on, over or under the ground at the Project Site to an appropriate location or alignment. Such shifting of the utilities shall be carried out only if and to the extent according to the Authority, the non-shifting thereof materially obstructs the implementation of the Project. The cost of such shifting shall be borne by the Licensee with a right to seek set off from the owner of such utilities as may be available under the Applicable Laws or contract. In the case of any delays in shifting of the utilities due and attributable to the owner of the utility or the Authority and provided such delay is not due to any default or negligence on the part of the Licensee, the same delay will be considered based on the merits of the shifting of such utility/ies vis-a-vis project completion for considering extension of project construction period without penalty - Provided, the Licensee shall submit a comprehensive list of utilities to be shifted along with the DPR.

- (d) The Licensee shall promptly use the Site for the implementation of the Project or remove at its cost from the Site in accordance with Good Industry Practice all surplus structures at, on, over or under the ground at the Project Site, construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris and dispose them in conformity with the Applicable Laws and Applicable Permits.

- (e) The Licensee shall be solely liable for all hazardous, dangerous and other goods, materials, creatures and substances brought, kept, stored or handled at the Site.
- (f) The Authority confirms that:
  - (i) The Site together with the necessary Easement rights has been acquired through the due process of law belongs to and is vested in the HMDA, and further that the HMDA has full powers to hold, dispose of and deal with the same consistent, *inter alia*, with the provisions of this Agreement; and
  - (ii) The Licensee shall have no obligation/liability as to payment of any compensation whatsoever to or the rehabilitation and resettlement of any Person from whom the Site or any part thereof had been acquired and that the same shall be the sole responsibility of the HMDA.
- (g) In the event the Licensee is obstructed by any Person claiming any right or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/ charge on the Project Site or any part thereof, Authority shall, if called upon by the Licensee, defend such claims and proceedings at its cost and expense and the Licensee shall not be liable for the same in any manner whatsoever.
- (h) The Licensee shall not part with or create any Encumbrances on the whole or any part of the Project Site save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Licensee to appoint Contractors, or to enter into Contractual Arrangements in relation to the Project Facilities and to assign its rights here under and create a Security Interest in favour of the Lenders in accordance with the provisions of this Agreement.

#### **Section 4.4 Access to Site**

- (a) Following the delivery of Vacant Possession of the Project Site on "as is where is basis" by the Authority to the Licensee, the Licensee shall, at all reasonable times and on reasonable notice, afford access to the Project Site to,
  - (i) the Authority, or the Independent Expert/Consultant, or the Experts and their duly authorised personnel and representatives so as to carry out their respective functions and obligations hereunder.
  - (ii) the representatives of or Persons duly authorised by the relevant Government Authority concerned with safety, security or environmental protection to inspect the Site, and the Project and the Works, carry out their respective duties and functions and to investigate any other matter within their authority.
- (b) The Persons obtaining access to the Site shall conduct their activities and operations at their own risk, cost and expense and in such manner so as to cause minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose of the Person gaining such access.
- (c) The Project Site shall be made available to the Licensee pursuant hereto free from all Encumbrances and occupations and without the Licensee 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 Licensee accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Project Site.

- (d) During the License Period, the Licensee 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 Licensee 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 Licensee therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

#### **Section 4.5 Information about Project Site**

- (a) The site map set out in Appendix-B is provided by the Authority to the Licensee in good faith and with due regard to the matters for which such information is required by the Licensee. The Authority agrees to provide to the Licensee upon a reasonable request, any further information relating to the Project Site, which the Authority may now possess or may hereafter come to possess. Subject to this, the Authority makes no representation and gives no warranty to the Licensee in respect of the condition of the Project Site and the Licensee shall accept the Project Site handed over to it by the Authority on an "as is where is basis".
- (b) The Licensee acknowledges that before entering into this Agreement, it has had sufficient opportunity to investigate the Site, and
- (i) accepts full responsibility for its condition (including but not limited to its geological condition, any toxic contamination, the adequacy of the connectivity links to the Site and the availability or unavailability of adequate supplies of water and electricity); and
- (ii) agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Site (or part thereof) or for any other reason pertaining to the Site.

#### **Section 4.6 Authority's Property at Project Site**

- (a) All debris and construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Project Site or generated during the implementation of the Project shall be promptly disposed off by the Licensee at its cost in accordance with Applicable Laws. The Licensee may if it deems appropriate use the same for the execution of the Works.
- (b) All articles of value or antiquity found on the Project Site shall be the property of the Authority. The Licensee shall take reasonable precautions to prevent its labour and personnel and that of its Contractors from removing or damaging any such article or thing. The Licensee shall immediately upon discovery of such article or thing, inform the Authority, which may issue instructions for dealing therewith.

#### **Section 4.7 Reservation**

The Authority accepts and reserves unto itself all the mines, minerals, coals, gold, etc. in, over, on or under the Site and full right and power at all times to undertake, with reasonable prior notice to the Licensee, all acts and things which may be necessary for searching, removing, appropriating or enjoying the same without providing or leaving any vertical support for the surface of the land at the Site or for any structure or building thereat; provided always the Authority shall be obligated to pay

reasonable compensation to the Licensee for all damage directly resulting from the exercise of the rights hereby reserved or any of them.

## ARTICLE 5 OBLIGATION OF PARTIES

### Section 5.1 Obligations of the Licensee

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Licensee shall, without qualification, at its own cost and expense observe, undertake, perform and comply during the License Period with the following obligations:

#### 5.1.1 Project Implementation

- (a) The Licensee shall construct the Project Facilities in accordance with the Specifications and Standards, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Licensee shall, for such purposes, do all such acts, deeds and things, as may be required under this Agreement. The Licensee shall make payments towards Annual Fee in the terms specified in this Agreement.
- (b) Licensee shall at its own cost and resources, design, plan, develop, finance, construct, market, administer, manage, operate and maintain the Project Facilities, including without limitation, the necessary infrastructure, services and facilities, during the License Period in accordance with the provisions hereof, including the Specifications and Standards, Applicable Laws, terms of Applicable Permits and Good Industry Practice. The Licensee shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.
- (c) In implementing the Project, the Licensee shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including environmental laws, and the terms of Applicable Permits and the Licensee shall be entirely liable for any violations or breaches thereof and indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf.
- (d) The Licensee may appoint Contractors to perform its obligations under this Agreement in accordance with Section 5.3 below; provided that the Licensee shall ensure that the Contractors function in accordance with the terms and conditions of this Agreement and do not violate or cause of breach of this Agreement. The Licensee shall indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf in accordance with Section 5.3 below.
- (e) The Licensee shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
  - i. procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
  - ii. perform and fulfil its obligations under the Financing Agreements;
  - iii. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
  - iv. not do or omit to do any act, deed or thing which may in any manner violates any provision of this Agreement;
  - v. ensure that the Users are treated with due courtesy and consideration and provided with ready access to services and information;



- vi. procure registration from the Department of Tourism, Government of India or Telangana State Department of Tourism;
- vii. support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- viii. transfer the Project Assets to the Authority upon Termination in accordance with the provisions of this Agreement; and
- ix. undertake the Development Works in accordance with the international guidelines including Griha/LEED/Green Globe and Standards and Specifications, as provided in Appendix C and D.

#### **5.1.2 Applicable Permits**

- (a) The Licensee 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 Licensee shall obtain all Applicable Permits and comply with the conditions thereunder for the procurement and use of such infrastructure facilities and utilities.
- (b) The Licensee shall obtain and maintain at its cost all Applicable Permits, including all environmental permits, in conformity with the Applicable Laws and be in compliance therewith. Subject to the Licensee complying with the Applicable Laws and Good Industry Practice, the Authority shall facilitate the securing of such consents, clearances and Applicable Permits.
- (c) The Licensee shall expeditiously make necessary applications to the relevant Government Authorities for all Applicable Permits to meet the stipulated time frames in this Agreement, for completion of the Works, to achieve various performance milestones, if any, and to perform all of its other obligations under this Agreement. The Licensee shall supply the appropriate particulars and details to such Government Authorities as may be necessary to confirm that the Licensee fulfils the eligibility criteria to enable such Authority reasonably to consider the request for the grant of the relevant Applicable Permits and, following the grant of any such Applicable Permits, the Licensee shall maintain such Applicable Permits in full force and effect so long as it is necessary in order for the Licensee to perform its obligations hereunder.
- (d) During the License Period, the Licensee shall obtain from the relevant Government Instrumentalities, the Applicable Permits (other than the Applicable Permits required to be obtained by the Authority under its Conditions Precedent) 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

#### **5.1.3 Personnel and Labour**

- (a) The Licensee shall
  - i. be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and costs incidental thereto, health, hygiene, safety etc. and all taxes, charges, levies, duties payable under Applicable Laws arising from the respective terms and conditions of employment of all labour and personnel employed by the Licensee, its Contractors,

- agents and representatives on or in connection with the Works or the Project Site under or through whatever legal relationship;
- ii. be solely responsible and liable for compliance with all Applicable Laws, including labour (without limitation, The Employee Provident Fund & Misc. Provisions Act 1952, Employees State Insurance Act 1948, Workmen's Compensation Act 1923) and local laws, pertaining to the employment of labour, staff and personnel by it and its Contractors for implementing the Project.
  - iii. ensure that the personnel engaged by it or by its Contractors in the performance of its obligations under this Agreement are duly qualified and at all times properly trained with adequate and state-of-the-art training for their respective functions.
- (b) The employees of the Licensee and its Contractors shall at all times be the responsibility of the Licensee and the Authority shall not be liable in any manner whatsoever in respect of such employees and their employment.
- (c) In case of employment of foreign nationals, the Licensee
- i. acknowledges, agrees and undertakes that employment of foreign personnel by the Licensee and/or its Contractors and their sub-contractors shall be in accordance with Applicable Laws and subject to grant of Applicable Permits, including employment or residential visas and work permits. The Licensee shall obtain such Applicable Permits at its own cost and expense. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permit or approval by the Licensee or any of its Contractors or sub-contractors shall not constitute a Force Majeure Event, or allow any extension of time to the Licensee for performance of its obligations under this Agreement and shall not in any manner excuse the Licensee from the performance and discharge of its obligations and liabilities under this Agreement

#### 5.1.4 Subcontracting

- (a) The Licensee may appoint at its cost and risk, Contractors possessing the requisite skill, expertise, capacity and technical and financial qualifications, for the performance of any of its obligations under this Agreement, provided the Licensee shall at all times be solely responsible and liable for any defect, deficiency or delay in the construction and erection of the structures/equipment or any part thereof and for the management, operation and maintenance of the Project in accordance with the provisions of this Agreement and provided further that this does not result in the assignment of any of the rights vested with the Licensee under this Agreement to the Contractors. The Licensee shall ensure that any of its obligations, which are relevant to the scope of work of a Contractor pursuant to this Agreement, are incorporated in the terms and conditions under which such Contractor is retained.
- (b) The Licensee shall supervise, monitor and control the activities of Contractors under their respective Project Contracts as may be necessary.
- (c) For the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a Contractor by the Licensee for any of the aforesaid purposes, the Licensee shall be liable for the performance of its duties and for the discharge of all its obligations and responsibilities which it shall have towards the Authority under this Agreement and the appointment of Contractor(s) for any of the aforesaid purposes shall neither release nor exonerate the Licensee from its obligations hereunder, including full and timely compliance with the terms of this Agreement. The

Licensee does hereby also agree and acknowledge that it shall remain responsible for obligations performed or to be performed by the Contractors/ subcontractors to the same extent as if such obligations were to be always performed by the Licensee and shall at all times be solely responsible for any defect, deficiency or delay by the Contractor in the implementation of the Project/execution of Works.

- (d) The Licensee further undertakes and covenants that it shall be solely responsible for all payments to be made to the Contractors and shall indemnify the Authority and keep it indemnified and harmless from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses that the HMDA may incur, insofar as such losses directly arise out of, in any way relate to, or result from the non-performance by the Licensee of its obligations to the Contractors including non-payment of any monies to such Contractors.

#### 5.1.5 Transaction Documents

- (a) The Licensee accepts and undertakes to ensure that the terms of all Transaction Documents (including but not limited to the agreements between the Licensee and Contractors and any other Person(s), including vendors of goods and services, or between any of these entities) shall be in conformity with the provisions of this Agreement and not in derogation of or conflict with the provisions hereof. In the event of any conflict or inconsistency between such documents and this Agreement, the provisions of this Agreement shall prevail.
- (b) It is expressly agreed that the Licensee shall, at all times, be responsible and liable for all its obligations under this Agreement. Notwithstanding anything contained in the Transaction Documents or any other agreement, and no default under any Transaction Documents or any other agreement shall excuse the Licensee from its obligations or liability hereunder.
- (c) The Licensee shall
- i. Provide to the Authority notarised true copies of every Transaction Document duly executed, to which the Licensee is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto and of any amendments, supplements or replacements etc. thereof within 15 (fifteen) days of such execution or amendment etc.
  - ii. Not make any replacement, modification or amendment to any of the Financing Documents at any time without the prior written consent of the Authority if such replacement, modification or amendment has or may have the effect of imposing or increasing any financial liability or obligation on the Authority and in the event any replacement, modification or amendment is made without such consent, the Licensee shall not enforce such replacement, modification or amendment nor permit enforcement thereof against the Authority.
  - iii. Comply with its obligations set out in the Transaction Documents.
  - iv. Ensure and procure that each Transaction Document contains provisions that would entitle Authority or a nominee of the Authority to step into such agreement at the Authority's discretion, in place and substitution of the Licensee in the event of termination pursuant to the provisions of this Agreement. (the "Covenant"). For the avoidance of doubt, it is expressly agreed that in the event Authority does not exercise such rights of substitution within a period of 90 days from the Transfer Date,

the Project Contracts shall be deemed to cease to be in force and effect from the Transfer Date without any liability whatsoever on Authority and the Covenant shall expressly provide for such eventuality. The Licensee expressly agrees to include the Covenant in all its Project Contracts and undertakes that it shall, in respect of each of the Project Contracts, procure and deliver to Authority an acknowledgement and undertaking, in a form acceptable to Authority, from the counter party(ies) of each of the Project Contracts, where under 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 Authority in the event of termination.

- v. Not enter into any material Transaction Document, including without limitation, any Construction Contract or agreement with any affiliated party related to or in connection with the Project unless the principal terms including consideration is reviewed, assessed by the Independent Expert/Consultant appointed by the Authority and approved by the Authority, prior to the execution of any such contract.
- vi. Notwithstanding anything to the contrary contained in this Agreement, the Licensee agrees and acknowledges that selection or replacement of the Contractor and execution of the Transaction Documents 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 Licensee 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 Licensee or its Contractors from any liability or obligation under this Agreement

#### **5.1.6 Reporting Requirements**

The Licensee shall provide to the Authority and the Independent Expert/Consultant reports on a regular basis during the License Period in accordance with the provisions of **Article 7** and as set forth elsewhere in the Agreement and at all times provide the Authority such information, data and documents as the Authority may reasonably require.

#### **5.1.7 Accidents and Safety and Medical Aid**

- (a) The Licensee shall
  - (i) Develop, implement and administer a surveillance and safety program for the Project and the users thereof and the Contractors' labour and personnel engaged in the provision of any services under any of the Project Contracts, including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice.
  - (ii) Take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims.

- (iii) Maintain liaison with emergency service providers and seek necessary police assistance on payment of applicable charges for the provision of such services as are not provided in the normal course or are available only on payment.
- (b) For providing aid and assistance in medical emergencies relating to all Project Components, and more specifically Adventure Park, the Licensee 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.

#### **5.1.8 Taxes and Charges**

The Licensee shall

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

#### **5.1.9 Foreign Exchange Risk**

Not applicable. All transaction of the Licensee shall be done only in Indian Rupees.

#### **5.1.10 Contractual Arrangements**

The Licensee shall undertake development of the Site and Project Facilities thereon and enter into Contractual Arrangements in accordance with the provision of this Agreement.

#### **5.1.11 Environment, Healthy, Safety and Standards.**

- (a) The Licensee shall comply Applicable Environmental regulations applicable for the Project Site for all proposed components.
- (b) The Licensee shall at all times and throughout the License 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")
- (c) The Licensee shall prepare and comply with the performance standards, including an environmental and sustainability plan stating how the Licensee intends to manage and mitigate risks in relation to EHS. Such performance standards shall take into consideration the principles set out in:
  - i. National EHS regulations (<http://www.moef.nic.in/> and others);
  - ii. Real Estate (Regulation and Development) Act, 2016;
  - iii. 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
  - iv. L&FS Standards.

