



**HOSPITALITY TRAINING INSTITUTE
AT TEESTA (GAJOLDOBA)
DOOARS, WEST BENGAL
REQUEST FOR PROPOSAL
VOLUME II**



IIDC Limited

TABLE OF CONTENTS

ARTICLE – 1: DEFINITIONS AND INTERPRETATION	9
1.1 Definitions	9
1.2 Interpretations	21
ARTICLE – 2: GRANT OF LEASE RIGHTS	24
ARTICLE – 3: DEVELOPMENT OF THE PROJECT	26
ARTICLE – 3A: CONDITIONS PRECEDENT	28
ARTICLE – 4: FINANCIAL COVENANTS OF THE LESSEE	31
4.1 Land premium	31
4.2 Annual Lease Fee	31
4.3 Performance Security	32
4.4 User Charges	34
ARTICLE – 5: PROJECT SITE – ACCESS AND POSSESSION	35
5.1 Access to the Project Site	35
5.2 Handover of possession of the Project Site	35
ARTICLE– 6: OBLIGATION OF THE LESSEE	37
6.1 General Obligations	37
6.2 Obligations relating to Sub Contracting and Project Agreements	40
6.3 Obligations relating to Shareholding of the Lessee	42
6.4 Payment of Taxes	43
6.5 Audit and Accounts	43
6.6 Reporting Requirements	44
6.7 Insurance	45
6.8 Access for Supervision	48
6.9 Materials of Construction	48
6.10 O&M Obligations	49
6.11 Sole Purpose of the Lessee	51
6.12 Obligations of Preferred Bidder	51
ARTICLE – 7: OBLIGATIONS OF THE LESSOR	53
ARTICLE – 8: REPRESENTATIONS AND WARRANTIES	54
8.1 Representations and Warranties of the Lessee	54

8.2	Representations and Warranties of the Lessor	56
8.3	Disclosure	57
8.4	Disclaimer	57
8.5	Indemnity	58
ARTICLE – 9: CONSTRUCTION OF THE PROJECT		62
9.1	Preparation and Review of DPR	62
9.2	Construction and Construction completion	63
9.3	Completion Certificate	65
9.4	Project Completion	67
ARTICLE – 10: PROJECT MONITORING		68
10.1	Independent Engineer	68
10.2	Appointment of Expert	70
10.3	Inspection	70
ARTICLE – 11: EVENT OF DEFAULT AND TERMINATION OF LEASE		72
11.1	Lessee Event of Default	72
11.2	Deleted	73
11.3	Parties Rights	73
11.4	Notice of Termination & Suspension	73
11.5	Not Used	75
11.6	Not Used	75
11.7	Rights & Obligation of the Parties upon Termination	75
ARTICLE 12 – CONSEQUENCES OF TERMINATION AND/ OR EXPIRY		77
12.1	Condition Survey	77
12.2	Obligations upon Termination	77
12.3	Risk	79
12.4	Defects Liability Period	79
ARTICLE – 13: DISPUTE RESOLUTION		81
ARTICLE – 14: FINANCING AND ASSIGNMENT		82
14.1	Financing	82
14.2	Restrictions on assignment and charges	82
14.3	Permitted assignment and charges	82
14.5	Assignment by the Lessor	83

ARTICLE – 15: FORCE MAJEURE	84
ARTICLE - 16: INTELLECTUAL PROPERTY RIGHTS	86
ARTICLE - 17: MISCELLANEOUS	88
17.1 Change in Law	88
17.2 Joint and Several Liability of the Preferred Bidder/Lessee	88
17.3 Entire Agreement	88
17.4 Notices:	89
17.5 Modifications:	89
17.6 No partnership	90
17.7 Severability:	90
17.8 Third Parties	90
17.9 Waiver	91
17.10 Governing Law:	91
17.11 Counterparts	91
SCHEDULE A: PROJECT SITE	94
SCHEDULE B: ADDITIONAL DOCUMENTS	95
Schedule B- Part 1: Request for Proposals	95
Schedule B- Part 2: Bid Document submitted by the Preferred Bidder	95
Schedule B-Part 3: Letter of Intent	95
Schedule B-Part 4: Letter of Acceptance	95

Draft Lease Agreement

This Lease cum Development Agreement (hereinafter referred to as the Agreement) is executed at _____ on this ____ day of _____ 2015

BETWEEN

The Governor of the State of West Bengal, represented by the Director, Department of Tourism, Government of West Bengal (DOT), (hereinafter referred to as "**Lessor**" which expression shall where the context so admits, be deemed to include its successors and assigns) of the **FIRST PART**

AND

....., a company incorporated under the provisions of the Companies Act, 2013, having its registered office at acting through Shri....., who has been duly authorised by the Board of Directors of the Company vide Board Resolution dated -----(hereinafter referred to as "**Lessee**" which expression shall include, where the context so demands, its successors and permitted assigns) of the **SECOND PART**;

AND

M/s _____ a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at _____, in its capacity as the Confirming Party to this Agreement (hereinafter referred to as the "**Preferred Bidder**" 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**;

OR

The consortium of (i) M/s _____ having its Registered Office at _____ and (ii) M/s _____ having its Registered Office at _____, in their capacity as the Confirming Party to this Agreement (hereinafter referred to as the '**Preferred Bidder**' which expression shall, unless the context otherwise requires, include its successors) duly represented through M/s _____, the Lead Member of the consortium, through its Authorized signatory Mr./Ms. _____, of the **THIRD PART**.

(Each of the parties of the FIRST and 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) The Lessor is desirous of developing a tourism park at Teesta, Dooars in Gajoldoba, Jalpaiguri, constituting inter alia development of a _____ (one of the Project Components) (hereinafter referred to as the '**Project**') on a plot of land measuring _____ acres over revenue plot no _____ of _____, West Bengal (hereinafter referred to as the '**Project Site**') and delineated in red colour boundary lines on the plan annexed hereto and marked as **Schedule A**, which is exclusively owned by and belongs to the Lessor.
- (b) Pursuant to the above objective, the Lessor has carried out a transparent competitive

single stage bidding process and invited proposals from bidders pursuant to the RFP.