### **5.1.12 Marketing and Branding of the Project Components**

- (a) The Licensee shall undertake marketing, public relations and brand building of the Project and each of the Project Facilities at its cost and expense.
- (b) The Licensee may, in its discretion, name or brand each of the Project Components or any part thereof in accordance with the Applicable Laws and Applicable Permits.

### **5.1.13 Others**

The Licensee shall

- (a) maintain requisite insurance in accordance with the provisions hereof.
- (b) provide all assistance to the Authority and the Independent Expert/Consultant /Experts as they may reasonably require for the performance of their duties and services under this Agreement;
- (c) be responsible for safety, soundness and durability of the Project Facilities including all structures forming part thereof and their compliance with the Specifications and Standards.
- (d) provide representatives of the Authority, including those concerned with safety, security or environmental protection, at reasonable time and upon reasonable notice, access to the Project Site to review progress of construction and the operations of the Project and to ascertain compliance with any of the requirements of the Agreement. Provided that any failure on the part of the Authority to inspect any works shall not, in relation to such works, (i) amount to any consent or approval of the Authority or shall the same be deemed to be a waiver of any of the rights of the Authority under this Agreement; and (ii) release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work.
- (e) provide or arrange at its cost during the License Period all on-site infrastructure including power, electricity, water, sanitation, sewage treatment and disposal, drainage, solid and hazardous waste disposal, effluent treatment and disposal and other utilities and facilities required from time to time in respect of the construction, operation and maintenance of the Project/Project Facilities and be in compliance to the requirements relating thereto under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.
- (f) if required, at its cost install meters to measure the consumption of power and water. The Licensee shall, at its cost, make alternate and back up arrangement for power, including but not limited to installation of generators and for water, subject to the Licensee obtaining Applicable Permits if any.
- (g) hand over the Project /Project Assets free from encumbrances and encroachments to the Authority or its nominated agency upon the expiry/termination of this Agreement.

### **5.1.14 Additional Obligations during the Construction Period**

The Licensee shall

- (a) promptly commence construction and complete the Project Facilities in accordance with the provisions of this Agreement, including the Project Implementation Schedule and the Specifications and Standards, the terms of Applicable Permits, the Applicable Laws and Good Industry Practice and achieve the Project Completion.

- (b) entrust responsibility for project management and construction to professionally competent Persons;
- (c) give priority to safety in its construction and planning activities and implementation of any of the Work including having suitable illumination at night with barriers to prevent third parties from being injured by the Works
- (d) promptly carry out at its cost such further Works as may be necessary to remove any defects or deficiencies observed by the Independent Expert/Authority and ensure completion of the construction of the Project in all respects in accordance with the provisions of this Agreement;
- (e) incorporate suggestions (if any) made by any Government Authority in the designs proposed for constructions.
- (f) confine its activities to the Project Site and to any additional areas arranged by the Licensee at its cost and not encroach upon, damage or degrade adjacent land and be liable for all costs and consequences for its failure to do so;
- (g) commence Commercial Operations of the Project Facilities only upon issuance of the Completion Certificate in respect of the relevant Project Facilities.
- (h) Make provision of space for setting up HMDA kiosks and hoardings within the Project Site /premises, if need be.
- (i) shall explore various options and provide exclusive parking provision for the visitors.

#### **5.1.15 Obligations relating to aesthetic quality of the Project Components (Resort)**

The Licensee shall maintain a high standard in the appearance and aesthetic quality of the Resort and achieve integration of the Resort with the character of the overall Eco-hill Park, the surrounding landscape through both appropriate design and sensitive management of all visible elements. All Applicable Government Regulations shall be followed to ensure that the nature of the materials used and construction proposed is within the extant rules. The Licensee shall engage professional architects of repute for ensuring that the design of the Resort and other facilities meets the aforesaid aesthetic standards.

#### **5.1.16 Obligations related to Operations and Maintenance**

The Licensee shall overall Project:

- (a) Operate, maintain, manage and repair the Project Facilities at its cost and risk during the Operations Period in accordance with the provisions hereof, including the Specifications and Standards, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice.
- (b) Upon achieving Project Completion, shall commence Commercial Operations, if not already done so. Provided that the Licensee shall have the right to commence Commercial Operations of a Project Facility once it has obtained the Completion Certificate in respect thereof (which may be before achievement of Project Completion)
- (c) Employ qualified Persons to efficiently implement, operate and manage the Project.
- (d) shall provide the open area reserved for parking for free parking of vehicles of the Users and shall not use such area for any paid parking.

- (e) Make available all necessary financial, managerial, technical, technological and other resources for the operations and, maintenance of the Project to conform to the requirements of this Agreement.
- (f) Replace, repair, replenish or renew, as the case may be, the materials, goods, machinery, equipment, capital components and spares etc. and undertake preventive maintenance at its cost as necessary to carry out efficient operations and maintenance of the Project and to provide adequate service standards and to ensure that the Project/Project Facilities are transferred to the Authority in a good condition except for the normal wear and tear having regard to their life, construction, use and the period of use, in accordance with the terms of this Agreement.
- (g) Ensure maintenance of proper and accurate records, data and accounts relating to the operations of the Project and the revenues earned there from.
- (h) Comply with all Applicable Laws, including those relating to safety, health, sanitation, environment, labour and hazardous and dangerous materials.
- (i) promptly and diligently repair, replace or restore the Project or part thereof which may be destroyed, lost or damaged.
- (j) Except as provided or authorized under this Agreement, not, without the prior written consent of the Authority, remove or replace any asset comprised in the Project/Project Facility.
- (k) Ensure timely payments to the Authority in accordance with the provisions of this Agreement.
- (l) Carry out the commercial operations and provide the services and facilities as per the requirements of this Agreement and make changes therein only with the prior written approval of the Authority.
- (m) Not undertake, cause or suffer the undertaking of Prohibited Activities by any person at the Site or the Project Facilities or part thereof.
- (n) Ensure Solid Waste Collection and Disposal System in place by implementation of environmentally sound solid waste collection mechanisms. Processing and disposal of Solid waste shall not be allowed within the site Premises.
- (o) Maintain Project Facilities as Plastic Free Zone.
- (p) 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;
- (q) 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;
- (r) Recycle and reuse the Liquid waste, instead of disposing into the reservoir, for gardening, landscaping, flushing of toilets etc., and thus making the project as "Zero Discharge" project.
- (s) shall remove promptly from the Project Site all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and



other debris (including, without limitation, accident debris) and keep the Project Components in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.

- (t) 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.
- (u) If the Licensee 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 Licensee, 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 Licensee as per the provisions of this Agreement
- (v) Adhere at all times with the Maintenance Requirements as defined under this Agreement for all Project Components

#### **5.1.17 Facilities for children, physically challenged and elderly persons**

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

Further, the Licensee shall have a right to determine the age profile and entry restrictions for the Adventure Zone depending on the safety guidelines.

#### **5.1.18 Obligations related to Operational Hours for Project Components**

Except in case of Project Component – Resort, the Licensee shall operate the Project Components based on the guidelines issued by the Authority and shall adhere to the overall timings of the Eco-hill Park. The closing and opening hours as well as overall upkeep of the Project Components shall not be in any manner contravening the provisions and workings of the Eco-hill Park.

#### **5.1.19 Obligations to adhere to overall norms of Eco-Hill Park**

The Licensee acknowledges and agrees that the Project and Project Components are integral part of the Eco-Hill Park and that the operations of the Project Components shall adhere to the overall working principles and norms of the Eco-Hill Park project. The Licensee is free to operate the Project Component – Resort based on the Good Industry Practices and have 24-hour operations for provision of services to the Users. However, the entry-exit times, working hours, working days of the Adventure Zone, Restaurants and Food Park shall comply with the norms of the Eco-Hill Park and any other specific guidelines issued by the Grantor time-to-time.

#### **5.1.20 Specific O&M obligations for Resort**

The Licensee shall adhere to the O&M obligations including, but not limited to:

- (a) Shall operate for 365 days in the year and will upkeep the operations and maintenance of the Resort in line with Good Industry Practices and shall offer services that are not below a 3-star hotel as defined by the Ministry of Tourism Guidelines

- (b) Ensure safety and security of the occupants at all given times by providing sufficient round-the-clock security personnel, medical-aid service and other related services
- (c) Provision of free parking service, safety of visitor vehicles and property as per the Applicable Laws
- (d) Time-to-time obtain and renew all relevant approvals for operation of resort, restaurants as per the Applicable Laws
- (e) At the minimum, shall adhere to all Necessary factors and endeavor to provide all Desirable factors as per the operational guidelines issued by Ministry of Tourism for a 3-star hotel or Deluxe Tented Accommodation, as applicable, as updated from time-to-time. The current applicable norms for wooden cottages shall be in line with the Ministry of Tourism notification dated Jan 19, 2018 ([https://tourism.gov.in/sites/default/files/2020-02/Hotel\\_Guidelines\\_From%2019-01-2018.pdf](https://tourism.gov.in/sites/default/files/2020-02/Hotel_Guidelines_From%2019-01-2018.pdf)) and for Tented Accommodation the current guidelines applicable as provided herewith <https://tourism.gov.in/sites/default/files/2020-09/Guidelines%20for%20Project%20Approval%20and%20Classification%20of%20Tented%20Accommodation2.pdf>. Where necessary and need arises from a pandemic or equivalent such as COVID-19, the Licensee shall adhere to the Applicable Laws issued by the relevant Government Instrumentality
- (f) Maintain clean and hygienic premises, conditions, to the satisfaction of the customers
- (g) Maintain landscaping aligned to the overall Eco-hill Park and in line with the DPR provided
- (h) Maintain Infinity Pool as per the Good Industry Practices
- (i) Carrying out periodic preventive maintenance
- (j) Undertake routine maintenance including prompt repairs of all elements and components of the Resort and amenities so as to ensure compliance with the requirements in the DPR
- (k) Undertake major maintenance, replacement of components and parts, repairs to structures, and repairs and development of associated facilities
- (l) Any other specific guidelines issued by Grantor from time-to-time and not in derogation of the rights of the Licensee under this Agreement

#### **5.1.21 Specific O&M obligations for Adventure Zone**

The Licensee shall adhere to the O&M obligations including, but not limited to:

- (a) At the minimum, shall at all times, comply and adhere to the operational guidelines issued by Ministry of Tourism under the 'Indian Adventure Tourism Guidelines 2018 Ver:2', as updated from time to time. The current applicable guidelines are available at ([https://tourism.gov.in/sites/default/files/2020-01/1527867024\\_gallery\\_image.pdf](https://tourism.gov.in/sites/default/files/2020-01/1527867024_gallery_image.pdf)).
- (b) The Licensee or the operator of the Adventure Zone shall necessarily be a member of the Adventure Tour Operators Association of India and shall renew its membership from time to time. The Licensee shall furnish a copy of the active membership card every year along with the Annual Financial Statements
- (c) Ensure safety and security of all the visitors at all times and shall ensure well trained personnel to operate the activities at the Adventure Zone
- (d) Seamlessly tie-up various activities planned across various land parcels as per the DPR
- (e) Ensure regular, scheduled and periodic preventive maintenance of all equipment and assets related to the Adventure Zone in proper order and shall submit periodic maintenance report to the Grantor every quarter

- (f) Maintain asset register providing details of all activities, assets and equipment – in whatever form operated used for activities of the Adventure Zone visitors including details such as purchase date, asset life, remaining life of asset, safety precautions, operational manual and related details which shall be updated time-to-time and a copy of which shall be provided to the Grantor every year along with Annual Financial Statements.
- (g) At all times maintain basic medical support facilities to address any exigency
- (h) Undertaking operation and maintenance of all assets in accordance with the specification and standards, operation and maintenance manual provided by the OEMs
- (i) Provide all basic civic facilities such as clean washrooms for male and female, drinking water facility at multiple places within the Adventure Zone
- (j) Any other specific guidelines issued by Grantor from time-to-time and not in derogation of the rights of the Licensee under this Agreement

#### **5.1.22 Specific O&M obligations for Food Courts**

The Licensee shall adhere to the O&M obligations including, but not limited to:

- (a) Upkeep and maintenance of the stalls as per the Good Industry Practices
- (b) Ensure basic facilities such as water, electricity, sewage network and solid waste management as per the Applicable Laws and requirements of the licensees of the food stalls
- (c) Shall ensure prompt payments for all municipal and infrastructure service providers
- (d) Ensure that the licenses entered into with the food and beverage providers are not in derogation to the provisions of this Agreement and are co-terminus with this Agreement
- (e) Operational times and activities adhere to the Eco-hill Park
- (f) Engage qualified professionals and maintenance staff as per the Applicable labour laws and other guidelines
- (g) Any other specific guidelines issued by Grantor from time-to-time and not in derogation of the rights of the Licensee under this Agreement

#### **5.1.23 Specific O&M obligations for Restaurants**

The Licensee shall adhere to the O&M obligations including, but not limited to:

- (a) Upkeep quality, hygiene and operational standards of the Restaurants as per the Good Industry Practices
- (b) Ensure engaging with suitable operators that have sufficient experience and capability to run the restaurants
- (c) Have licenses, permits and approvals from all relevant Government Instrumentality that is updated from time to time. The Licensee shall provide copies of all active licenses and permits to the Grantor every year along with Annual Financial Statements
- (d) Any other specific guidelines issued by Grantor from time-to-time and not in derogation of the rights of the Licensee under this Agreement

#### **5.1.24 Obligations related to Operation and Maintenance of the Project: O&M Works**

- (a) Effective from date of Commercial Operations of a Project Facility and until the end of the License Period, the Licensee shall undertake, at its cost and risk, the operation and maintenance of the relevant Project Facility (and of the Project from Project Completion)

including the buildings, the common areas, the landscape and other spaces, the parking lots/spaces, the infrastructure, works, fire-fighting and other systems and the common services and facilities, in accordance with the provisions of this Agreement, including the Specifications and Standards, Good Industry Practice, Applicable Laws and conditions of Applicable Permits, by itself or, subject to the provisions of Section 5.1.4 through suitable management/service contractors, without in any way relieving the Licensee of its responsibilities, obligations and liabilities as set out in this Agreement; provided that the service contractors shall be appointed not less than 2 (two) months before the Scheduled Project Completion or Project Completion, whichever is earlier. Notwithstanding anything contrary stated under any clause of this Agreement, the Licensee shall at least 2 (two) weeks prior to the appointment of such contractors inform the Authority of their appointment including details of the name, ownership, experience and transaction details related to the nature of contract and financial details of the contract with such contractors. While in general circumstances, the Authority shall not object to engage any contractors for such purposes as stated in this Clause, it may seek necessary additional details, and in cases it deems appropriate, object the appointment of any contractors by stating the reasons for such objection. The Licensee shall in such cases provide alternatives to be considered by the Authority. The decision of Authority in these cases shall be final.

- (b) The Licensee shall exercise appropriate control over the contractors and shall manage, direct, administer and supervise their working so as to ensure compliance with the provisions of this Agreement.
- (c) The Licensee shall make appropriate arrangements for security at the Site and abide by the security regulations/procedures prescribed by the Authority or any Government Authority from time to time. The Licensee may secure assistance of the police force for maintaining security upon payment of routine charges for such services.
- (d) The Licensee or the Persons claiming through or under it shall be free to determine the User Charges at market driven rates in respect of the use of the Project/Project Facilities or the goods, services, facilities or amenities provided thereat and shall have the right to demand, collect, retain and appropriate and revise the User Charges; provided that the same shall be in compliance with the requirements, if any, under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.

#### **5.1.25 Obligations related to Operation and Maintenance of the Project: Contractual Arrangements**

- (a) Subject to the provisions of this Agreement, the Licensee may enter into such Contractual Arrangements as it may deem fit and effective from the Commercial Operations Date of a Project Facility, grant in accordance with the terms thereof the possession of the relevant area of the Project Facility/Project Site to such Person (hereinafter the "**Contractual Counter Parties**"); provided that the use of Project shall not comprise the Prohibited Activities as for the applicable laws for the site jurisdiction and also not in competition with the activities of Authority.
- (b) The Licensee may determine, demand, collect, revise, retain and appropriate the User Charges for such Contractual Arrangements at rates determined by the Licensee;
- (c) All Contractual Arrangements shall be subject to the following terms and conditions:

- i. the terms and conditions of this Agreement are complied with and as applicable form a part of such Contractual Arrangements and the Contractual Counter Parties, if any, shall be bound by such terms and conditions and be liable and accountable in respect thereof;
- ii. the duration of such Contractual Arrangements shall be limited to and be co-terminus with/not exceed the License Period herein;
- iii. all such Contractual Arrangements shall be determined and terminated automatically and simultaneously on the expiry, determination or termination of this Agreement/the License Period, as the case may be;
- iv. such Contractual Arrangements shall come into effect and operation only upon the Licensee achieving the Commercial Operations Date of the relevant Project Facility in accordance with the provisions of this Agreement unless otherwise authorised by the Authority in writing;
- v. the Licensee shall at its cost carry out or cause the operation and the execution and existence of Contractual Arrangements which shall, in no manner, relieve the Licensee of its liability or obligations as set out in this Agreement;
- vi. the execution of Contractual Arrangements shall not relieve the Licensee of its liability or obligations as set out in this Agreement;
- vii. each Contractual Arrangement shall include provisions to the effect that in case of a conflict, direct or indirect, between the provision of this Agreement and the Contractual Arrangement on the other hand, the provisions of Agreement, as the case may be, shall prevail and such Contractual Arrangement shall stand modified to that extent;
- viii. the Licensee shall submit to the Authority for its information and record either a notarised true copy of the agreements/documents or a copy duly certified by Statutory Auditor/ Authorized Representative relating to the Contractual Arrangements within 60 (sixty) days of the Execution Date, modification or amendment thereof.
- ix. the Licensee's failure to comply with this Section 5.1.24 shall be at its cost, risk and consequence and constitute an Licensee Event of Default that shall entitle the Authority to terminate this Agreement in accordance with the provisions of Article 16 hereof.

#### **5.1.26 No Liability of Authority for Contractual Arrangements**

The Authority shall not be liable in any manner whatsoever to any Person in respect of or in connection with execution of documents/agreements, matters, understandings and/or disputes relating to the Contractual Arrangements between the Licensee and such Person or otherwise or for the Licensee's contracts of the Licensee with any third parties in relation to the Project. The Licensee shall indemnify and keep indemnified the Authority, its employees, agents, representatives and consultants from and against all costs, losses, damages, liabilities, proceedings, litigation, penalties etc. in this behalf.

#### **5.1.27 Obligations related to Safety, breakdowns and accidents during Operations Period**

- a) The Licensee shall ensure safe conditions at the Project Site and Project Components 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 Licensee shall undertake removal of obstruction and debris without delay.
- b) Licensee's responsibility for rescue operations in the Project Components, especially the Adventure Zone 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 services to the Users

#### **5.1.28 Overriding powers of the Authority**

If in the opinion of the Authority, the Licensee is in material breach of its obligations under this Agreement and in particular, the poorly maintaining the Project Components, 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 Licensee to take reasonable measures immediately for removing such hardship or danger as the case may be.

In the event the Licensee, upon notice under Clause 5.1.27(a), 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 Licensee 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 Licensee in accordance with the provisions hereof along with the Damages specified therein.

#### **5.1.29 Restoration of loss or damage to the Project Components**

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

#### **5.1.30 Safety Requirements**

- a) The Licensee 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 Licensee 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 Appendix L (the "Safety Requirements")
- b) Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to Safety Requirements shall be borne by the Licensee.

### 5.1.31 Maintenance of Complaints and Feedback Register

#### a) Complaints and Feedback Register

- i. The Licensee shall maintain a public relations office at the Resort and at entry ticket counter at the Adventure Zone, billing counter at Restaurants and at such appropriate location in Food Court where it shall keep a register (the "Complaint and Feedback Register") open to public access at all times for recording of complaints and feedback by any person (the "Complainant") in compliance with the minimum standards and services for the respective Project Component. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Licensee at each of the Project Component and its website so as to bring it to the attention of all Users.
- ii. 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 Licensee. Immediately after a complaint is registered, the Licensee shall give a receipt to the Complainant stating the date and complaint number.
- iii. Without prejudice to the provisions of this, the Authority may, in consultation with the Licensee, specify the procedure for making complaints in electronic form and for responses thereto.

#### b) Redressal of complaints

- i. The Licensee 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 Licensee to the Complainant under a certificate of posting.
- ii. Within [7 (seven)] days of the close of each month, the Licensee 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 Licensee to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Licensee 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.

### 5.1.32 Classification for Resort

- (a) Within six (6) months from the date of receiving Completion Certificate for MDO-1, the Licensee shall achieve appropriate classification provided by the Ministry of Tourism for the Resort:
  - i. At least 3-star rating certification for the Resort from the Ministry of Tourism in case of wooden cottages as per guidelines viz. "Guidelines for Approval of Hotel Projects and Star Classification of Operational Hotels" ([https://tourism.gov.in/sites/default/files/2020-02/Hotel\\_Guidelines\\_From%2019-01-2018.pdf](https://tourism.gov.in/sites/default/files/2020-02/Hotel_Guidelines_From%2019-01-2018.pdf)) as updated from time-to-time; **OR**
  - ii. 'Deluxe' category rating for the Resort from the Ministry of Tourism in case of tented accommodation (luxury tents) as per guidelines viz., "Guidelines for Project Approval and Classification of Tented Accommodation" (<https://tourism.gov.in/sites/default/files/2020-09/Guidelines%20for%20Project%20Approval%20and%20Classification%20of%20Tented%20Accommodation2.pdf>) as updated from time-to-time

- (b) All the costs and obligations related to obtaining and maintaining such classification shall be borne by Licensee.
- (c) Licensee shall, at all times during the License Period continue to maintain the above for Project Component – Resort and shall submit a copy of the active license provided by the Ministry of Tourism, each year, along with its Annual Financial Statements.
- (d) Any failure to maintain or renew the classification as specified in this Clause 5.1.32 (a) shall be construed as Licensee Event of Default under the Clause 15.1.1 and shall be dealt as per the terms therein.

### 5.1.33 Certification for Adventure Zone

- (a) Within six (6) months from the date of receiving Completion Certificate for MDO-1, the Licensee shall obtain at its own costs, quality appropriate certification as provided below for the various activities and equipment in the Adventure Zone:
    - i. ISO certification 17842 including Nos., 17842-1:2015, ISO 17842-2:2022, ISO 17842-3:2022.
- OR**
- ii. European Standard: EN 13814:2019 including Nos., 13814-1, 13814-2 and 13814-3
- (b) Licensee shall, at all times during the License Period continue to maintain the above certifications for Project Component – Adventure Zone and shall submit a copy of the active certificate provided by the competent agency, each year, along with its Annual Financial Statements.
  - (c) Any failure to maintain or renew the classification as specified in this Clause 5.1.33 (a) shall be construed as Licensee Event of Default under the Clause 15.1.1 and shall be dealt as per the terms therein.

## Section 5.2 Obligations of Preferred Bidder

### 5.2.1 Shareholding Lock-In

- (a) The Licensee shall not undertake or permit any Change in Ownership except with the prior written approval of the Authority
- (b) The Preferred Bidder shall hold a minimum of 51% of the paid-up equity share capital of the Licensee at all times during the period up till the Tenth (10<sup>th</sup>) anniversary of the Execution Date ("**Lock-in Period**"). No change in composition of the Preferred Bidder shall be made Lock-in Period. Any transfer of such share capital after such Ten (10) years shall require the prior written approval of the Authority, which shall not be unreasonably denied. Provided, nothing contained in this sub-section shall preclude or prevent pledge of the Preferred Bidder's shares in the Licensee in favour of Lenders as security for the Financial Assistance and enforcement thereof in accordance with this Agreement and/or the Financing Documents.

### 5.2.2 Funding Obligation

The Preferred Bidders shall ensure that the Licensee has, at all times, sufficient funds to ensure the due discharge of its payment obligations to the Authority under this Agreement. In the event the Licensee is not able to discharge its payment obligations to the Authority under this Agreement on account of lack of funds, the Authority shall have the right to claim and recover from the Preferred Bidders (jointly and severally) and the Preferred Bidders shall have the obligation to pay, all such amounts that are due and payable by the Licensee to the Authority under this Agreement.



### 5.2.3 Obligations relating to management of the Licensee

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

### 5.2.4 Obligations in Respect of the Licensee

The Preferred Bidder shall in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the following areas of the Licensee's activities such that its experience and expertise become available to the Licensee on an on-going basis:

- (a) Preparation of the DPR and the Designs and Drawings;
- (b) Arranging the financing for the Project, including mobilization of debt and equity;
- (c) Procurement of Applicable Permits for commencing and implementing the Project;
- (d) Execution of Project Contracts in respect of engineering, procurement, construction, management, Operation/or and Maintenance of Project/Project Assets.
- (e) Timely implementation of the Project in accordance with the provisions of this Agreement, including the Specifications and Standards, the Applicable Laws, the terms of the Applicable Permits and Good Industry Practice.
- (f) Compliance with and implementation of the Environment Management Plan;
- (g) Marketing of the Project;
- (h) Compliance with the provisions of this Agreement relating to liability and indemnification;
- (i) Implementation of measures for safety, security and protection of the works, property, life and materials at the Site and the environment.

### **Section 5.3 Obligations of Authority**

Transfer the Project Site on leave and license basis free from Encumbrance to the Licensee from the Government Instrumentality 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.

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Agreement, the Authority agrees and undertake as under:

#### **5.3.1 Applicable Permits**

- (a) The Authority shall, at the request of the Licensee , grant Applicable Permits with reasonable promptness that are in its authority and capacity to grant and, as the case may be, assist but without guarantees and/or without assuming any responsibility in that behalf and issue recommendatory letters and make best efforts to assist the Licensee in obtaining all the Applicable Permits from Government Authorities, Authorizations to import equipment and materials required for the Project and immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Licensee in connection with the implementation of the Project, including renewals thereof; provided that nothing contained in this provision shall relieve the Licensee of its obligations under this Agreement to obtain the Applicable Permits and of being in compliance with the requirements of the same, provided further that the Licensee (a) provides to the Authority all necessary relevant details and other information as may reasonably be required by the Authority and (b) keeps the Applicable Permits in force and effect throughout the License Period.
- (b) Upon written request from the Licensee, assist the Licensee on best effort basis in obtaining access to all necessary infrastructure facilities and utilities, including water, sewerage, electricity and telecommunication facilities at rates and on terms no less favourable to the Licensee than those generally available to commercial customers receiving substantially equivalent facilities/utilities.

#### **5.3.2 Tax Benefits**

In cases found appropriate the Authority may, at the request of the Licensee, issue recommendatory or supporting letters to any Government Authority recommending tax or duty concessions/ benefits to the Licensee / the Project.

#### **5.3.3 Off-site Infrastructure**

The Off site infrastructure (Road, Power, Sewerage and Water) are being provided by different agencies like Municipal Corporation, Telangana Power Distribution Company Limited (TSPDCL) etc. The Licensee is required to apply to the concerned Authorities and obtain the necessary approvals in this regard, on its own and at its own cost. The Authority will extend all necessary support, on best effort basis, to the Licensee based on written request of the Licensee

### **Section 5.4 Others**

- (a) In the event of any action or suit to prevent, prohibit or otherwise challenge the Project by any Government Authority, trade union, environmental group or any other Person or organization, which might reasonably be expected to materially and adversely affect the Project Assets, the

implementation of the Project or the enjoyment by the Licensee of its rights and benefits under the License granted herein, the Authority shall, if requested by the Licensee in writing, on a best effort basis, take such reasonable action as is available to it to challenge and to mitigate such effects.

- (b) support, cooperate with and facilitate the Licensee in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (c) upon written request from the Licensee, execute the Substitution Agreement

#### **Section 5.5 Obligations relating to refinancing**

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

#### **Section 5.6 Maintenance Requirements**

The Licensee shall procure that at all times during the Operation Period, the Project Components 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 Appendix K.

## ARTICLE 6 PROJECT IMPLEMENTATION

### Section 6.1 DPR and Designs

- (a) The Licensee, immediately after grant of the License but no later than 45 days from the Execution Date, shall at its cost prepare and submit to the Authority and the Independent Expert, a draft detailed project report (DPR), Designs and Drawings for each Project Component.
- (b) The DPR shall, *inter alia*, set out the full details of the developmental activities proposed to be carried out by the Licensee for implementation of the Project, proposed order, sequence and method of working, the steps, procedures and processes undertaken and to be undertaken by the Licensee, the Project Implementation Schedule with the Project Milestones, detailed schedule bar charts / PERT networks with milestone dates, master plan and building plan of the Project, detailed designs, quality assurance procedures, including the site development, proposed construction activities, names of likely Sub-contractors/ vendors etc., plans for mobilization of finances, plans for marketing the Project, proposed arrangements for operating and managing the Project, the organisation chart of the Licensee and such other similar details which define and clarify the method and direction of the Licensee's plans for the implementation of the Project in accordance with Project Completion Schedule as set forth in Schedule G.
- (c) The Authority/Independent Expert shall review the DPR, Designs and Drawings submitted by the Licensee for conformity with the Specifications and Standards and, subject to the provisions of sub-section (d) herein below, communicate Authority's approval immediately.
- (d) Within [15 days] of the receipt of DPR and Designs and Drawings, the Authority/Independent Expert shall review the same and convey its observations in case it has any objection to the DPR and/or Designs and Drawings or any part thereof, in writing and seek clarifications or suggest changes or modifications or corrections thereto in writing. Thereupon, within 7 days of such communication, the Licensee shall provide necessary clarification to the Authority or re-submit revised DPR and/or Designs and Drawings or part thereof, as the case may be, after incorporating the changes, modifications or corrections suggested by the Authority. The Authority/Independent Expert shall give its observations, if any, within [7 (seven)] days of receipt of the revised DPR, Designs and Drawings
- (e) If the Authority/Independent Expert does not provide any further written objections to the DPR and the Design and Drawings submitted to it by the Licensee within ten (10) days of resubmission, the Authority shall be deemed to have approved such DPR and Design and Drawings and the Licensee shall be entitled to proceed with the Project accordingly. However, nothing in this Agreement shall derogate from the Licensee's obligation to obtain the Applicable Permits in relation to the construction and commencement of commercial operations/ use of the Project Facilities from the relevant authorities under Applicable Laws and Development Controls.
- (f) Notwithstanding any express or deemed approval or failure to review by or the comments or observation of the Authority in relation to the DPR and Designs and Drawings, the Licensee shall be solely responsible for any defect and/or deficiency therein or any part thereof and accordingly the Licensee shall at all times remain solely responsible for the technical

- feasibility, operational capability and reliability of the Project and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- (g) The Licensee may, with the prior written approval of the Authority, make or permit alterations in or addition to any DPR and Designs and Drawings, specifications and calculations approved or deemed to be approved by the Authority under this Agreement.
  - (h) Designs, drawing or specifications, if any, provided by the Authority to the Licensee shall only be indicative and the Licensee shall accept the same at its sole risk, cost and consequence.
  - (i) The Authority shall not be responsible or liable in any manner for the accuracy, completeness or otherwise of the DPR and Designs and Drawings and the construction and implementation of the Project/Works by the Licensee on the basis thereof, irrespective of any perusal or review thereof or comment thereon by the Authority, any Government Authority.
  - (j) The DPR, Drawings and Designs shall elaborate on how Licensee's proposed plans shall ensure that it shall obtain the classification for its Resort as specified in Clause 5.1.32 and certification for its Adventure Zone as specified in Clause 5.1.33.