- (c) After evaluation of the proposals/ bids received by it from various parties/Persons, the Lessor has accepted the bid submitted by M/s..... (hereinafter referred to as the '**Preferred Bidder**') and has issued a Letter of Intent No..... dated.....(hereinafter referred to as the "**Letter of Intent**" or "**LoI**") to the Preferred Bidder requiring, inter alia, the execution of this Lease Agreement within 45 days of the date of issue thereof. The copies of the Request for Proposal, Preferred Bidder's bid documents, LoI and subsequent letter of acceptance sent by the Preferred Bidder to Lessor vide letter dated..... are collectively annexed hereto and marked as **Schedule B**.
- (d) The Preferred Bidder has since promoted and incorporated the Lessee as a limited liability company under the Companies Act 2013, and has requested the Lessor to accept the Lessee as the entity which shall undertake and perform the obligations and exercise the rights of the Preferred Bidder under the LOI, including the obligation to enter into this Lease Agreement for executing the Project.
- (e) By its letter dated ***, the Lessee has also joined in the said request of the Preferred Bidder to the Lessor, to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Preferred Bidder including the obligation to enter into this Lease Agreement pursuant to the LoI. The Lessee has further represented to the effect that it has been promoted by the Preferred Bidder for the purposes hereof.
- (f) The Lessor has agreed to the said request of the Preferred Bidder and the Lessee and has accordingly agreed to enter into this Agreement with the Lessee for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.
- (g) The Lessor has agreed to provide to the Lessee the Project Site, free from all

encumbrances, charges, mortgages, lien, litigation, attachments or any kind of charges.

(h) Following the issuance of the LoI, the Preferred Bidder (for and on behalf of the Lessee) /Lessee has, within 15 days from the date of issue of LoI , fulfilled the following pre requisites to the execution of this Agreement

- i. Made a payment of the Land premium of Rs. _____(Rupees_____), plus applicable service tax thereon, if any, in the form of demand draft no.____, drawn on ____ bank, in favor of The Director, Department of Tourism, Government of West Bengal payable at Kolkata
- ii. Furnished to the Lessor an unconditional and irrevocable Bank Guarantee of Rs. _____ from ____ Bank (name and details of the issuing Bank) towards the Performance Security from ____ Bank, as per the stipulations of the RFP
- iii. Made a non-refundable payment of the Project Development fees of Rs. _____ (Rupees _____ only) plus service tax as applicable and other levies by way of demand draft no. _____, drawn on ____ Bank, in favor of IIDC Limited payable at Kolkata as per the stipulations of the RFP ;

(i) Pursuant to the fulfillment of the above prerequisites to the execution of the Agreement, the Lessor has agreed to the implementation of the Project by the Lessee on the Terms, Conditions and covenants hereinafter set forth in this Agreement.

(j) It is deemed necessary and expedient to enter into this Agreement to record the terms of the said Agreement between the Parties.

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

ARTICLE – 1: DEFINITIONS AND INTERPRETATION

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

1.1 Definitions

- i. **“Accounting year”** means the financial year commencing on 1st April in each year and ending on 31st March in the next year except in the first and last calendar year during the subsistence of this Agreement. In the first year of the subsistence of this Agreement, it means the period from the commencement of this Agreement till the immediately following 31st March, and in the last year of the subsistence of this Agreement, it means the period from 1st April till the end of the Lease Period. .
- ii. **Not Used**
- iii. **“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;.
- iv. **“Annual Lease Fee”** shall mean a sum equivalent to 4% of the Land Premium which the Lessee has to pay to the Lessor every Accounting Year starting from the Execution date till the end of the Lease Period in a manner as mentioned in Article 4.2 of the Agreement.
- v. **“Appendix”** means any of the schedules, supplements or documents appended to this Agreement.
- vi. **“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, GoWB or by any Local Authority of other Government Authority or instrumentality thereof, as may be in effect on the date of this Agreement and during the subsistence thereof.

- vii. **"Applicable Permits"** means any or all permissions, clearances (including environmental clearances, pollution clearance and approvals), authorizations, 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 as contemplated in this Agreement.
- viii. **"Approved DPR"** means the DPR approved by the Lessor
- ix. **"Associate"** means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member. As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or contract or otherwise;
- x. **"Bank Rate"** means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;
- xi. **"Best Industry Practice"** shall mean the exercise of that skill, diligence and prudence and those methods, practices and specifications and standard of engineering, procurement, construction, equipment, security, operation, maintenance 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 similar type and size.

- xii. **“Business Day”** shall mean a day on which banks are generally open in the State of West Bengal for transaction of normal banking business.
- xiii. **“Change in Law”** means occurrence of any of the following events after the execution of this Agreement:
- a. enactment of any new Applicable Law;
 - b. the repeal in whole or in part (unless re-enacted with the same effect) or modifications of any Applicable Law;
 - c. the change in interpretation or application of any Applicable Law;
 - d. the imposition of a requirement for an Applicable Permit (s) (other than for cause) not required on the date of this Agreement;
 - e. after the date of grant of any Applicable Permit(s), a change in the terms and conditions attaching to such Applicable Permit(s) (other than for cause) or the attachment of any new terms and conditions to the Applicable Permit (s) (other than for cause); or
 - f. any Applicable Permit(s) previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a Party (including a failure to renew), or if granted for a limited period, nor being renewed on a timely basis on an application therefore having been duly made in good time.
- xiv. **“Commercial Operation Date (COD)”** shall mean the date on which the Construction Completion Certificate or the Provisional Completion Certificate , as the case may be, is issued by the Lessor, to the Lessee in respect of the Project.
- xv. **“Conditions Precedent”** shall mean the conditions precedent to be fulfilled either by the Lessor or the Lessee as per the provisions of Article 3A of the Agreement.
- xvi. **“Change in Ownership”** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the [Preferred Bidder /Consortium Members] together with

their Associates in the Equity of the Lessee to decline below (i) 51% (fifty one per cent) thereof until the tenth anniversary of the date of Commercial Operations Date of the Project, (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Lessor during the remaining Lease Period; provided that any material variation (as compared to the representations made by the Preferred Bidder during the bidding process) in the proportion of the equity holding of [any Consortium Member] to the Equity of the Lessee, if it occurs prior to COD of the Project, shall constitute Change in Ownership; provided further that any transfer of the direct and/or indirect, legal or beneficial ownership leading to acquisition of more than 15% (fifteen per cent) of the total Equity by any person and/ or his Associate at any time during the Lease Period shall constitute a Change in Ownership. For the avoidance of doubt, indirect, legal or beneficial ownership of any shares, or securities convertible into shares shall include transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in any person acquiring control over the voting rights of the shares of the Lessee;