## **Section 6.2 Development of Site and Implementation of Works**

- (a) The Licensee shall commence the Works immediately after taking necessary sanction of the Competent Authority under Applicable Laws and Development Controls for the master plan and building plans to achieve Minimum Development Obligations of all Project Components.
- (b) The Licensee shall, by itself or through its Contractors, at its cost and risk undertake the development of the Site, including land filling, levelling, clearing, shifting of utilities, landscaping and demarcation and division of the Site etc. for establishment of the Project Facilities, in accordance with the provisions of this Agreement, including the Specifications and Standards and Good Industry Practice.
- (c) The Licensee shall arrange at its cost the infrastructure facilities, including but without limitation, the power and water supply, necessary for carrying out the construction, operations and maintenance of each of the Project Component. Each of the Project Facilities and Project Component shall have adequate facilities with respect to water supply, power, entry & exit arrangement, fire safety provisions, etc.
- (d) The Licensee shall, by itself or through Contractors at its cost and risk establish, install, equip, provide, construct, as the context admits or requires, and commission the Project Facilities and Project Component in accordance with the requirements of the provisions hereof, including the Specifications and Standards and provide the same to the users/others in an equitable, fair and non-discriminatory manner.
- (e) The Licensee or the Persons claiming through or under it, as the case may be, shall be responsible for doing all such acts, deeds and things as may be necessary and expedient for establishing the Project including, without limitation, procuring at its/their own risk and cost all goods, materials, things and services necessary for the development and construction thereof and arranging at its/their cost the construction power, water, materials and labour required for establishing the Project, without in any way relieving the Licensee of its obligations as set out in this Agreement. Subject to the provisions of clause 6.3 (c) hereof the Licensee shall not be entitled to nor shall it seek or raise any demand for any extension of time for completion of construction on account of any

shortage of any material or resources or delay in procurement of the same for any reason whatsoever.

- (f) The Licensee shall on and from the Compliance Date, in accordance with the Specifications and Standards, develop the Site and requisite infrastructure facilities so as to:
- (i) efficiently manage, make available, maintain and operate the Project consistent with prudent standards of safety and technical sufficiency;
  - (ii) provide the necessary resources for the operations and maintenance of the Project;
  - (iii) provide non-discriminatory access of the Project Facilities within the Project to the users and other persons.

### Section 6.3 Project Completion

- (a) The Project shall be complete only when **Completion Certificate** of the Project have been issued by the Nodal Officer or Independent Expert, (if an Independent Expert has been appointed) with the due approval of the Authority, in relation to all the proposed Project Facilities and Project Component constituting the Licensee's Minimum Development Obligations (**MDO-1**). Once the Completion Certificates have been issued in relation to all the proposed Project Facilities, the Independent Expert with the due approval of the Authority, shall issue a certificate confirming the completion of construction of the Project in accordance with the provisions of Section 6.3 (b) (the "**Project Completion**"). The Completion Certificate shall be issued, only after Constructions Works in respect thereof have been completed and the necessary Applicable Permits in respect thereof inter-alia the Occupancy Certificate and power connection from concerned Government Authorities/ departments, etc, have been duly procured. The Completion Certificate shall specify the date on which, in the opinion of the Independent Expert/Authority, the relevant Project Phase was completed. Similarly, the Independent Expert/Authority shall specify the date on which in its opinion the Project Completion was achieved.
- (b) For the avoidance of doubt, Project Completion herein refers to the completion of 100% of the Project Facilities and all Project Components as detailed under **MDO-1** at Appendix B and C and as per the approved DPR;
- (c) The Licensee shall achieve Project Completion in accordance with the provisions of this Agreement within a maximum period of Twelve (12) months from the Execution Date (the "**Scheduled Project Completion Date**"), failing which the Licensee may apply to the Authority for grant of extension of time for Project Completion up to a maximum additional period of 6 (six) months from such date and the Authority may permit the same subject to the payment of liquidated damages by the Licensee to the Authority at 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 the MDOs are achieved
- (d) In the event that Project Completion does not occur even within 6 months from the Scheduled Project Completion Date (extended time period granted to the Licensee by the Authority subject to payment of damages in terms hereof), for any reason other than Force Majeure or reasons attributable to the Authority, the Authority shall be entitled to invoke the Performance Security and further, to terminate this Agreement for a Licensee Event of

Default in accordance with the provisions of Article 16 hereof. Provided that instead of terminating this Agreement, the Authority may in its sole discretion extend the time for achieving Project Completion on such terms and conditions, as it deems appropriate.

- (e) Notwithstanding the foregoing, in the event of any unforeseen delay in the issuance of any clearance/ permits by any Government Authority/ department, the Authority shall, extend the Construction Period by the period of such delay.
- (f) The Licensee shall commence Commercial Operations of a Project Components only after issuance of Completion Certificate by the Authority/ Independent Expert in respect thereof.

### Section 6.3 A Tests

- a) At least 15 (fifteen) days before the likely completion of the construction of the Project/ or a Project Facility, the Licensee shall notify the same in writing to the Authority/ Nodal Officer/ the Independent Expert as the case may be and of its intention to conduct the Tests for completion of the Construction Works. Such notice will set out the place, date and time when such Tests will be performed (which shall not be on a date which is earlier than 10 (ten) days following the date of such notice and at least 7 (seven) days in case of any subsequent Tests or retests). The Authority shall have the right to attend such Tests. The Independent Expert/ Nodal Officer shall attend such tests with a view to determine whether completion of construction has occurred.
- b) Within one (1) month from the date of inspection in accordance with sub-section (a) above, the Independent Expert shall issue a Completion Certificate (the "**Completion Certificate**" as indicated in Appendix J) with the due approval of Authority on successful completion of the Tests if the "Project", or any Project Facility thereof, to the Independent Expert's reasonable satisfaction, can legally, safely and reliably be placed for Commercial Operations ("**COD**") and is found satisfactorily complete in all respects.
- c) If the Independent Expert certifies to the Parties that it is unable to issue the Completion certificate because of the events or circumstances which excuse the performance of the Licensee's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Licensee shall re-schedule the Tests and hold the same as soon as reasonably practicable.
- d) The Licensee shall bear all the expenses relating to Tests under this Agreement. Provided, however, if the Authority requires the Licensee to conduct any Test that is not specified in this Agreement, the Authority shall forthwith reimburse to the Licensee, the expenses incurred by the Licensee thereon.
- e) The Completion Certificate shall be issued for the entire Project – i.e., completion of all Project Components. The Licensee shall not commence operations of any of the Project Components without obtaining the Completion Certificate. Any failure to adhere to this requirement entitles the Authority to consider it as Licensee Event of Default.

### Section 6.3 B Inspection and Certification by Authority

- (a) After the completion of the Construction Works of the Project or any Project Facility, the Licensee shall at its cost procure the issuance of the necessary occupancy certificate/ Permits for the Project Facility(ies) from the concerned Government Authorities, if any required within 30 (thirty) days of the date of such completion.

- (b) The Licensee shall procure the preparation and submission of the necessary documentation for complying with and obtaining the occupancy certificate.
- (c) The Licensee should submit 'As-Built drawings' in its entirety for the entire Project and each Project Component before the issue of Completion Certificate in respect of the entire Project, to the satisfaction of Authority/ Government Authorities, for reference of Authority at a future date.
- (d) Whenever obligatory inspection by the concerned Government Authorities is required, the same shall be arranged and attended to by the Licensee or its Contractors or authorised representatives.
- (e) All the deficiencies pointed out by the concerned Government Authorities/ Authority during the inspection shall be promptly attended by the Licensee at its cost to the entire satisfaction of the inspecting authorities.
- (f) The Authority shall provide and procure the necessary cooperation, assistance and facilitation to the Licensee during inspection, testing and certification of the Project by Government Authorities and in the grant of requisite certificates.

**Section 6.3 C Inspection and Certification by Competent Agencies**

- (a) The Licensee shall obtain certifications requisite under Clauses 5.1.32 and 5.1.33 for various Project Components

**Section 6.4 No Breach**

- (a) The Licensee shall not be considered to be in breach of its obligations relating to the Project nor shall it incur or suffer any liability if and to the extent performance of any such obligations is affected by or on account of any of the following:
  - (i) Force Majeure Events, subject to provisions of Article 14;
  - (ii) a material delay, impediment, default or prevention due to or caused by the Authority;
  - (iii) Compliance with the instructions or directions of the Authority/Independent Expert/Consultant/ Expert/ any Government Authority other than instructions issued as a consequence of a breach or default by the Licensee of any of its obligations hereunder;
  - (iv) Extensions granted under the provisions of this Agreement, or specific extensions granted by the Authority or extensions made by the mutual agreement of the Parties (provided that the payments required to be made by the Licensee under this Agreement in respect of the grant of such extensions shall be paid);
  - (v) Measures taken to ensure the safe use of the Project Facilities except when the unsafe conditions have been occasioned by the Licensee's failure to perform its obligations under this Agreement.

Notwithstanding the above, the Licensee and the Authority may, mutually agree to extend the time period mentioned hereinabove for reasons that they may deem expedient in the interest of the Project.



## ARTICLE 7 PROJECT MONITORING

### Section 7.1 Nodal Officer or Independent Expert

- (a) The Authority shall nominate a Nodal Officer from their Engineering Department for monitoring the Progress of the Project, or alternatively, the Authority may decide to appoint an Independent Expert/Consultant, for the purpose. The Nodal Officer/Independent Expert, as the case may be, shall monitor the implementation of the Project, review and certify on behalf of Authority with due approval from Authority, the DPR and the Designs and Drawings, conduct on behalf of the Authority the periodic verification of the progress in the construction. HMDA may appoint an Independent Expert/Consultants, if required, who shall discharge the duties and functions substantially in accordance with the terms set forth in Appendix M and elsewhere in this Agreement. The Nodal Officer/Independent Expert shall pursue the Licensee for submission of periodic reports (at least once every quarter) in respect of its functions.

It is hereby clarified that wherever in this Agreement any certification or verification has been stated to be needed or undertaken by the Independent Expert, the same shall be done or undertaken by the Nodal Officer in the event no Independent Expert has been appointed.

- (b) In case, HMDA hires the services of Independent Expert/Consultant, the cost and expenses of the same shall be borne entirely by the Licensee and an amount equivalent to two months retainer of the Independent Expert/Consultant shall be retained in the Escrow Account to ensure the due payment to the Independent Expert.
- (c) For appointment of the Independent Expert, the following process shall be followed:
- i. The Authority shall provide a list of five firms to the Licensee from which the Licensee will suggest three firms.
  - ii. The Authority shall select and appoint one firm, from amongst the three firms suggested by the Licensee, as the Independent Expert.
- (d) For appointment of the Independent Expert, the following process shall be followed:
- iii. The Authority shall provide a list of five firms to the Licensee from which the Licensee will suggest three firms.
  - iv. The Authority shall select and appoint one firm, from amongst the three firms suggested by the Licensee, as the Independent Expert.

#### 7.1.1 Appointment of Independent Expert

- (a) The Authority may, after the end of the term of appointment of the Independent Expert/Consultant, from time to time, appoint Experts to assist it in monitoring the implementation of the Project by the Licensee, the Transferees and other persons for compliance with the provisions of this Agreement, including the Specifications and Standards and for inspection, verification and reporting in this behalf. The remuneration, cost and expenses of the Experts shall be borne by the Licensee.
- (b) The Expert(s) shall have no authority to relieve the Licensee of any of its obligations or responsibilities under this Agreement. Any proposal, inspection, examination, testing,

consent, approval or similar act of or by an Expert(s) (including absence of disapproval) shall not relieve the Licensee from its obligations and responsibilities hereunder.

## **Section 7.2 Reporting and Inspection**

The Licensee shall, in addition to the reporting requirements set forth elsewhere in this Agreement, comply with the reporting requirements hereunder:

### **7.2.1 Construction Period Reports**

- (a) The Licensee shall within 30 (thirty) days after the execution of the EPC Contract provide to the Authority / Nodal Officer/Independent Expert a copy of the construction schedule created using network techniques. A detailed explanation of the construction methodology, outlining the quality assurance, safety and surveillance plan shall also be included.
- (b) The Licensee shall provide to the Authority /Nodal Officer/ Independent Expert a quarterly progress report during the Construction Period, which shall contain the following information

Summary of Progress: Summary of the progress of the Project for that month which shall detail:

- i. any areas of significant concern and the action being taken to resolve any significant difficulties;
- ii. the actual progress made during that month against the construction schedule including a description in reasonable detail of the work carried out;
- iii. any matters which have come to light which are likely materially and adversely to affect the construction of the Project;
- iv. any potential or actual deviations from the construction schedule, the Specifications and Standards and Good Industry Practice or otherwise confirmation that construction is proceeding in accordance therewith;
- v. a commentary on the progress of construction as against the business plan;
- vi. areas of concern or problem or bottlenecks, impact and corrective action plans, revised resource planning details. The critical path schedules shall be updated and included as part of this report in order of priority.

Completion: Details of any changes to the proposed date of completion of construction and the reasons for such changes; and

Government Approvals: Written confirmation that all Applicable Permits then required are in full force and effect including a list of such permits.

- (iii) The Licensee shall promptly carry out at its cost such further works as may be necessary to remove the defects and deficiencies observed by the Authority /Nodal Officer/ Independent Expert and ensure construction of the Project/Project Facilities is in all respects in accordance with the provisions of this Agreement.

### **7.2.2 Operation Period Reports**

Throughout the License Period, the Licensee shall provide to the Authority/Independent Expert, a quarterly operation and maintenance progress report during the Operation Period, in mutually agreed

format, stating in reasonable detail the condition of each of the Project Component, including its compliance or otherwise with the Maintenance Requirements and the Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Expert. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification. The report shall, in general, shall contain the following information:

- i. Summary of Progress: Summary of operating and financial results for that quarter and explanations of any major variation between actual and projected results;
- ii. Revenue: Details of the Revenue for the relevant quarter from each source
- iii. Maintenance Plan: Maintenance plan for the Project for the next quarter and a report on maintenance carried out during the previous quarter (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan).
- iv. The Independent Expert shall inspect the Project Components 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 Licensee within [7 (seven)] days of such inspection.
- v. Remedial Measures: The Licensee shall, at its own costs and promptly, repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report 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 Licensee shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

### **7.2.3 Additional Information**

The Licensee agrees to provide the Authority/Nodal Officer such further information as any of them may reasonably request in order for them to monitor the progress and performance of the Project.

### **7.2.4 Inspection**

The Authority/Nodal Officer / Independent Expert/ Expert, the relevant Government Authorities, and their representatives shall at all reasonable times and upon reasonable notice, have access to the Project Site, the Project and the Works and all related designs, documents, reports, records technology and workmanship, to review progress of the construction, operation and maintenance of Project and to ascertain compliance with any of the requirements of this Agreement, including the Specifications and Standards and to check the progress of the works or for performing statutory duties and the Licensee shall provide the necessary cooperation and assistance to them in this behalf

Provided that any failure on the part of the Authority, the concerned Government Authorities to inspect any work, material, equipment and workmanship etc. shall not, in relation to such work etc. (i) amount to any consent or approval of the Authority nor shall the same be deemed to be a waiver of any of the rights of the Authority under this Agreement; and (ii) release or discharge the Licensee from its obligations or liabilities under this Agreement in respect of such work etc.

## ARTICLE 8 FINANCIAL COVENANTS

### Section 8.1 Financing for Project

- (a) The Licensee agrees and undertakes to obtain financing for the Project in the form of equity, debt and other sources, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project.
- (b) The Licensee may assign its rights, or interest or create a Security Interest in respect of its rights under this Agreement or any part thereof, including right, and interest under this Agreement, in and to the Project Assets (excluding the Project Site or any part thereof and the rights relating thereto), and its right to receive User Charges in favour of Lenders for securing the Financial Assistance provided or agreed to be provided by the Lenders under the Financing Documents; provided that any such assignment or Security Interest shall be consistent with the provisions hereof and the lenders are made aware of the same. For the avoidance of doubt the Licensee shall not have the right and authority to mortgage, encumber or create, permit or allow the subsistence of any Security Interest whatsoever on the Project Site or any part thereof, in favor of the Lenders or any person in any form, manner, device or method.
- (i) Provided that the Licensee shall procure prior permission of the Authority as to the creation of any Security Interest in favor of the Lenders and the Authority shall be informed by the Licensee as to the creation of any Security Interest in favor of the Lenders, together with the Lenders particulars within a period of 14 days from the date such Security Interest comes into existence and provide to the Authority within such time notarized true copies of documents/agreements relating thereto. Failure to do so shall amount to an event of default on the part of the Licensee and any consequential failure or inability on the part of the Authority to provide any notice or intimation to such Lender, in terms of the relevant provisions of this Agreement, if any required, shall be at the risk and responsibility of the Licensee only. Provided that at any given time the Authority shall give such approval only in respect of one Lender; such Lender acting for itself and as agent of the other Lenders (who are providing financing for the Project).
- (ii) Provided further in the event of termination of this Agreement by efflux of time or otherwise, such assignment/Security Interest shall stand extinguished upon payment of compensation by the Licensee to the Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Agreement. The Licensee shall primarily be responsible to ensure that the prospective lenders are made aware of this provision and a suitable provision to this effect is incorporated in the financing & security documents to execute between the Licensee and the Lenders. If the Licensee fails to compensate the Lenders within a stipulated period as mentioned in the financing documents, the lenders, in consultation with the Authority, shall step in and appoint a suitable entity as Licensee that has agreed to act as such on the terms and conditions of this agreement and financing and security agreements.

- (iii) The Licensee shall primarily be responsible to ensure that the prospective lenders are made aware of this provision and a suitable provision to this effect is incorporated in the financing & security documents to execute between the Licensee and the Lenders.
  - (iv) Provided further, nothing contained in sub-section (b) of this Section 8.1 shall (i) absolve the Licensee from its responsibilities to perform/discharge any of its obligations under and in accordance with the provisions of this Agreement; (ii) authorise or be deemed to authorise the Lenders to implement and execute Project themselves and (iii) under any circumstances amount to any guarantee from or recourse to the Authority.
- (c) Except as stated in sub-section (b) above or elsewhere in this Agreement, the Licensee shall not assign its rights, interest or obligation or create a Security Interest with respect to its rights under the Agreement or any part thereof in favour of any Person.
- (d) The Authority shall assist the Licensee as necessary and mutually agreeable, to enable the Licensee to achieve Financial Closure. Such assistance shall include discussion in good faith and the obligation of the Authority to consider reasonable modifications to this Agreement as may be required by the Lenders and execution of such further appropriate documentation or additional writings, in order to facilitate the process of achieving Financial Closure and which do not materially and adversely affect the rights and interests of the Authority hereunder or impose additional material liabilities on the Authority.
- (e) The Agreement entered by the Licensee with the lenders will be sub-ordinate to the License Agreement entered by the Licensee with the Authority.

## **Section 8.2 Escrow Account**

- 8.2.1 The Licensee shall prior to the Compliance Date open and establish an Escrow Account with a Nationalised or Scheduled Bank, acceptable to the Authority (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement (Refer to Appendix N).
- 8.2.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Licensee, the Authority, the Escrow Bank and the Lenders, for a period until the end of License Period.

### **8.2.3 Deposits into Escrow Account**

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

- i. All revenues, inflows and outflows of cash and receivables on account of Project or otherwise that accrue or arise to the Licensee under, in connection with or pursuant to the implementation of the Project under this Agreement including but not limited to all receivables under or pursuant to the Transaction Documents (including without limitation Financial Assistance, the equity contributions, all User Charges, compensation payable by the Authority upon termination of this Agreement pursuant to Article 16), shall be credited to or debited from, as the case may be, the Escrow Account. The Escrow Bank shall be instructed to provide monthly statements relating to such account to the parties.
- ii. The Licensee shall deposit all cash and receivables from the Project, including collection of User Charges, into Escrow Account, which shall at all times including at the time of termination or expiry of the Agreement, be first used to ensure the payments due and payable to the Authority in

terms of this Agreement and, subject to timely payments thereof and retention of the amounts required to ensure the payment of the fees and expenses to the Independent Expert, transfer the remaining balances to any of the accounts of the Licensee or to the order of the Licensee in accordance with the terms for the Escrow Agreement. Provided always, all the payments by the Licensee to the Authority under this Agreement in terms with the agreement shall have priority over all other payments that are due and payable by the Licensee on any account whatsoever, excepting the payment of taxes by the Licensee to any Government Authority.

#### **8.2.4 Withdrawals from Escrow Account**

The Licensee 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:

- i. all Taxes due and payable by the Licensee for and in respect of the Project;
  - ii. all payments relating to development of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
  - iii. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
  - iv. 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;
  - v. Fee due and payable to the Authority;
  - vi. monthly proportionate provision of Debt Service due in an Accounting Year;
  - vii. all payments and Damages certified by the Authority as due and payable to it by the Licensee;
  - viii. monthly proportionate provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;
  - ix. any reserve requirements set forth in the Financing Agreements; and
  - x. balance, if any, in accordance with the instructions of the Licensee.
- iii. The Escrow Account shall be opened and operated at Hyderabad Branch of any Nationalised/Scheduled bank (the Escrow Bank), as approved by the Authority.
  - iv. The Escrow Bank shall hold the Escrow Account and such monies, from time to time, as may be deposited in the said Escrow Account subject to conditions herein contained and/or in the Escrow Agreement.
  - v. The monies held by the Escrow Bank in pursuance of this Agreement shall not be considered as part of the assets of the Escrow Bank, and, being trust property shall not, in the case of a bankruptcy or liquidation of the Escrow Bank, be considered as its assets and shall not be available to the liquidator, bankruptcy trustee or other creditor of the Escrow Bank. The Escrow Bank shall not have any lien or be entitled to exercise claim on the monies in the escrow account.
  - vi. The Escrow Bank shall maintain the Escrow Account for the tenor of the License Period or until receipt of joint written confirmation from the Parties for the termination thereof. Upon termination of the escrow account the Escrow Bank shall transfer any balances in the account to the

Licensee or to the order of the Licensee; provided there are no outstanding claims of the Authority on the Licensee.

- vii. The Licensee shall duly appoint authorized signatories ("Authorized Signatories") for operating the Escrow Account from among its personnel and inform their names to the Escrow Bank and the Authority. Such Authorized Signatories shall, on or prior to the payment date, issue and sign cheques in favour of the Authority for payments due and payable by the Licensee to the Authority hereunder, including the Annual Fee, the enhancement of the Security Deposit and the Charges and Expenses.

### **Section 8.3 Payments to Authority**

In consideration for the grant of the License, the Preferred Bidder/ Licensee shall make the following payments/provide following facilities to the Authority in the manner and at the times mentioned hereunder:

#### **8.3.1 Annual Fee**

- a. In consideration of the grant of the License, effective from the date of issuance of Completion Certificate or beginning of 13<sup>th</sup> month from the Compliance Date, whichever is earlier and from thereon throughout the License Period, the Licensee shall in accordance with the provisions hereof, pay to the Authority, Annual Fee which shall be the **higher** of the following:
- i. 10% of Gross Annual Revenue of the particular year,
  - ii. Quoted Fee of Rs. \_\_\_\_\_ quoted by the Preferred Bidder in its Price Bid plus the Reserve Annual Fees of Rs. 2,00,00,000 (Rupees Two Crores only), which together is escalated at 5% every year from the Execution Date, until the particular year under consideration (as more elaborately shown in *Appendix Q: Annual Fee Table based on Quoted Fee of the Selected Bidder for the year under consideration*).
- b. In case the date of issuance of Completion Certificate or the beginning of 13<sup>th</sup> month from the Compliance Date falls in the middle of a Financial Year, the Licensee shall for that year make a pro-rata Annual Fees for the remaining months in that Financial Year and shall commence the payment of full Annual Fees from the following Financial Year.
- To illustrate, in case the Completion Certificate is issued for example on 20<sup>th</sup> July 2024, for the first year of Operations Period, the Licensee shall pay "Quoted Fees x 5% escalation as applicable x 254/365" where 254 is the remaining days in the Financial Year.*
- c. The Annual Fee quoted by the Preferred Bidder in absolute terms (in figures) in its Price Bid for a particular year shall be paid annually, before the 10th day of the first month of every Financial year in advance during each year of the License Period.
- d. At the end of each Financial Year, based on finalised audited accounts and the determination of the audited Gross Revenue for that year as certified by the statutory auditor of the Licensee, necessary adjustments shall be made in respect of the Annual Fee paid for the year under consideration. If in any particular Financial Year, the Annual Fee paid for that Financial Year as per the Quoted Fees is less than 10% of Annual Gross Revenue for that year, then the Licensee shall, within 30 days of finalisation of its accounts for the particular Financial Year, pay the difference between the amount payable based on the 10% of Annual Gross Revenue and the amount already paid as per the Quoted Fee for that particular year.

- To illustrate, if the Licensee has paid Rs. 100 as Annual Fees on 5<sup>th</sup> April 2025 (for the Financial Year 2025-26) and Licensee has further paid Rs. 105 as Annual Fees on 5<sup>th</sup> April 2026 (for the Financial Year 2026-27). Further, on 15<sup>th</sup> July 2026, during the finalization of Annual Accounts for Financial Year 2025-26, it has been identified by the Licensee that the 10% of the Annual Gross Revenues is Rs. 115, the Licensee shall before 14<sup>th</sup> August, 2026 shall make a payment of Rs. 15 (Rs. 115 – Rs. 100) to the Authority along with submission of audited Annual Financial Statements. The Authority may at its discretion, is authorized to engage Independent Auditor as per Clause 8.3.1 (h) to validate the veracity of the Gross Revenues shown by the Licensee in its books of accounts.
- e. The Licensee shall pay the Annual Fee to the Authority by way of a Demand Draft drawn on the Escrow Account, payable at Hyderabad or by electronic transfer from the Escrow Account.
  - f. The Authority/Nodal Officer and its authorized representatives and Experts/Auditors shall at all times be entitled to inspect the Licensee's book of accounts, contracts, invoices, vouchers, bills, receipts etc and to make copies thereof.
  - g. In the event of delay or default in payment of Annual Fee to the Authority beyond the due date (10<sup>th</sup> day of beginning of each Financial year or as per 8.3.1 (a) for the first year) provided herein, the Licensee shall be liable to pay interest, up to 3 months, to the Authority on the amount due at the rate of 18% (Eighteen percent) per annum from and including the due date to and excluding the date of payment. Any delay or default in payment of Annual Fees beyond 3 months from the due date of any Financial Year or any delay beyond the due date for two consecutive years, shall constitute Licensee Event of Default and shall be dealt in accordance with the Clause 15.1.1.
  - h. The Authority shall have right to appoint at the Licensee's cost an Expert, being reputable Independent Auditor, to audit the accounts and record of the Licensee on a quarterly or annual basis to determine the Gross Revenues. The Licensee shall make available to the Authority, its representatives or such Expert, all its records, books of accounts, documents, access to accounting software and other relevant information that may be reasonably be required to check or audit any information, figures, calculation of revenues of the Licensee and shall provide the Authority, its representative and such Expert reasonable access to its offices and premises for the purpose of such audit.

The Parties further agree that in the event that the revenue declared by the Licensee (on the basis of which the Annual Fee is determined and paid by the Licensee to the Authority) is less than the revenue determined by such auditor pursuant to this section 8.3.1 , (i) the differential amount shall be payable immediately by the Licensee to the Authority upon such determination by such auditor and shall accrue penal interest at the rate of 36% of such amount per annum for the period from the date of finalisation of its accounts for the particular year and until the date of actual payment of the differential amount; and (ii) the Licensee shall bear all the cost of such Audits including but not limited to the fees of the Auditor. Any material discrepancy notified by the Independent Auditor for a period of 3 consecutive years shall be construed as Licensee Event of Default and the License shall be dealt in accordance with Clause 15.1.1, in addition to any other penal measures available to the Authority under the terms of this Agreement or Applicable Laws. A material discrepancy in this context shall mean a variation of more than or equal to 10% in the Gross Revenues as per the audited Financial Statements and the report provided by the Independent Auditor.



#### Section 8.4 User Charges for Project Components

- (a) Effective from COD and during the balance License Period, the Licensee shall:
- i. be entitled to fix at rates fixed/structured at the discretion of the Licensee from time to time, determine, revise, charge, demand, collect, recover, retain and appropriate the tariff, fees, entry fees, service charges, charges for food and beverages, or any other charge by whatever name called as further described below ("**User Charges**") at market driven rates from Users of various Project Components for the goods, services, facilities and amenities etc. relating to the Project/Project Facilities/Project Components that are provided, arranged or procured by the Licensee by itself or under or pursuant to Contractual Arrangements;
  - ii. For Project Component – Resort, the Licensee may determine the tariff structure for different categories of cottages 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. In addition, the Licensee may, for occupancy of cottages 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.) irrespective of whether these services are operated by it or by any third party contractor, outdoor catering, vending machines, Wi-Fi services and any other service. The Licensee may also recover rent or fee for use of commercial or other spaces of every description and kind, provided by it. The Licensee may levy and recover an additional service charge for and in respect of any facility or service as it may deem fit. Each component of revenue/income/charge, by whatever name referred, collected or charged by the Licensee, shall form integral part of the overall Gross Revenues of the Licensee for the Project Component.
  - iii. For Project Component – Adventure Zone, the Licensee is free to determine and charge entry fees, different packages for each adventure activity, a combination of offers for various activities, food and beverages offered within the boundaries of Adventure Zone. Each component of revenue/income/charge, by whatever name referred, collected or charged by the Licensee, shall form integral part of the overall Gross Revenues of the Licensee for the Project Component.
  - iv. For Project Component – Food Courts, the Licensee may determine the license/sub-lease for various stalls and infrastructure provided, and other services in such manner as it deems fit and may include additional charges, by whatever name called, referred, charged or collected by the Licensee shall form integral part of the overall Gross Revenues of the Licensee for the Project Component.
  - v. For Project Component – Restaurants, the Licensee shall operate Glass Restaurant and Resto-bar by itself by deploying qualified personnel. All revenues from sale of food, beverages, and any additional products or services and other services in such manner as it deems fit and may include additional charges, by whatever name called, referred, charged or collected by the Licensee within the Restaurants shall form integral part of the overall Gross Revenues of the Licensee for the Project Component.

- vi. The Licensee shall submit the detailed GST filings to the Authority/Independent Expert to validate and reconcile the Gross Revenues declared by the Licensee.
  - vii. provide separate customized service or User Charges packages or differential rates or special or seasonal discounts for specific, bulk, regular users or different category of users or during different parts of the year or for timely or early payment.
- (b) The Authority expressly recognizes that if any Users fail to pay User Charges, the Licensee may exercise all rights and remedies available under the Applicable Laws for recovery thereof, including the suspension, termination or cancellation of provision of the applicable service to the relevant defaulting Contracting Counter Party or user; provided that the same shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits, statutory or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf.
- (c) It is clarified that the no deductions are allowed in any case, whatsoever, from the total revenues earned from any service or infrastructure provision to the Users

## **Section 8.5 Audit and Account**

### **8.5.1 Appointment of Auditors**

- (i) The Licensee shall appoint and have during the subsistence of this Agreement, as its statutory auditors, a reputed firm of chartered accountants duly authorised to practice in India. All fees and expenses of the statutory auditors shall be borne by the Licensee.
- (ii) Any claim or document provided by the Licensee to the Authority relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, in connection with the Project shall be valid and effective only if certified by the Licensee's statutory auditors.

### **8.5.2 Maintenance of Accounts**

- (i) The Licensee shall, during the subsistence of this Agreement, maintain books of accounts in accordance with standard accounting practices and statutory requirements under the Indian laws recording all its receipts from all sources derived or on account of the Project, income, expenditure, payments and assets and liabilities, in accordance with this Agreement, the Applicable Laws and Good Industry Practice. The Licensee shall provide the Authority 2 (two) copies of its audited balance sheet and profit and loss account along with a report thereon by its statutory auditors, within 90 (ninety) days yof the close of the Accounting Year to which they pertain.

## ARTICLE 9 PERFORMANCE SECURITY

### Section 9.1 Performance Security

- (a) For securing the performance of the obligations of the Licensee / Preferred Bidder under the RFP, the Lol, under Section 3.4 of this Agreement and during the Construction Period, the Preferred Bidder for and on behalf of the Licensee, has along with the execution of this Agreement, delivered to the Authority an un-conditional and irrevocable bank guarantee of **Rs. 2,75,00,000 Cr (Rupees Two Crores Seventy Five lakhs Only)** in favor of the Authority, from a nationalized bank operable in Hyderabad valid for 2 (Two) years from the Execution Date. This Performance Security shall be renewed upon expiry and will be released within six months of completion of MDO-2 and against submission of a reduced Performance Security for Rs. 1,50,00,000 (Rupees One Crore Fifty Lakhs). The reduced Performance Security shall be valid for a period of 3 (three) years and shall be extended further based on Authority's discretion. The BG is payable and enforceable in Hyderabad, Telangana. ("**Performance Security**"), the receipt & veracity of which, is hereby acknowledged by the Authority.
- (b) The Preferred Bidder /Licensee shall keep the Performance Security valid and in full force and effect at all times during the Construction period and as per the conditions mentioned in Section 9.1 (a) of this Agreement. This is an essential condition of the Contract and the failure to maintain the Performance Security in accordance with the provisions hereof shall constitute Licensee Event of Default and shall entitle the Authority to terminate this Agreement in accordance with the provisions of Clause 16 hereof.