- xvii. **“Compliance Date”** shall have the meaning prescribed thereto under Article 3A hereof.
- xviii. **“Construction Period”** shall mean the period commencing from the Compliance Date and ending on the Project Completion Date.
- xix. **“Contractor”** means a reputed Person with whom the Lessee has entered into/may enter into a contract relating to the works and sub-contractors, including contractor for equipment, procurement and engineering and contractors for operation and maintenance and/or any other contractors and sub-contractors, manufacturers or suppliers of works or part thereof, as the context may admit or require.
- xx. **“DBFOT”** shall mean and refer to Design, Built, Finance, Operate and Transfer

- xxi. **“Detailed Project Report”** or **“DPR”** means the detailed design and engineering report for the Project and as detailed in Clause (1) of Article 9 hereof;
- xxii. **“Dispute Resolution Procedure”** means the procedure for resolution of disputes set forth in this agreement
- xxiii. **“Easements”** means all easements, reservations, right-of-way, utilities and other similar rights as to the use of the real property, which are necessary or appropriate for the conduct of business of the Lessee or Preferred Bidder related to the Project.
- xxiv. **“Encumbrances”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, license, gift, 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 Project Site or Third Party claims or rights of any kind attaching to the Project Site.
- xxv. **“Equity”** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Lessee for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Lessee, and any interest-free funds advanced by any shareholder of the Lessee for meeting such equity component.
- xxvi. **“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 purposes of this Agreement, as appointed by the Parties hereto by mutual consent, in accordance with the provisions hereof.
- xxvii. **“Execution Date”** shall mean and refer to the date of execution of this Agreement.
- xxviii. **“Financial Assistance”** means and include the aggregate amounts provided by way

of loan, lease finance, advances, guarantees, bonds, subscription to non-convertible debentures, or otherwise, by the Lenders to the Lessee, towards financing the debt component of the cost of the Project and shall include all related financial charges, fees and expenses of all kinds relating to the same.

- xxix. **"Financial Closure"** means the date on which the Financing Documents providing for Financial Assistance by the Lenders have become effective and conditions if any for draw down of fund have been met by the Lessee such that the Lessee has immediate access to such sanctioned funding under the Financing Documents the Lessee has access to such Financial Assistance.
- xxx. **"Financing Documents"** means, collectively, the documents executed in favor of or entered into with the Lenders by the Lessee, in respect of the Financial Assistance, including loan agreements, notes, indentures, security agreements or arrangements, guarantees and acceptable letters of credit, other debt instruments and other agreements evidencing any obligation of the Lessee and other necessary undertakings required pursuant to the respective terms thereof, relating to the Financial Assistance or any part thereof (including refinancing).
- xxxi. **"Financial Package"** means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated debt, if any;
- xxxii. **"Financial Model"** means the financial model adopted by Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;
- xxxiii. **"Force Majeure"** or **"Force Majeure Event"** shall have the meaning as set out in

Article 14.

xxxiv. **“GoI”** shall mean the Government of India.

xxxv. **“GoWB”** shall mean Government of West Bengal.

xxxvi. **“Government Authority”** means GoI, GoWB or Governmental Department, commission, board, body, bureau, agency, authority, instrumentality or administrative body, central, state or local, having jurisdiction over the Lessee, the Land, the Project or any part thereof or the performance of all or any of the services, obligations and covenants of the Lessee under or pursuant to this Agreement or any portion thereof.

xxxvii. **“Land”** or **“Project Site”** shall mean and include all the land and hereditament and premises of around ___ acre revenue plot no ----- of _____, _____, Jalpaiguri, West Bengal and delineated in red colour boundary lines on the plan annexed hereto and marked as Schedule **“ A”**.

“Land premium” shall mean and refer to an amount equivalent to Rs._____/-(_____) plus service tax thereon, paid by the Preferred Bidder/Lessee to the Lessor towards Land premium, in terms of the RFP, the LOI and the provisions hereof, in consideration of the grant of the Lease rights, as envisaged hereunder, in respect of the Project Site.

xxxviii. **“Lease Period”** shall mean a period of 30 years commencing from the Compliance Date (including construction period) unless terminated earlier or renewed further in accordance with the terms and conditions of this Agreement. In case of early termination or further renewal, the Lease Period shall be adjusted accordingly.

xxxix. **“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 Lessee and includes subscribers to/trustee for the holders of the debentures/bonds or other securities issued by the Lessee to meet the debt component of the cost of the Project.

- xl. **“Lessee”** means M/s _____ which the Preferred Bidder has incorporated as a Special Purpose Company under the Companies Act 2013, to implement the Project under the provisions of this Agreement.
- xli. **“Lessor”** shall mean The Governor of the State of West Bengal, represented by the Director, Department of Tourism, Government of West Bengal.
- xlii. **Deleted**
- xliii. **“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.
- xliv. **“O&M”** means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of User Charges in accordance with the provisions of this Agreement;
- xlvi. **“Operation Period”** means the period commencing from COD and ending on the Transfer Date.
- xlvii. **“On-site Infrastructure”** includes all support infrastructure including but not limited to internal roads with bitumen surfacing, pavements, sidewalks, perimeter fencing, street lighting within the perimeter, internal water supply and sanitary arrangement,

drains, sewerage, electricity sub-stations, electricity mains, transformers, water mains, sewer mains, utilities, parking facilities, waste disposal systems, storm water drains, rainwater harvesting systems, telecom services, fire fighting system, logistics centre, administrative offices, car parking and open space and green belt development, landscaping, maintaining of environmental conditions, arboriculture etc. within the perimeter of the Project Site.