### Section 9.2 Appropriation of Performance Security

- (a) In the event of the Licensee being in default of the due, faithful and punctual performance of its obligations under the RFP, the Lol, under Section 3.4 of this Agreement and during the Construction or Operations Period, as the case may be, or owing any sums whatsoever to Authority under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Authority for or against the Licensee under this Agreement or against the Authority in respect of this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the Performance Security as damages for such default, dues, demands or claims.
- (b) The decision of the Authority as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Licensee. The Licensee specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Authority under this Agreement is required to be provided in connection with any demand made by the Authority to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than the Authority's written demand as aforesaid.
- (c) In the event of encashment of the Performance Security by the Authority, in full or part, the Licensee shall within 30 (thirty) days of receipt of the encashment notice from the Authority provide a fresh Performance Security or replenish the existing Performance Security to its original value, as the case may be. The provisions of this Article 9 shall apply mutatis mutandis to such fresh Performance Security. The Licensee's failure to comply with this provision shall constitute

an Licensee Event of Default, which shall entitle the Authority to terminate this Agreement in accordance with the provisions of Article 16 hereof.

**Section 9.3 Release of Performance Security**

Subject to the provisions hereof, HMDA shall promptly return the main Performance Security of Rs. 2.75 crores, to the Licensee, upon request made by the Licensee for release of the Performance Security along with the particulars which establish the Project Completion being achieved, and provided that there are no outstanding claims of the HMDA on the Preferred Bidder/Licensee and the Licensee is not in breach of this Agreement, and the submission of reduced Performance Security as per the provisions of Section 9.1 (a).

## ARTICLE 10 THE OWNERSHIP AND CERTAIN RIGHTS

### Section 10.1 Ownership of Assets

#### (a) Land Area

The ownership of the Project Site shall always remain vested with the Authority. The rights of the Licensee in the Project Site shall only be that of a Licensee as provided in this Agreement. It is clarified for the avoidance of doubt that title to the land shall vest exclusively with the Authority and the Licensee shall only have the right to develop and use the same in accordance with the provisions of this Agreement.

#### (b) Assets created or provided by the Licensee

The ownership of all infrastructure assets, buildings, structures, equipment and other immovable and movable assets constructed, installed, located, created or provided by the Licensee in, on, over or under the Project Site pursuant to this Agreement shall, until transfer to the Authority in accordance with this Agreement, be with the Licensee.

## ARTICLE 11 INSURANCE

### Section 11.1 Insurance Cover

The Licensee shall maintain or cause to be maintained, at its own expense, insurance policies as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained, consistent with similar facilities of the size and type of the Project and as may be required by the Lenders.

#### (a) Construction Period

The Licensee shall, at its cost and expense, purchase and maintain during the Construction Period such insurances as are necessary, including but not limited to the following:-

- i. Construction/builders'/contractors' all risk insurance;
- ii. Erection all risk policy
- iii. Comprehensive third party liability insurance including injury or death to personnel of the Authority and others who may enter the Project Site;
- iv. Workmen's compensation insurance;
- v. any other insurance that may be necessary to protect the Licensee , its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv).

#### (b) Operations Period

The Licensee shall, at its cost and expense, purchase and maintain during the Operations Period insurance to cover against Project Facilities/ Project Assets for:

- i. loss, damage or destruction of the Project/ Project Assets at replacement value or full market value (including fire, burglary, standard and special peril);
- ii. the Licensee's general liability arising out of the License .
- iii. liability to third parties; and
- iv. any other insurance that may be necessary to protect the Licensee and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iii).

### Section 11.2 Evidence of Insurance

The Licensee shall, from time to time, furnish to the Authority copies of all insurance policies in respect of the Insurance Cover (or appropriate endorsements, certification of other satisfactory evidence of insurance) as soon as reasonably practical after they are received by the Licensee and furnish evidence to the Authority that all premiums have been paid and that the relevant policies remain in force, valid and existence. In the event the Licensee does not maintain any Insurance Cover pursuant hereto, the Authority may, at its option, effect such insurance and the Licensee shall reimburse all the costs and expenses incurred in this behalf by the Authority within 15 (fifteen) days of receipt of the Authority's claim in respect thereof. In case the Licensee fails to reimburse such expense, this shall become the Licensee's Event of Default and shall be treated as per the provisions laid down under Article 15.

### **Section 11.3 Application of Insurance Proceeds**

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds from all insurance claims, except for life and injury, shall be promptly credited the amount to Escrow Account, in accordance with the terms hereof and thereof, the Licensee shall apply such proceeds for the repair, renovation, restoration or re-instatement of the Project or any part thereof, which may have been damaged or destroyed and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents

### **Section 11.4 Distribution of Insurance Proceeds Upon Termination**

Whenever this Agreement is terminated following a Force Majeure Event and insurance proceeds are available in connection with the insurance policies to which the Licensee is entitled or should be entitled pursuant to this Agreement with respect to the Project, such proceeds shall, if not used to effect a restoration or to make repairs to the Project, be distributed first, (a) payment of dues, if any, to the Authority; and (b) for the payment towards indebtedness (actual or contingent) owing to the Lenders; (c) the residual amount, if any, to the Licensee.

### **Section 11.5 Validity of the Insurance Cover**

The Licensee shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the License Period and furnish certified true copies of the same to the Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 days' clear notice of cancellation is provided to Authority in writing. If at any time the Licensee fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Authority may at its option purchase and maintain such insurance and all sums incurred by the Authority therefore shall be reimbursed by the Licensee forthwith on demand, failing which the same shall be recovered by the Authority by exercising right of set off or otherwise.

## ARTICLE 12 REPRESENTATIONS AND WARRANTIES

### Section 12.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) it has taken all necessary actions to authorise the execution, delivery and performance of this Agreement and to carry out the transactions contemplated hereby;
- (d) this Agreement constitutes its legal, valid and binding obligation, fully enforceable against it in accordance with the terms hereof;
- (e) it has the financial standing and capacity to undertake the Project;
- (f) it shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

### Section 12.2 Further Representations and Warranties of Licensee

In addition, the Licensee represents and warrants to the Authority that:

- (a) The execution, delivery and performance of this Agreement and all instruments or agreements required hereunder do not conflict with, contravene, violate, result in the breach of, constitute a default under or accelerate performance of any agreement or instrument to which the Licensee is a party, including without limitation, its articles and memorandum of association or by which it is or may be bound or any Applicable Laws or any covenant, agreement, understanding, decree or order, injunction, award to which it is a party or by which it or any of its properties or assets is bound or affected;
- (b) There are no actions, suits, proceedings, or investigations pending or, to the Licensee's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Licensee under this Agreement or which individually or in the aggregate may result in any Essential Material Adverse Effect;
- (c) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Authority or any other pending or potential matters which may result in any Material Adverse Effect or impairment of the Licensee's ability to perform its obligations and duties under this Agreement;
- (d) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which individually or in the aggregate have or may have Material Adverse Effect;
- (e) No representation or warranty by the Preferred Bidder /Licensee contained herein or in any other document furnished by it to the Authority or to any Government Authority in relation to Applicable Permits or otherwise contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;



- (f) The Preferred Bidder was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Licensee entering into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

Provided that whenever any pending or potential matter, including the matters listed in the sub-sections above, comes to the knowledge of the Preferred Bidder /Licensee, during the License Period, the outcome of which may result in the breach of or constitute a default of the Licensee under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Licensee's ability to perform its obligations and duties under this Agreement, the Licensee shall immediately intimate the same to the Authority;

- (g) In submitting its Proposal, the Preferred Bidder/Licensee has complied with all the Applicable Laws and it is and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal proceedings or liabilities which individually or in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to implement the Project.
- (h) All rights and interests of the Licensee in the Project, the Project Facilities and Project Assets shall pass to and vest in the Authority or its nominated agency on the Transfer Date free and clear of all liens, claims, and Encumbrances, without any further act or deed on the part of the Preferred Bidder/Licensee or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Licensee subject to any agreement under which a Security Interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Agreement; and
- (i) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Preferred Bidder /Licensee to any person by way of commission or otherwise for securing the License execution of this Agreement or for influencing or attempting to influence any officer or employee of the Authority.

### Section 12.3 Waiver of Sovereign Immunity

Each Party hereto unconditionally and irrevocably:

- (a) agrees 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 governmental acts and that it is subject to the civil and commercial laws of India with respect to this Agreement;
- (b) agrees that any proceedings be brought against it or its assets, other than the assets protected by the diplomatic and consular privileges under the Foreign Sovereign Immunities Act or / any analogous legislation ("**Exempted Assets**") in any jurisdiction, in relation to this Agreement or any transaction contemplated by this Agreement, no immunity, sovereign or otherwise from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of itself or with respect to any of its assets (other than the Exempted Assets);
- (c) 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 including without limitation the making, enforcement or execution against or in respect of any property irrespective of its use subject to (b) above.

## Section 12.4 Disclaimer

- a. Without prejudice to any express provision contained in this Agreement, the Preferred Bidder/Licensee acknowledges that prior to the execution of this Agreement, the Preferred Bidder/Licensee has after a complete and careful examination made an independent evaluation of the Project, the legal and contractual framework, the Applicable Laws and Applicable Permits and the technical and financial aspects of the Project, the Specifications and Standards, the Project Site and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things needed for implementing Project, all the information and documents provided by the Authority, its consultants or any Government Authority, the market and demand conditions, information relating to users and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Preferred Bidder's/Licensee's complete satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Licensee in the course of performance of its obligations hereunder. It has also carried out a title search, including without limitation the title, ownership, possession, land acquisition etc. in respect of the Project Site.
- b. The Preferred Bidder /Licensee further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) above and hereby confirms that the Authority, its consultants or any Government Authority shall not be liable for the same in any manner whatsoever to the Preferred Bidder/ Licensee or Persons claiming through or under the Preferred Bidder/Licensee.
- c. The Preferred Bidder /Licensee accepts that it is solely responsible for the verification of any design, data, design, documents or information provided to the Licensee by the Authority, its consultants or any Government Authority and that it shall accept and act thereon at its own cost and risk.
- d. The Preferred Bidder /Licensee shall be solely responsible for the contents of its Proposal, adequacy and correctness of the Design and Drawing, data and detailed engineering prepared or procured by the Licensee for implementing the Project.
- e. The Preferred Bidder /Licensee is entering into this Agreement on the basis of its satisfaction based on the due diligence audit undertaken by it

## ARTICLE 13 LIABILITY AND INDEMNIFICATION

### Section 13.1 Liability of Licensee

Notwithstanding anything to the contrary contained in this Agreement,

- (a) in addition to the Licensee's liability and obligations, indemnities and the Authority's remedies provided elsewhere in this Agreement, the Licensee shall be solely responsible for any loss of or damage to the Project and the Project Assets, damage to environment, death or injury to Person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by the Authority:
- (i) during the License Period resulting from any negligent act or omission of the Licensee , the Contractors, the Contractual Counter Parties or any other Person and their respective employees, agents, contractors and representatives.
  - (ii) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Licensee , Contractor or Contractual Counter Parties, or non-performance of any term, condition, covenant or obligation to be performed by the Licensee , Contractor or Contractual Counter Parties under this Agreement and the Transaction Documents.
- (b) The Licensee shall also be liable for any loss or damage which occurs as a result of any act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with development control regulations of the relevant local authorities from time to time, building bye laws as may be applicable, other Applicable Laws, regulatory requirements of Government Authorities, Specifications and Standards or any other matter) for which the Licensee is liable or which is attributable to the Licensee and, in turn, the Persons claiming through or under the Licensee .

### Section 13.2 Indemnification

- (a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Licensee agrees to indemnify and hold harmless the Authority and its officers, employees, agents, trustees and consultants (each a "**Authority Indemnified Party**") promptly upon demand at any time and from time to time, from and against any and all losses, claims, demands, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, "**Losses**") to which the Authority Indemnified Party may become subject, insofar as such Losses arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by Licensee or (ii) the failure by Licensee to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Licensee Person claiming through or under the Licensee or (iii) any claim or proceeding by any Third Party against the Authority arising out of any act, deed or thing done or omitted to be done by Licensee or (iv) as a result of failure on the part of the Licensee to perform any of its obligations under this Agreement or on the Licensee committing breach of any of the terms and conditions of this Agreement or (v) on the failure of the Licensee to perform any of its statutory duties and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any user of the Project or the Licensee's Contractors or employees or any Third Party or Government

Authority or (vi) as a result of any failure or negligence or default of the Licensee or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Licensee's use and occupation of Project Site and/or construction, operation and maintenance of the Project.

For the avoidance of doubt, indemnification of Losses pursuant to this Article 13 shall be made in an amount or amounts sufficient to restore each Authority Indemnified Party to the financial position it would have been in had the Losses not occurred.

- (b) Without limiting the generality of sub-section (a) of this Section 13.2,
- (i) the Licensee shall fully indemnify and defend the Authority Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Licensee and the Persons claiming through or under the Licensee to comply with Applicable Laws and Applicable Permits, (2) payments of Taxes relating to the Licensee and the Persons claiming through or under the Licensee, including contractors, suppliers and representatives, including the income or other taxes required to be paid by the Licensee such Persons without reimbursement hereunder, or (3) non-payment of amounts due as a result of materials or services rendered/ provided to the Licensee or any Person claiming through or under the Licensee, which are payable by the Licensee or such Person.
  - (ii) the Licensee shall fully indemnify, and defend the Authority Indemnified Party harmless from and against any and all Losses which the Authority Indemnified Party 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 Licensee or by the Persons claiming through or under the Licensee in performing the Licensee's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Licensee shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit 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 Licensee shall promptly make every reasonable effort to secure for Authority Indemnified Party, a permission, at no cost to Authority Indemnified Party, authorising continued use of the infringing work. If the Licensee is unable to secure such permission within a reasonable time, the Licensee 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 parts or process, or modify the same so that it becomes non-infringing.
  - (iii) the Licensee shall further indemnify, defend and hold harmless the Authority Indemnified Party from any and all Third Party claims for loss of or physical damage to property or for death or injury and against all Losses for personal injury and for damage to or loss of any property arising out of or in any way connected with the Licensee's performance of this Agreement or arising out of any act or omission of the Licensee, and in turn of the Persons claiming through or under the Licensee.

- (c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

**Section 13.3 Indirect or Consequential Losses**

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to the other Party for any matter arising out of or in connection with this Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by such other Party.

**Section 13.4 Business Risks**

Except as expressly provided in this Agreement, the Licensee shall carry out and perform its rights and obligations under this Agreement and the other Transaction Documents at its own cost and risk. The Licensee shall be fully responsible for and shall bear the financial, commercial and business risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the other Transaction Documents.

**Section 13.5 Survival**

The provisions of Article 13 shall survive the expiry or prior termination of this Agreement/the License.

## ARTICLE 14 FORCE MAJEURE

### Section 14.1 Force Majeure Event

#### 14.1.1 Force Majeure Event

Force Majeure Event shall mean any event or circumstance or a combination of events and circumstances (occurring in India) set out hereunder or the consequence(s) thereof which affect or prevent the Party (Authority or Licensee) claiming Force Majeure ("**Affected Party**") from performing its obligations in whole or in part under this Agreement and which event or circumstance is (a) is beyond the reasonable control of the Affected Party, (b) such party could not have prevented or reasonably overcome with the exercise of due diligence, reasonable efforts, skill and care, (c) does not result from the negligence of such party or the failure of such party to perform its obligations hereunder, (d) is of an incapacitating nature and prevents or causes a delay or impediment in performance that has Material Adverse Effect and (e) is all or any of the following circumstances:

- (a) Acts of God or natural disasters beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, including but not limited to storm, cyclone, typhoon, hurricane, flood, landslide, drought, lightning, earthquakes, volcanic eruption, fire or exceptionally adverse weather conditions affecting the implementation of the Project.
- (b) Radioactive contamination, ionizing radiation.
- (c) Epidemic, famine.
- (d) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, nuclear blast / explosion, sabotage or civil commotion.
- (e) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Licensee in any proceedings (which are non collusive and duly prosecuted by the Licensee) for reasons other than failure of the Licensee or of any Person claiming through or under it to comply with any Applicable Law or terms of Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by Authority.
- (f) Any event or circumstances of a nature analogous to any of the foregoing.

### Section 14.2 Exceptions to Force Majeure

#### 14.2.1 For the Authority

The Authority will not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement

- (i) the expropriation, confiscation or nationalization of the Project/Project Facilities/Project Assets by the Authority;
- (ii) any delay or difficulty in handing over vacant possession of the Site.

#### 14.2.2 For the Licensee

The Licensee and/or persons claiming through or under it will not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the nonperformance of its obligations under this Agreement:

- (i) late delivery of any equipment or materials where such delivery is not attributable to Force Majeure events mentioned in section 14.1.1;
- (ii) breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Project Facilities;
- (iii) delays in performance by the contractors or sub-contractors or employees, agents and representatives of the Licensee
- (iv) economic hardship including insufficiency of funds; or
- (v) general economic slowdown.
- (vi) Delay in shifting/restoration of utilities/public infrastructure in the project site as per the DPR.
- (vii) Delay in completion of construction period

#### Section 14.3 Notice of Force Majeure Event

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event ("the Notice") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- (b) The Notice shall inter-alia include full particulars of:
  - (i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
  - (ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;
  - (iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damages; and
  - (iv) any other relevant information.
- (c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for under Section 14.2 (b) and such other information as the other Party may reasonably request.

#### Section 14.4 Period of Force Majeure

Period of Force Majeure shall mean the period from the time of occurrence specified in the notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- (a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.4; or

(b) termination of this Agreement pursuant to Article 14.7 hereof

#### **Section 14.5 Performance Excused**

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

#### **Section 14.6 Resumption of Performance**

During the Period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall extend all reasonable assistance to the Affected Party in this regard.

#### **Section 14.7 Costs, Revised Timetable**

##### **(a) Costs**

Each Party shall bear its costs, if any, incurred as a consequence of the Force Majeure Event.

##### **(b) Extension of Time/ Period**

The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. Such extension may include extension of the License Period by the Authority in appropriate cases.

#### **Section 14.8 Termination Due to Force Majeure Event**

If the Period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 180 days, the Parties may mutually decide to continue this Agreement or terminate this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 180 days, be entitled to terminate the Agreement in which event, the provisions of Article 16 shall, to the extent expressly made applicable, apply.

#### **Section 14.8 Liability for other losses, damages etc.**

Save and except as expressly provided in this Agreement, neither party hereto shall be liable in any manner whatsoever to other party in respect of any loss, damage, cost, expense, claims, demand and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this agreement



## ARTICLE 15 EVENTS OF DEFAULT

### Section 15.1 Events of Default

Event of Default means the Licensee Event of Default or the Authority Event of Default or both as the context may admit or require.

#### 15.1.1 Licensee Event of Default

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 Licensee fails to cure the default within a Cure Period of [60 (sixty)] days, the Licensee shall be deemed to be in default of the Agreement (the "Licensee Event of Default" or "Licensee Default"), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (i) the Performance Security has been encashed and appropriated in accordance with Section 9.2 and the Licensee fails to replenish or provide fresh Performance Security within a Cure Period of [15 (fifteen)] days;
- (ii) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, or cure the Licensee 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
- (iii) the Licensee does not achieve the latest outstanding Scheduled Completion Date due in accordance with the provisions of Appendix H and continues to be in default for [90 (ninety)] days;
- (iv) the Licensee 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;
- (v) Project COD does not occur on or before the Scheduled Project Completion Date;
- (vi) 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 Licensee fails to cure the default within the Cure Period specified hereinabove;
- (vii) the Licensee creates any Encumbrance in breach of this Agreement;
- (viii) the Licensee's and/or Preferred Bidder's is in/commits a Material Breach of this Agreement .
- (ix) the Licensee's failure to perform or discharge any of its obligations under any other Transaction Documents, which has or is likely to have a Material Adverse Effect.
- (x) the Licensee's failure to complete the MDO-1 before the Scheduled Project Completion Date or such date as extended, in writing, by the Authority;
- (xi) the Licensee's failure to obtain and maintain throughout the License Period, the classification for Resort and certifications for the Adventure Zone as per the MDO-2;
- (xii) any representation made or warranties given by the Licensee/Preferred Bidder under this Agreement are found to be false or misleading.

- (xiii) the Licensee passing a resolution for voluntary winding up.
- (xiv) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Licensee by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings.
- (xv) levy of an execution or distraint on the Licensee assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 30 days or any authority, regulatory body, court , tribunal or judicial authority passing or issuing any order or direction against the Licensee which would have an or likely to have an Material Adverse Effect on the project or the ability of the Licensee to comply with or discharge the obligations and responsibilities under this Agreement. .
- (xvi) amalgamation of the Licensee with any other company or reconstruction or transfer of the whole or part of the Licensee's undertaking (other than transfer of assets in the ordinary course of business) without the Authority's prior written approval, provided, if the amalgamated entity, reconstructed entity or the transferee as the case may be, has the financial and technical ability demonstrated to the satisfaction of the Authority, to undertake, perform/dischage the obligations of the Licensee under this Agreement, necessary approval shall be granted by the Authority.
- (xvii) the Licensee engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- (xviii) the Licensee repudiates this Agreement or otherwise takes any action or evinces or conveys an intention not to be bound by this Agreement.
- (xix) the Licensee has not rectified the default in payment as per the clause 8.2.3 of this Agreement.
- (xx) the Licensee is adjudged bankrupt or insolvent
- (xxi) the whole of Project or any part of Project remains closed for an aggregate period of sixty (60) days (except for reasons on account of Force Majeure or Authority's Event Of Default).
- (xxii) The Licensee committing any breach or non compliance of any of the terms and conditions of the Financing Documents executed between the Licensee and if all or any of the Lender(s) have recalled their outstanding dues and in pursuance thereto have initiated the exercise of their right to enforce the Security Interest created in their favor under the financing documents, as permitted by this agreement, on the Project Assets and / or the rights and interest under this agreement.
- (xxiii) A change in the shareholding pattern of the Licensee has occurred in breach of the provisions hereof.
- (xxiv) the Licensee creates any Encumbrance in breach of this Agreement.
- (xxv) such events as have been specified as Licensee Events of Default under the provisions of this Agreement.
- (xxvi) an Escrow Default has occurred and the Developer fails to cure the default within a Cure Period of 15 (fifteen) days

### 15.1.2 Authority Event of Default

The Authority Event of Default means any of the following events unless such an event has occurred as a consequence of an Licensee Event of Default or a Force Majeure Event (the “**Authority Event of Default**” or “**Authority Default**”):

- (i) The Authority’s repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement that has a Material Adverse Effect unless such failure has occurred as a consequence of Licensee Event of Default or a Force Majeure Event;
- (ii) any representation made or warranties given by the Authority under this Agreement is found to be false or misleading; any defect in the Authority’s title, ownership and possession of the site.

### Section 15.2 Parties Rights

- a) Upon the occurrence of the Licensee Event of Default, the Authority shall, subject to the provisions of this Article 15, without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement in accordance with the provisions of Section 16.1.
- b) Upon the occurrence of the Authority Event of Default, the Licensee shall, subject to the provisions of this Article 15, without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement in accordance with the provisions of Section 16.1:

Provided that before proceeding to terminate this Agreement, the Party entitled to do so shall (i) in terms of Clause 15.3 issue a Consultation Notice and follow the Remedial Process in Clause 15.4, (ii) give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Agreement and the circumstances in which the same has occurred.

### Section 15.3 Consultation Notice

Either Party exercising its right under Section 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default (the “**Consultation Notice**”).

### Section 15.4 Remedial Process

#### 15.4.1 Suspension upon Licensee Default

Upon occurrence of Licensee Event of 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 Licensee under this Agreement including the Licensee's right to receive any Revenues from any of the Project Components such as room charges, restaurants and sale of food and all other incomes, entry tickets, license fees received by it from or on account of the any Project Component 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 Licensee 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 Licensee 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.

#### **15.4.2 Authority to act on behalf of Licensee**

- (a) During the period of Suspension, the Authority shall, on behalf of the Licensee, 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 8.2.4.
- (b) During the period of Suspension hereunder, all rights and liabilities vested in the Licensee in accordance with the provisions of this Agreement shall continue to vest in the Licensee and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Licensee under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or take for and on behalf of the Licensee and the Licensee undertakes to indemnify the Authority for all costs incurred during such period. The Licensee hereby licenses and sub-licenses respectively, the Authority or any other person authorised by it to use during Suspension, all Intellectual Property belonging to or licensed to the Licensee with respect to all the Project Components, their design, engineering, construction, operation and maintenance and which is used or created by the Licensee in performing its obligations under this Agreement.

#### **15.4.3 Revocation of Suspension**

- (a) In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding [90 (ninety)] days from the date of Suspension, it shall revoke the suspension forthwith and restore all rights of the Licensee under this Agreement. For avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- (b) Upon the Licensee having cured the Licensee 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 Licensee under this Agreement.

#### **15.4.4 Substitution of Licensee**

At any time during the period of Suspension, the Lenders' Representative, on behalf of the Senior Lenders, shall be entitled to substitute the Licensee 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.

#### **15.4.5 Termination**

- a) At any time during the period of Suspension under this Section 15.4, the Licensee 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 15.4.4, the Authority shall, within [15 (fifteen)] days of receipt of such notice, terminate this Agreement under and in accordance with Article 16 as if it is a Licensee Default.
- b) 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 15.1.1, 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 Licensee Default.

## ARTICLE 16 TERMINATION AND EXPIRY OF AGREEMENT/LICENSE

### Section 16.1 Termination Procedure

16.1.1 The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing ("**Termination Notice**") to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice Period shall not be more than 60 (sixty) days, ("**Termination Period**") and at the expiry of the Termination Period, this Agreement shall stand terminated.

16.1.2 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 Licensee 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 Licensee: Provided further that upon written request from the Lenders' Representative and the Licensee, 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.

16.1.3 Without prejudice to any other right or remedy which the Licensee may have under this Agreement, upon occurrence of a Authority Default, the Licensee 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 Licensee shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 45 (forty five) days to the Authority to make a representation, and may after the expiry of such 45 (forty five) days days, whether or not it is in receipt of such representation, issue the Termination Notice. Any such Notice shall, in addition to a hard copy to be submitted at the office indicated in Section 18.5, be also sent in digital format (signed and scanned copies) to the email id provided in Section 18.5

### Section 16.2 Obligations During Termination Period

During Termination Period, the Parties shall subject to the provisions of Article 15 wherever applicable, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

### Section 16.3 Condition Survey

- a) The Licensee agrees that six months prior to the expiry of the License Period by efflux of time or on the service of a Termination Notice, as the case may be, it shall conduct or cause to be conducted by the mutually accepted third party Expert under the Authority's supervision, a condition survey of the Project and the Project Assets to ascertain the

- condition thereof, verifying compliance with the Licensee's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project
- b) If, as a result of the condition survey, the Authority shall observe/notice that the Project Assets and/or the Project or any part thereof have/has not been operated and maintained in accordance with the requirements therefore under this Agreement (normal wear and tear excepted) the Licensee shall, at its cost and expenses, take all necessary steps to put the same in good working conditions in light of the life of the relevant Project Facility well before the Transfer Date.
  - c) In the event the Licensee fails to comply with the provisions of sub clause (a) and (b) above, the Authority may itself cause the condition survey and inventory of Project Assets and the Project to be conducted. The Authority shall be compensated by the Licensee for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project and the Project Assets in good working condition.

#### **Section 16.4 Consequences of Termination**

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the License Period by efflux of time or due to a Force Majeure Event or an Event of Default.

##### **(a) Transfer of Assets**

- (i) On the Transfer Date, the Licensee shall subject to the provisions of this Agreement:
  - (A) save and except to the extent set forth in the Substitution Agreement, transfer, assign and deliver to the Authority or its nominated agency, free and clear of any Encumbrances, the vacant and peaceful possession of the Project Facilities, Project Assets and the Site along with the buildings, facilities and structures constructed on, over, at or under it and its right, and interest in and to the Project the Project Assets.
  - (B) transfer all its rights and interest in or over the tangible assets comprised in the Project (including movable assets which the Authority agrees to take over) to the Authority or its nominated agency and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
  - (C) hand over to the Authority or its nominated agency all documents including as building drawings, manuals, designs, documents, information and records relating to the Project and the Project Assets.
  - (D) to the extent possible assign to the Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies.
  - (E) at its cost remove from the Site all such moveable assets which are not taken over by or transferred/assigned to the Authority or its nominated agency. In the event the Licensee fails to remove such objects within the stipulated time, the Authority or its nominated agency may remove and transport or cause removal, transportation and storage of such objects, after giving the Licensee notice of its intention to do so to a suitable location for safe storage. The Licensee shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.

- (F) The transfer of immovable property comprising the Project and the Project Assets shall be deemed to be a termination of all licenses in relation to the Site and all such immovable property shall automatically revert to the Authority or its nominated agency. The movable property comprising the Project and the Project Assets shall be deemed to be transferred by delivery and possession.
- (G) The HMDA and the Licensee shall at least 6 (six) months prior to the expiry of the License Period or upon commencement of Termination Period, as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets on the Transfer Date. During this period, the designated key personnel of the HMDA shall be associated with the operations of the Project in order to facilitate smooth take over of the same by HMDA on the Transfer Date.
- (H) The Licensee shall be responsible for all defects and deficiencies in any of the Project Components 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/Engineer in the Project Components during the aforesaid period. In the event that the Licensee 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 Licensee's risk and cost so as to make the Project Components conform to the Maintenance Requirements/DPR. All costs incurred by the Authority hereunder shall be reimbursed by the Licensee 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 8.2 or from the Performance Guarantee provided thereunder.
- (iv) It is clarified that only the assets of the Licensee shall be taken over and not the liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Licensee and the Persons claiming through or under the Licensee shall be taken over by the HMDA. All such labour and employees shall be the responsibility of the Licensee /such Persons even after the expiry of the License Period and they shall have no claim to any type of employment or compensation from HMDA.
- (v) On the Transfer Date the Project and the Project Assets shall be in fair condition, subject to normal wear and tear, having regard for the nature of the asset, the construction and life of the facilities, constructions, structures etc. However, the Licensee shall ensure that the Project and Project Assets:
- Shall be in usable condition and all the facilities and sub-infrastructure such as power connections, water connection, drain lines are in fully working condition
  - The tents shall be in a condition to be rented out and shall not be torn or dilapidated conditions. This shall be assessed by the Authority and the Authority shall be satisfied of the condition of the tents.
  - In case the Authority is not satisfied, it shall in writing intimate to the Licensee the lapses, which shall be corrected within 15 days from such notice at the Licensee's own cost.
- (vi) All contracts, agreements, arrangement's etc entered into by the Licensee with its suppliers, service providers, O&M contract's including license of any built-up area or space in the Project Site, shall also be liable to be terminated forthwith along with the termination of this agreement



at the sole option and discretion of the Authority and if so required by the Authority all monies due and receivable under such agreement shall be recovered and deposited in the relevant Bank Account pending final settlement with the Licensee .

- (vii) If on the Transfer Date, any Person is found to be occupying the Site or any part thereof, other than in respect of the Site/Plot/built up area/unit that has been sub-licensed and the sub-licenses pursuant thereto, the duration of which have been extended by the HMDA upon such expiration/prior termination of this Agreement, as provided herein, it shall be lawful for the HMDA to secure summary eviction of such Person in accordance with the Applicable Laws.

**(b) Project Contracts**

Authority shall upon its election, succeed, without the necessity of any further action by the Licensee, to the interests of the Licensee under such of the Project Contracts 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 Contracts from and after the date the Authority elects to succeed to the interests of the Licensee. For the avoidance of doubt, it is hereby agreed, and the Licensee hereby acknowledges, 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 Licensee 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 Contracts, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

**(c) Applicable Permits**

The Licensee shall, at its cost, transfer to the Authority all such Applicable Permits which the Authority may require and which can be legally transferred. Provided if the termination is on account of Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Authority.

**(d) Guarantees**

The Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Licensee, if the termination is on account of Licensee Event of Default.