- xlvi. **“Person”** means any individual, company, corporation, partnership, joint venture, trust, un-incorporated organization, society, Government or Governmental Authority or agency or any other legal entity.
- xlviii. Deleted
- xlix. **“Project”** shall mean _____ in the Gajoldoba Tourism Hub, Jalpaiguri District, West Bengal with all structures, constructions, additions, alterations or improvements etc. thereof, landscape structures, pavements, drainage facilities, sign boards, electrical, mechanical, civil, sanitation and other works, equipments installed therein to be used for the purposes of the Project and including but not limited to the furniture, fixtures and equipments, other related facilities installed or affixed and all additions, modifications, alterations and extensions thereto as may be effected by the Lessee from time to time, as per the approved and sanctioned plans and layout.
- l. **“Project Agreements”** means collectively this Agreement, O&M Agreements and any Material Contract (other than the Financing Documents) entered into or may hereafter be entered into by the Lessee in connection with the Project.
- li. **“Project Assets”** means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of licence, Right of Way or otherwise; (b) tangible assets such as civil works and equipments, buildings, structures, electrical systems, communication systems; (c) Project Facilities situated

on the Site; (d) all rights of the Lessee under the Project Agreements;(e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project;

- lii. **"Project Facilities** (including Project concept, write-up, components, capacity and area statement)" mean collectively or singularly, as the context may admit or require, the facilities required for development of the Project as per the guidelines issued by Department of Tourism, GoWB, along with the structures, common areas, infrastructure and facilities and services relating thereto that shall be developed, designed, financed, constructed, completed, commissioned, operated and maintained on the Project Site by the Lessee.
- liii. **"Project Completion Date"** shall have the meaning ascribed thereto in Clause 2 of Article 9;
- liv. **"Project Implementation Schedule"** means the progressive Project Milestones schedule approved as part of the Detailed Project Report for completion of the Project on or before the Scheduled Project Completion Date;
- lv. **"Project Milestones"** means the project milestones set forth in the Project Implementation Schedule
- lvi. **"Prudent Utility Practices"** means (in the absence of any express provision in the Technical Specifications or Performance Standards) the methods and standards, on any particular issue of construction, restoration, operation and maintenance of the Project Facilities (i) of any Competent Authority, and (ii) as would be followed by a prudent and experienced construction contractor and/or operator, in a project of similar nature and magnitude to the Project as per the generally accepted standards of quality and performance.
- lvii. **"Scheduled Project Completion Date"** means the date falling at the expiry of 24

(twenty four) months from the compliance date

- lviii. **"Specifications and Standards"** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project Facilities, as set forth in the Bid Document (PIM) and any modifications thereof, or additions thereto, as included in the DPR for the Project submitted by the Lessee to, and expressly approved by, the Authority;
- lix. **Deleted**
- lx. **"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, 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 GoI, GoWB or Government Authority, and in respect of any Person and all penalties, charges, costs and interest relating thereto.
- lxi. **"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.
- lxii. **"Third Party"** means any Person, real or legal, or entity other than the Parties to this Agreement.
- lxiii. **"Total Project Cost"** means the lowest of:
- a. the capital cost of the Project, as set forth in the Financial Package;
 - b. the actual capital cost of the Project upon Project Completion as certified by

the Statutory Auditors and confirmed by the Independent Engineer; and

- c. the Project Cost as per the approved DPR.

- lxiv. **“Transfer Date”** means the date immediately following the date of end of the Lease Period.

- lxv. **“User Charges”** means the charges, tariffs, prices, fees, rentals, rates, etc. and all sources of revenue or amounts of money by whatever name called that are determined, charged, demanded, collected, retained and appropriated by the Lessee under this Agreement,

- lxvi. **“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/Project Facilities (the **“Construction Works”**), and the operation 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 in relation to the Project.

B: Any word or expression used in this Agreement shall unless defined or construed in this Agreement shall have the same meaning as in the RFP, 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;

1.2 Interpretations

In this Agreement, unless the context otherwise requires,

- i. 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;
- ii. words importing singular shall include plural and vice versa, and words importing the masculine shall include the feminine gender;
- iii. the captions and headings are for the purpose of convenience and reference only and shall not be used in and shall not effect the construction and interpretation of this Agreement;
- iv. terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and terms and words defined in Appendices and used therein shall have the meaning ascribed thereto in Appendices;
- v. words “include” and “including” are to be construed without limitation;
- vi. any reference to day shall mean a reference to a calendar day; any reference to month shall mean a reference to a calendar month;
- vii. 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;
- viii. Reference to this Agreement or any other agreement, deed, instrument or document of any description shall be construed as reference to such

agreement, deed, instrument or other document as the same may from time to time be amended, varied, supplemented, modified, novated or suspended;

- ix. References to Recitals, Articles, Articles, Sub-Articles, Appendices in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Sub-Articles, Appendices of or to this Agreement;
- x. 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;
- xi. Wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate, agreement, authorization, proposal, communication, information or report or determination by any Party and/or Expert unless otherwise specified, such notice, endorsement, consent, approval, certificate, agreement, authorization, proposal, communication, information or report or determination shall be in writing under the hand of the duly authorized representative of such Party and/or Expert in this behalf.

1.4 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; **Ambiguities within Agreement**

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

- (i) 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;
- (ii) 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;

- (iii) Between the written description on the drawings & detailed engineering and the Specifications & Standards, the latter shall prevail; and
- (iv) Between any value written in numerals and that in words, the latter shall prevail.