**(e) Transfer of Risk**

Until the Transfer Date, all risks shall lie with the Licensee for loss of or damage to the whole or any part of the Project and the Project Assets unless the loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Agreement. On and from the Transfer Date all risks in relation to the Project and the Project Assets shall be deemed to lie with the Authority

**Section 16.5 Vesting Certificate**

- (a) On the Transfer Date the Authority/Expert shall verify, in the presence of the Licensee or of a representative of the Licensee's, compliance by the Licensee with the requirements of Section 16.4 above. In the event the Authority/Expert notifies the Licensee of shortcomings, if any, in the Licensee's compliance with such requirements, the Licensee shall forthwith cure the same.
- (b) The divestment of all rights and interest in the Project and Project Assets shall be deemed to be complete on the Transfer Date but no later than 30 (thirty) days thereafter, by when all the requirements of Section 16.5 above shall be fulfilled. The Expert shall on such date

issue a certificate substantially in the form set forth in *Appendix O* (the “**Vesting Certificate**”), with a copy thereof endorsed to the Authority, which shall have the effect of constituting evidence of divestment by the Licensee of all of its rights and interest in the Project and the vesting thereof in the Authority or its nominee, as the case may be, pursuant hereto.

### **Section 16.6 Compensation on Termination**

16.6.1 In the event of termination of this Agreement/License due to Force Majeure Event or an Event of Default, the Licensee shall promptly transfer the Project Site along with Project Assets and Project Facilities, in a manner satisfactory to the Grantor and in accordance with the provisions hereof. The Grantor shall, upon completion of such transfer pay to the Licensee the termination payments as below.

16.6.2 Upon termination of this Agreement due to:

- a) an Licensee Event of Default, Grantor shall retain the Project Development Fee, License Fees Security Deposit, and forfeit the Performance Security, as case may be, as damages;
- b) a Force Majeure Event, the Grantor shall retain the Project Development Fee, but return/refund the Security Deposit and the Bank Guarantee in lieu of Performance Security to the Licensee/Preferred Bidder; provided there are no outstanding claims of the Grantor on the Preferred Bidder/Licensee.
- c) In addition, in case of Licensee Event of Default, the compensation payable by the Grantor to the Licensee shall be the amount determined as follows: 75% (Seventy Five percent) of the aggregate Depreciated Historic Cost (DHC), as determined by a third party Expert (appointed by mutual consent and who shall be in the position of an expert under the Arbitration and Conciliation Act, 1996), of (a) the tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Licensee and comprised in the Project, which in the reasonable judgment of the said Expert are capable of being put to use/utilized by the Grantor and (b) the moveable assets which the Grantor agrees to take over; LESS any amount due to the Grantor from the Licensee under this Agreement and the insurance claims claimed or received.
- d) In case of termination due to a Force Majeure Event, the compensation payable by the Grantor to the Licensee shall be the amount determined as follows: 100% (one hundred percent) of the aggregate Depreciated Historic Cost (DHC), as determined by a third party Expert (appointed by mutual consent and who shall be in the position of an expert under the Arbitration and Conciliation Act, 1996), of (a) the tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Licensee and comprised in the Project, which in the reasonable judgment of the said Expert are capable of being put to use/utilized by the Grantor and (b) the moveable assets which the Grantor agrees to take over; LESS any amount due to the Grantor from the Licensee under this Agreement and the insurance claims claimed or received.
- e) For the avoidance of doubt, the Licensee hereby acknowledges that no Termination Payment shall be due or payable on account of a Licensee Event of Default occurring prior to issue of Completion Certificate. Further provided, no Termination Payment shall be due or payable to the Licensee if the Licensee fails to maintain Insurance as contemplated under Article 11 of this Agreement.

16.6.3 Upon termination of this Agreement due to Grantor Event of Default, the Grantor shall return the Performance Security and refund the Security Deposit to the Preferred Bidder/Licensee; provided there are no outstanding claims of the Grantor on the Preferred Bidder/Licensee. The Grantor shall retain the Project Development Fee in all cases. Further, the

- compensation payable by the Grantor to the Licensee shall be the amount determined as follows: 110% (one hundred and ten percent) of the aggregate Depreciated Historic Cost (DHC), as determined by a third party Expert (appointed by mutual consent and who shall be in the position of an expert under the Arbitration and Conciliation Act, 1996), of (a) the tangible assets forming part of, fixed or attached to the ground created, installed or provided by the Licensee and comprised in the Project , which in the reasonable judgment of the said Expert are capable of being put to use/utilized by the Grantor and (b) the moveable assets which the Grantor agrees to take over; LESS any amount due to the Grantor from the Licensee under this Agreement and the insurance claims claimed or received.
- 16.6.4 Nothing herein shall prejudice the right of the Grantor to recover from the Licensee any amounts due and payable to it by the Licensee hereunder.
- 16.6.5 Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of a Party, including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. All rights and obligations of a Party under this Agreement, including without limitation termination payment, shall survive the termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.
- 16.6.6 In the event of expiry of License Period by efflux of time (the License having run its full course), the Licensee shall hand over/ transfer peaceful possession of the Project Site, Project Assets and the Project Facilities and Services free of cost and encumbrance to the Grantor as per the provisions hereof.
- 16.6.7 The cost of the independent Expert appointed under this Section shall be borne equally by the Licensee and the Grantor.

#### **Section 16.7 Substitution Agreement**

- a) Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Licensee pursuant to the agreement for substitution of the Licensee (the "Substitution Agreement") to be entered into amongst the Licensee, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule O.
- b) Upon substitution of the Licensee under and in accordance with the Substitution Agreement, the Nominated Company substituting the Licensee shall be deemed to be the Licensee under this Agreement and shall enjoy all rights and be responsible for all obligations of the Licensee under this Agreement as if it were the Licensee; provided that where the Licensee 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 Licensee for curing such breach.

## ARTICLE 17 DISPUTE RESOLUTION

### Section 17.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Authority and the Licensee in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether before or after the Termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them, period to resolve such dispute should be within 30 days

### Section 17.2 Assistance of Expert

The Parties may, in appropriate cases agree to refer the matter to an Expert appointed by them with mutual consent. The Parties agree to abide by the decision/ opinion of the Expert. The cost of obtaining the service of the Expert shall be shared equally.

### Section 17.3 Arbitration

#### a) Arbitrators

In the event the dispute or difference or claim, as the case may be, is not resolved, as evidenced by the signing of the written terms of settlement by the Parties, within 30 (thirty) days of reference for amicable settlement and/ or settlement with the assistance of Expert, as the case may be, the same shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a tribunal of three arbitrators, one each to be appointed by the Authority and the Licensee and the third to be appointed by the two arbitrators so appointed. A Party (Authority or Licensee, as the case may be) requiring arbitration shall appoint an arbitrator in writing, inform the other Party (Licensee or Authority, as the case may be) about such appointment and call upon the other Party to appoint its arbitrator. If the other Party fails to appoint its arbitrator, the Party appointing arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996.

#### b) Place of Arbitration

The place of arbitration shall be Hyderabad or Secunderabad, Telangana State only.

#### c) English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

#### d) Procedure

The procedure to be followed within the arbitration, including appointment of arbitrator/ arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996.

#### e) Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to

appeal or to review of such award by any court or tribunal. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgement upon the arbitral award may be entered in any court having jurisdiction thereof.

**f) Fees and Expenses**

The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by such Party.

**g) Performance during Arbitration**

Pending the submission of and/ or decision on a dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

## ARTICLE 18 MISCELLANEOUS PROVISIONS

### Section 18.1 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and, subject to the provisions of Article 17, the courts at Hyderabad & Secunderabad shall have jurisdiction over all matters arising out of or relating to this Agreement.

### Section 18.2 Waiver & Remedies

- (a) The waiver by either Party, including conditional or partial waiver, of any default by the other Party in the observance and performance of any provision of or obligations of under this Agreement:
- (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
  - (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
  - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) No failure on the part of any Party to exercise, and no delay in exercising, any right, power, obligation or privilege hereunder or time or indulgence granted by a Party to the other Party shall operate or be treated or deemed as a waiver thereof or a consent thereto or the acceptance of any variation or relinquishment of any such right hereunder; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by the Applicable Laws.
- (c) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### Section 18.3 Survival

The Termination/expiry of this Agreement

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

### Section 18.4 Entire Agreements and Amendments

- (a) This Agreement constitutes the complete, exclusive and entire statement of the terms of the agreement between the Parties on the subject hereof and supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof.

- (b) No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be valid and effective unless the same is in writing and signed by the Parties or their duly authorised representative especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

**Section 18.5 Mode of Delivery of Notices**

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

**If to Authority:**

**The Chief Engineer**

Hyderabad Metropolitan Development Authority (HMDA)  
Swarna Jayanti Complex, Ameerpet  
Hyderabad – 500082

[superintendentengineerhmda@gmail.com](mailto:superintendentengineerhmda@gmail.com); copy to pppcell2.hmda@gmail.com

Attn:

**If to Licensee :**

-----  
-----

Fax No. -----

Attn:

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Party in writing prior to the adoption thereof.

**Section 18.6 Severability**

- (a) 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, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.

- (b) The Parties will negotiate in good faith with a view to agreeing upon one or more provisions, which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement or otherwise.

### **Section 18.7 No Partnership**

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the Provisions of this Agreement.

### **Section 18.8 Language**

The language of this Agreement is English. All notices, correspondence, Project Contracts, documentation, Designs and Drawings, DPR, design data, test reports, certificates, specifications and standards and information in respect of this Agreement, under or in connection with this Agreement shall be in the English language. All other written and printed matter, communications, documentation, proceedings and notices etc. pursuant or relevant to this Agreement shall be in the English language.

### **Section 18.9 Exclusion of Implied Warranties etc.**

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

### **Section 18.10 Counterparts**

This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document.

### **Section 18.11 Further Assurances**

At all times after the date hereof the Parties shall execute all such documents and do such acts, deeds and things as may reasonably be required for the purpose of giving full effect to this Agreement.

### **Section 18.12 Regulatory Framework for Infrastructure Projects**

Without prejudice to the rights and obligations of the Parties under this Agreement, if a regulatory framework for the grant, implementation and supervision of License related to infrastructure projects is introduced by Gol or GoT, the Parties shall consult in good faith and to agree to such amendments to this Agreement, as may be reasonably necessary to take account of such regulatory framework but so that the rights of the Licensee hereunder are not adversely affected or additional material liabilities imposed.

### **Section 18.13 Rights of Parties during road widening**

The Authority shall be entitled to receive the monetary compensation, if any paid by the authorities during Road Widening programmes. The Licensee shall enjoy the benefit accrued if any in the form of additional built up space subject to the Clause No. 8.2.3 of this agreement. The cost of restoration of the structures shall be borne by the Licensee.

### **Section 18.14 Remedies Cumulative**

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.



## Section 18.15 Intellectual Property Rights and Confidentiality

### 18.15.1 Intellectual Property Rights

- a) The Licensee accepts and agrees that the Authority shall be the absolute and exclusive owner and proprietor of all the details, plans, specifications, schedules, programs, budget, reports, calculations and other work relating to the Project hereafter referred to as "**Proprietary Material**", which have been or are hereafter written, originated or made by any of the Licensee or the Persons claiming through or under it or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. All Proprietary Material shall be clearly marked as such in capital letters and in bold face print. The Licensee shall not either directly or in-directly use the trademarks of HMDA .
- b) The Authority shall own all the intellectual property rights in or relating to the Proprietary Material and all rights, privileges, entitlements, interests, property and benefits and associated rights whatsoever therein for the full period in accordance with the Applicable Laws and with all the reservations and extensions thereof and together with the exclusive right of the Authority to use such information and intellectual property/authorize the use thereof by Third Parties in India and abroad in any form, including without limitation the right to reproduce, translate, edit, modify, distribute, sell or assign such rights, with or without consideration.
- c) The Authority shall have the exclusive right to apply for/procure registration of the intellectual property rights at its cost with relevant competent authorities in India and abroad.
- d) The Licensee and the Authority hereby grant to each other an irrevocable, royalty-free, non-exclusive License to use all proprietary material owned by any of them or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. Such License shall carry the right to use such material for all purposes connected with the Project; however, it shall not be transferable to any Person other than to the permitted assignee under this Agreement. Such License shall discontinue on the termination or expiry of this Agreement or the discharge by any Party of its duties hereunder.

### 18.15.2 Confidentiality

No Party shall, without the prior written consent of the other Party, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any Person or use for any purpose unconnected with the Project any information which is by its nature or is marked as Proprietary Material or "confidential", concerning the other (including any information concerning the contents of this Agreement) except to its officers, directors, employers, agents, representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process; provided, however, that a Party, with the written consent of the other Party, may issue press releases containing non-sensitive information in relation to the progress of the Project. This provision shall not apply to information:

- a) already in the public domain, otherwise than by breach of this Agreement;
- b) already in the possession of the receiving Party on a lawful basis before it was received from the other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality;

- c) obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality;
- d) disclosed to the Lenders under terms of confidentiality; or
- e) which is required to be disclosed by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by or under any Applicable Law or by any Government Authority.
- f) the Authority needs to provide to the third party applicants under RTI Act.

#### **Section 18.16 Joint and Several Liability of Preferred Bidder**

The Preferred Bidder shall be jointly and severally liable to the Authority for compliance with the terms of this Agreement.

#### **Section 18.17 No Liability for Review**

Except to the extent expressly provided in this Agreement,

- a) no review, comment or approval by the Authority/Government Authorities/ of the DPR, the Designs and Drawing, the Transaction Documents or the documents submitted by the Licensee nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Licensee from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- b) the Authority or any Government Authority or GoT shall not be liable to the Licensee by reason of any review, comment, approval observation or inspection referred in sub-section (a) above.
- c) In no event HMDA, or its successor would be vicariously liable during License Period.

#### **Section 18.18 Depreciation**

For the purpose of depreciation under the Applicable Laws, the property representing the capital investments made by the Licensee in the Project shall be deemed to be acquired and owned by the Licensee.

#### **Section 18.19 Assignability**

18.19.1 Subject to Clauses 18.9.2 and 18.9.3, this Agreement shall not be assigned by the Licensee 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. Further, subject to the provisions of Clause 18.9.2, the Licensee 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 Licensee 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.

#### **18.19.2 Permitted assignment and charges**

The restraints set forth in Clause 18.9.1 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 Project; and

- (c) assignment of rights, interest and obligations of the Licensee 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) The Licensee shall not, directly or indirectly, transfer, mortgage, pledge, assign, hypothecate, encumber, let or sub-let or part with the occupation of any of the Project Components 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 Licensee may permit or sub-let any third party to operate permissible activities in the in Adventure Zone or Food Courts to food and beverage providers, and for a period that shall be coterminous with or, less than the License Period and upon expiry of the License 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.

18.19.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Licensee, assign any of its rights and benefits and/or obligations hereunder pursuant to any direction of Gol, GoT, by the operation of law on such terms and conditions as the Authority may deem appropriate or as may be required by law, 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.

#### **Section 18.20 Interest and Right to Set Off**

- a) Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under Law, the Party entitled to receive such amount shall also have the right of set off.
- b) The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein the Agreement and if no such period is specified, within 10 (ten) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to the 24% (Twenty Four percent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under the Law and this Agreement, including termination thereof.
- c) All Supplemental Agreements executed subsequently to fulfil the objectives of the Project, shall essentially become part of this Agreement and shall be read in conjunction with the provisions of this Agreement.
- d) The Licensee shall be at sole responsibility in respect of issues arising out of consumer laws and their compliance.

**IN WITNESS WHEREOF** the Authority, Licensee and Preferred Bidder, through their respective authorized officials subscribe their respective signatures and seals hereto on this \_\_\_\_ day of \_\_\_\_\_ 2023:

Signed, sealed and delivered by:	Signed, sealed and delivered by:	Signed, sealed and delivered by:
The Authorised Signatory	The Authorised Signatory	by:
For and on behalf of	For and on behalf of the	The Authorised Signatory
		For and on behalf of the

**HMDA (Authority)**

**XXXX Ltd  
(Licensee )**

**(Preferred Bidder/Confirming Party)**

**Name**

**Name**

**Name**

**Designation**

**Designation**

**Designation**

**Company seal**

**Company seal**

**Company seal**

Witness:

Witness:

Witness:

1.

1.

1.