1.5 **Priorities 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:

- (i) This Lease Cum Development Agreement
- (ii) Appendices to the Agreement
- (iii) Letter of Award issued to the Concessionaire Consortium
- (iv) Written addenda to the RFP
- (v) Written clarifications issued to the bidders
- (vi) RFP
- (vii) The Bid submitted by the Preferred Bidder

ARTICLE – 2: GRANT OF LEASE RIGHTS

- (1) In consideration of the Lessee having paid the Land Premium to the Lessor, and agreeing to comply with the terms and conditions of this Agreement and the representations, warranties and covenants on part of the Lessee, and in accordance with this Agreement, the Applicable Laws and the terms of Applicable Permits, the Lessor hereby grants to the Lessee, and the Lessee hereby accepts the right and lease of the Project Site for the Lease Period, solely for the purpose of constructing, financing, developing, operating and managing the Project for general commercial operation and any other ancillary activity connected with operation and maintenance of the Project without interruption of any nature whatsoever from the Lessor or any person claiming for and on behalf of the Lessor. It is also expressly agreed and understood that the acceptance of the Lease has been on the basis of the independent due diligence and study done by the Preferred Bidder and accepted by the Lessee. As such, the Lessor does not stand guarantee on the viability of the Project in any way.
- (2) Subject to and in accordance with the provisions of this Agreement, the Applicable Laws & Applicable Permits, the Lease rights hereby granted shall, during the Lease Period, oblige or entitle (as the case may be) the Lessee to the following:
- a) Enjoy the possession of the Project Site as per the Lease Agreement hereunder, for the purpose of undertaking the implementation of the Project;
 - b) Undertake the construction of assets, Project Facilities upon the Project Site, on its own or through sub-contracts, in accordance with the terms hereof;
 - c) To apply for and obtain all requisite Applicable Permits for the development of the Project Site, including plans for construction of building/s and other structure/s thereon for such uses and purposes as prescribed herein;
 - d) Enjoy all the rights, privileges and benefits arising out of the Project Site in accordance with the provisions of this Lease Agreement and Applicable Laws and Applicable Permits and subject to receipt of approval and authorization in accordance with the terms hereof, to design, engineer, finance, procure, construct,

erect, operate and maintain the Project Facilities, and for that purpose to remove, renovate, use or demolish any structures with prior approval from DOT that may be existing on the Project Site as on the date of handing over of the Project Site to the Lessee;

- e) Demand, collect and appropriate User Charges from the users of the Project;
- f) Not to assign, transfer, lease or sublet or create any lien or Encumbrance on this Agreement, or rights hereby granted or on the whole or any part of the Project Site nor transfer, Lease, or part possession thereof, save and except as otherwise provided herein;
- g) Perform and fulfill all of the Lessee's obligations under and in accordance with this Agreement and
- h) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Lessee under this Agreement;
- i) Not to transfer by any mode the Project Site/ Land and other immovable structures constructed on the site, under any circumstances whatsoever;

(3) It is also explicitly made clear that the Lessor is the absolute owner of the land which shall remain so for all times to come;

(4) The Lease Period shall commence from the Compliance Date and shall be for a period of 30 years (including construction period) from such date unless renewed or terminated earlier in accordance with the terms and conditions hereof.

ARTICLE – 3: DEVELOPMENT OF THE PROJECT

- (1) The Lessee shall construct and develop the Project, either itself or through its Contractors, in accordance with the plans, designs and Detailed Project Report prepared by the Lessee and duly approved by the Lessor and sanctioned by the competent Government Authority as may be required from time to time by the relevant statutes applicable to the context without diversion or modification except in accordance with the prior written approval from the Lessor. The said DPR shall conform to the requirement of the RFP Document including the Project Information Memorandum and shall include the minimum components mentioned therein. The Project Cost and components shall also not exceed the maximum stipulated therein. The decision of Lessor in this regard is final and the Lessee agrees to abide by the same.
- (2) Be it mentioned here that while making the final drawing for setting up the Project at the Project Site, the Lessee has to ensure the development of the Project Facilities in accordance with Applicable Laws, terms of Applicable Permits and in accordance with Prudent Utility Practices.
- (3) Be it mentioned here that while making the final drawing for setting up the Project, the aesthetic sense of the Project Site is maintained in its appropriate level; and further before submitting the final drawing of the Project before the competent Government Authority concerned for approval, the Lessee shall take written concurrence from the Lessor endorsing the plans and drawings as 'acceptable'.
- (4) The Lessor will give the Lessee uninterrupted & unobstructed possession of the Project Site, free from all Encumbrances/charges, immediately on execution of this Agreement and on payment of such amount as may be mentioned hereunder.
- (5) The Lessor shall facilitate the Lessee to obtain such approvals, sanctions, licenses, Applicable Permits from GoWB and its departments/corporation under the

Applicable Laws, permissions, consents, no objections etc. as is within its power and authority and as may be required for implementation of the Project and similarly the Lessor has agreed to provide the Lessee support to apply and obtain temporary and/or permanent connection of water, electricity and other infrastructure requirements at the risk and cost of the Lessee for initiation of the Project; provided the Lessee makes the required applications for the same and before the completion of construction of the Project, the Lessee shall obtain all connections including electricity and water in their name. It is clarified that DOT shall only facilitate and does not guarantee receipt of the said approval, sanctions, licenses, Applicable Permits which shall be the exclusive responsibility of the Lessee.

- (6) The Lessee shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement make, or cause to be made, necessary applications to the relevant Governmental Agencies with such particulars and details, as may be necessary for obtaining all Applicable Permits, and obtain such Applicable Permits in conformity with the Applicable Laws. The Lessee would be responsible to protect the biodiversity of the Project Site, flora and fauna, comply with all applicable provisions including but not limited to the Forest (Conservation) Act, 1980, Environment (Protection) Act, 1986, National Environment Policy 2006, Ecotourism Policy & Guidelines 1998 issued by the Ministry of Tourism, Government of India with all its modifications, alterations and amendments from time to time.

ARTICLE – 3A: CONDITIONS PRECEDENT

- (1) Save and except as expressly provided elsewhere in this Agreement, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 3A (the "**Conditions Precedent**").
- (2) Unless waived by the Lessor in part or in full, the Conditions Precedent required to be satisfied by the Lessee shall be deemed to have been fulfilled when the Lessee shall have:
- a. Furnished the Performance Security to the Lessor
 - b. Furnished copies (certified as true copies by a Director of the Lessee of all resolutions adopted by the Board of Directors of the Lessee authorizing the execution, delivery and performance by the Lessee of this Agreement.
 - c. Submitted and got approval of the Detailed Project Report and Implementation Plan from the Lessor, The Implementation Plan shall be drawn up by the Lessee within the time scheduled stipulated by the Lessor for the respective component in the RFP .
 - d. Achieved Financial Closure and submitted attested true copies of the Financing Documents to the Lessor along with its soft copies within six months;
 - e. procured/obtained, at its own cost and expense, the Applicable Permits, including environmental permits, required for the commencement of the construction works, unconditionally or if subject to conditions then all such conditions have been satisfied in full and such permits are in full force and effect and the Lease is in compliance with the conditions of grant thereof;
- (3) Unless waived by the Lessee in part or in full, the Conditions Precedent required to be satisfied by the Lessor shall be deemed to have been fulfilled when the Lessor shall have handed over the vacant & unencumbered physical possession of the Project Site to the Lessee in accordance with the provisions hereof.
- (4) Each Party shall at its respective cost and expense make all reasonable endeavours to

satisfy the Conditions Precedent within a period of 180 days from the Execution Date and shall provide the other Party with such reasonable cooperation as may be required to assist the other Party in satisfying the Conditions Precedent for which such other Party is responsible. The later of the dates, within such period of 180 days, when the Lessor or the Lessee fulfils its Conditions Precedent, shall, be the date from which the identified obligations of the Parties hereunder shall commence (referred to as the “**Compliance Date**”).

The Lessee shall notify the Lessor in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

(5) Damages for delay by the Lessee

In the event that (i) the Lessee does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause (2) of this Article 3A, within a period specified in respect thereof in clause 3A (4) above, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Lessor due to Force Majeure, the Lessee shall pay to the Lessor, damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security. The Lessor reserves the right to terminate the Agreement in case of such delay.

If the Conditions Precedent set forth in Article 3 A (2) above have not been satisfied on or before 90 days from the expiry of 180 days stipulated in Article 3 A above and the Lessor has not waived, fully or partially, such conditions, the Lessor may, notwithstanding anything to the contrary contained in this Agreement, terminate this Agreement in accordance with provisions of Article 11 without being liable in any manner whatsoever to the Lessee and forfeit the the Performance Security and/or the Land Premium by way of Damages, provided that where the Lessor does not fulfill its obligations under Article 3 A and terminates this Agreement under the Article 11 it shall

refund in full the Performance Security and/or the Land Premium, as the case may be.

ARTICLE – 4: FINANCIAL COVENANTS OF THE LESSEE**4.1 Land premium**

The Lessee has, in consideration of the grant of Lease of the Project Site and the other rights granted hereunder, as a precondition to the execution of this Agreement, prior to the Execution Date, paid to the Lessor, the Land Premium of Rs. _____ (_____), plus service tax thereon, if any, in one single installment in the form of a demand draft drawn in favour of “The Director, Department of Tourism, Government of West Bengal” on _____ Bank, payable at Kolkata, West Bengal and the Lessor hereby acknowledges the receipt thereof.

4.2 Annual Lease Fee

- i. In addition to the Land Premium hereinabove mentioned, in consideration of the Lease of the Land and the rights appurtenant thereto in favour of the Lessee, the Lessee shall, effective from the Execution Date and till the end of the the Lease Period, pay Annual Lease Fee to the Lessor, by way of a demand bank draft drawn in favor of the Lessor on a nationalized/scheduled bank having a branch at Kolkata, West Bengal, at the beginning of each Accounting Year.
- i. The Annual Lease Fee for the first Accounting Year shall be paid, within seven days of the Execution Date, on a pro rata basis for the period commencing from the Execution Date till the immediately following 31st March. Similarly The Annual Lease Fee for the last Accounting Year shall be paid on a proportionate basis for the period commencing from 1st April of the respective Accounting Year and ending on the Transfer Date.
- ii. The Annual Lease Fee, for the subsequent Accounting Years of the shall be

paid in advance by the seventh day of each such Accounting Year (“**Due Date**”)

- iii. The Annual Lease Fee payable by the Lessee shall be exclusive of applicable service tax and other similar levies, which shall be payable over and above the Annual Lease Fee by the Lessee. The Annual Lease Fee for the last Accounting Year of the Lease Period shall be paid on a proportionate basis for the period commencing from 1st April of the respective Accounting Year and ending on the Transfer Date.
- iv. In the event of delay of up to four weeks from the Due Date, in the payment of the Annual Lease Fee, the Lessee shall pay to the Lessor, interest on the due amount at the rate of Bank Rate plus 3% (two percent) per annum, for the period from the Due Date until the date of actual payment of the outstanding dues. Further the Lessor shall be entitled to appropriate the delinquent amounts, if any, from the Performance Security. A delay in such payment beyond four weeks from the Due Date shall constitute a Lessee Event of Default and shall entitle the Lessor to terminate this Agreement under the provisions hereof.

4.3 Performance Security

- i. For securing the performance of the obligations of the Lessee, under Article 3A of this Agreement and during the Construction Period, the Lessee shall deliver to the Lessor an un-conditional and irrevocable bank guarantee in favor of _____, for a sum of Rs. _____ (**Rupees _____ Only**), to be remained valid till the period mentioned in Article 4.3(iii) below. Until such time the Performance Security is provided by the Lessee pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Lessor shall release the Bid Security to the Lessee.

- ii. Upon occurrence of a Lessee Event of Default during the Construction Period, the Lessor shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Lessee Default. Upon such encashment and appropriation from the Performance Security, the Lessee shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security, provide a fresh Performance Security, as the case may be, and the Lessee shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Lessor shall be entitled to terminate this Agreement in accordance with the provisions hereof.
- iii. The Lessee shall keep the Performance Security valid and in full force and effect at all times during the Construction period and for a period of six months thereafter (“the **Validity Period**”). This is an essential condition of the Agreement and the failure to maintain the Performance Security in accordance with the provisions hereof shall constitute a Lessee Default and shall entitle the Lessor to terminate this Agreement in accordance with the provisions hereof.
- iv. Subject to the provisions hereof, the Lessor shall return the Performance Security to the Lessee, within two weeks of the expiry of the Validity Period prescribed in sub clause iii above; provided that there are no outstanding claims of the Lessee on the Lessor and provided further the Lessee is not in breach of this Agreement.

4.4 User Charges

- i. Unless specifically authorized by the Lessor, effective from COD of the Project and during the Operations Period, the Lessee either itself or through its agents/Contractors shall be
 - (i) entitled to determine, revise, charge, demand, collect, recover, retain and appropriate the User Charges, from users of Project Facilities and for the goods, services, facilities and amenities etc. relating to the Project/Project Facilities/at the Project Site;
 - (ii) entitled to provide separate customized service or tariff 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; *Provided that* the Lessee 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.

- ii. Subject to any specific provision made for some part of the Project and/or Project Facilities by the Lessor during the Lease Period, the Lessor expressly recognizes that if any user fails to pay the User Charges, the Lessee 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 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.

ARTICLE – 5: PROJECT SITE – ACCESS AND POSSESSION**5.1 Access to the Project Site**

- i. The Lessor shall on the date of execution of this Agreement grant the Lessee access to the Project Site for the period from the Execution Date to the Compliance Date for the limited purpose of carrying out site investigations, surveys, inspections etc at the Lessee's cost, risk and consequence. The Lessor 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 Lessee shall ensure at its cost and consequence that during such period no damage is caused to the Project Site by its activities thereat.
- ii. The Parties shall, within 15 (fifteen) days of the Lessor's notice in this behalf to the Lessee prior to the Compliance Date, carry out through their duly authorised representative, a joint inspection and verification of all the real estate, structures, land, buildings at the Project Site and record the report thereof in a memorandum duly signed by the Parties/their representatives. The participation of the Lessee in such joint inspection shall be mandatory.

5.2 Handover of possession of the Project Site

- i. The Lessor shall on the Compliance Date and, upon satisfaction of the Conditions Precedents detailed in Article 3A (1), handover the vacant possession of the Project Site unto the Lessee on an "as is where is basis" on lease 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.

- ii. Upon the Lessee observing and performing its obligations, the several covenants, conditions and agreements herein contained and on the part of the Lessee to be observed and performed, the Lessee shall remain in peaceful possession and enjoyment of the Project Site during the Lease Period.

- iii. Following delivery of possession of the Project Site, the Lessee and the Persons claiming through or under it shall keep the Project Site free from any trespass or encroachment and keep the Lessor informed thereof and take appropriate and timely legal and remedial action.

- iv. The Lessor confirms that upon the Project Site being handed over, the Lessee shall have the right to enter upon, occupy and use the Project Site and to make at its cost, charge and expense such development and improvements in the Project Site as may be necessary or appropriate to implement the Project and to establish, operate and maintain the Project Facilities, subject to and in accordance with the provisions of this Agreement.

- v. It is expressly agreed that:
 - i. Any archaeological discoveries shall belong to and vest in the Government and the Lessee shall promptly report the discovery thereof to the Authority and follow its instructions for safe removal thereof; and

 - ii. Mining rights do not form part of the Lease granted to the Lessee under this Agreement and the Lessee hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Project Site. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

ARTICLE– 6: OBLIGATION OF THE LESSEE**6.1 General Obligations**

The Lessee shall have the obligations to:

- i. Prepare Detailed Project Report (including but not limited to investigations, studies, surveys, designs & drawings, evaluations (technical & financial), layout plans etc.), arrange finance and implement the Project at the Project Site, at its own costs, in accordance with the provisions of this Agreement, Applicable Laws, terms of Applicable Permits and Prudent Utility Practice.
- ii. Achieve the Financial Closure of the project within 180 days from the Execution Date or such extended period as may be allowed by the Lessor in its sole discretion.
- iii. Make, or cause to be made, necessary applications to the relevant Government Authorities with such particulars and details, as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws during the Lease Period;
- iv. Procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project.
- v. The Lessee should begin the construction work within 180 days from the Compliance Date.
- vi. Make timely payments of the Land premium, Annual Lease Fee and other statutory payments to the Lessor or any other Government Authority, as the case may be, in accordance with the terms of this Agreement and the Applicable Laws.

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- vii. Arrange and access at its cost and expense all infrastructural facilities like water, electricity and goods, materials, consumables, things and services etc. as necessary for the implementation, construction and operation and maintenance of the Project and make arrangements for back-up supply of power.
 - viii. Employ qualified and skilled personnel, as may be required, to implement and operate the Project and the Project Facilities and services being provided therein and the Lessee shall bear all costs and risks in this regard.
 - ix. afford access of the Project Site to the Lessor and its authorised representatives, Lenders and to the persons duly authorised by any Government Authority having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facilities and to investigate any matter within their authority and upon reasonable notice, the Lessee shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project Facilities consistent with the purpose for which such persons have gained such access to the Project Site;
 - x. promptly intimate in writing and notify the Lessor of any archaeological finds, treasures and precious and semi-precious minerals discovered at the Project Site by the Lessee or its employees, agents and Contractors and proceed, in relation thereof, according to the instructions issued by the Lessor in that regard;
 - xi. Construct the Project Facilities within 24 months from the Compliance Date.
 - xii. ensure that all materials, equipment, machinery, etc installed and/or used at the Project Site is of sound and merchantable quality, that all workmanship shall be in accordance with Prudent Utility Practices applicable at the time of installation, construction or repair and that each part of the construction will be fit for the purpose for which it is required;

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- xiii. Operate and maintain the Project Facilities at its cost in accordance with the Prudent Utility Practices and the terms and conditions of this Agreement, with the objective of providing adequate service standards to the users and ensuring that at the end of the Lease Period, including extension thereof, the Project is handed over to the Lessor or its nominated agency in fair condition, subject to normal wear and tear having regard to the terms and conditions of this Agreement.
- xiv. 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;
- xv. In order to fulfill its obligations under this Agreement and the Project Agreements, the Lessee may at its discretion appoint Construction Contractor(s) and the O&M Contractor (s) by entering into Construction Agreement(s) and O&M Agreement(s). The Lessee shall organize the supervision, monitoring and control of the construction, operation and Management of the Project by the Contractor (s) as may be necessary to ensure the proper performance of their respective obligations under the Construction Agreement(s), the O& M Agreement(s) and other relevant Project Agreements including licensing and franchising, in accordance with the conditions of Applicable Permits and the terms and conditions of this Agreement.
- xvi. ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Lessee's obligations under this Agreement;
- xvii. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- xviii. Upon the termination/ expiry of the Lease Period, transfer the Project and Project Facilities to the Lessor in accordance with the terms and conditions of this Agreement.

- xix. Be responsible for implementing the Environment and safety norms as desired by the Applicable Laws throughout the Lease Period. The Lessee shall take reasonable measures to prevent the destruction, scarring and defacement of the natural surroundings and environment at the Project Site.
- xx. Be and remain responsible for all taxes and other statutory or other dues incurred during the Lease tenure..
- xxi. Ensure that any arrangement/ Project Agreement with the users of the Project Facility is in line with the provisions of this Agreement and is subject to the rights and obligations of the parties under this Agreement.
- xxii. Ensure that the Project Site remains free from all encroachments and Encumbrances during the Lease Period and take all steps necessary to remove Encumbrances and encroachments there from, if any.
- xxiii. Ensure compliance with all labour, statutory requirements, environment, and health and safety laws as applicable to the Project in the State of West Bengal.

6.2 Obligations relating to Sub Contracting and Project Agreements

- i. The Lessee shall have the right to appoint Contractors for entering into agreements for any EPC Contract and/or, O & M Contract, and to enter in to franchising arrangements for construction and marketing of the Project, Project Facilities or any other activity relating to the Project or matters incidental thereto. Notwithstanding any such sub-contract, the Lessee shall retain the overall responsibility, obligation and liability in relation to the Project. It is clarified that Lessee shall remain liable and responsible for any acts, omissions or defaults of any Contractor/licensees for construction or for use of Project Facilities and shall indemnify the Lessor in respect thereof.

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

- iii. The Lessee shall submit to the Lessor the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Lessor shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Lessee within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Lessee shall submit to the Lessor a true copy thereof, duly attested by a Director of the Lessee, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Lessor and/or its failure to review and/or convey its observations on any document shall relieve the Lessee of its obligations and liabilities under this Agreement in any manner nor shall the Lessor be liable for the same in any manner whatsoever.

- iv. The Lessee shall not make any replacement or amendments to any of the Financing Agreements without the prior written consent of the Lessor if such replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Lessor, and in the event that any replacement or amendment is made without such consent, the Lessee shall not enforce such replacement or amendment nor permit enforcement thereof against the Lessor.. For the avoidance of doubt, the Lessor acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Financial Assistance.

- v. The Lessee shall procure that each of the Project Agreements contains provisions that

entitle the Lessor or its nominated entity to step into such agreement, in its sole discretion, in substitution of the Lessee in the event of Termination hereof.

6.3 Obligations relating to Shareholding of the Lessee

- i. The Lessee shall, at least for a period of 10 years from the Execution Date (“**Lock In Period**”), maintain the following shareholding structure;
 - (a) If the Preferred Bidder is a single bidder, then it shall maintain at least 51% holding in the Equity of the Lessee.
 - (b) If the Preferred Bidder is a consortium bidder, then the consortium members shall collectively maintain at least 51% holding in the Equity of the Lessee with the Lead member having not less than 26% and the other members having not less than 10% each.
- ii. The Lessee shall not undertake or permit any Change in Ownership, within the Lock In Period except with the prior approval of the Lessor.
- iii. Notwithstanding anything to the contrary contained in this Agreement, the Lessee agrees and acknowledges that all acquisitions of Equity by an acquirer, within the Lock In Period, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Lessee shall be subject to prior approval of the Lessor from national security and public interest perspective, the decision of the Lessor in this behalf being final, conclusive and binding on the Lessee, and undertakes that it shall not give effect to any such acquisition of Equity without such prior approval of the Lessor. For the avoidance of doubt, it is expressly agreed that approval of the Lessor hereunder shall be limited to national security and public interest perspective, and the Lessor shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Lessor 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 Lessee from any liability or obligation under this Agreement.

For the purposes of this sub clause (3) (ii):

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

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

6.4 Payment of Taxes

The Lessee shall during the Lease Period, pay all taxes, rates, cesses and/or revenues that may be imposed and/ or assessed by GoI and or GoWB and by any other authorities in respect of the Project and for the Project Site; the Lessee shall not make any arrears or default in payment of those taxes, cesses, rates and revenues making the Project Site and the Lessor encumbered and liable to any concerned/authority; in any event of default and for any encumbrance in and on the Land, the Lessee shall indemnify the Lessor with all costs that may have to be incurred by the Lessor in getting itself free from such liabilities created by the Lessee. However, any taxes, rates, cesses imposed by the Government (Central or State) till the Compliance Date, shall be the responsibility and liability of the Lessor.

6.5 Audit and Accounts

i. Statutory Auditors

The Lessee shall appoint and have during the subsistence of this Agreement, as its statutory auditors, a reputed firm of chartered accountants duly licensed to practice in India. All fees and expenses of the statutory auditors shall be borne by the Lessee. Any claim or document provided by the Lessee to the Lessor 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 Lessee's statutory auditors. The Lessee shall extend full co-operation to the statutory auditor.

ii. Maintenance of Accounts

The Lessee shall, during the Lease Period, maintain proper books of account recording all its receipts from all sources derived or on account of the Project, income, expenditure, and payments; and assets and liabilities, in accordance with this Agreement, the Applicable Laws and Prudent Utility Practices. The Lessee shall provide the Lessor 2 (two) copies of its audited balance sheet and profit and loss account along with a report thereon by its statutory auditors, within 120 (one hundred and twenty) days of the close of the Accounting Year to which they pertain.

6.6 Reporting Requirements

The Lessee, during the Construction Period, shall provide quarterly progress report/s of the Project construction to the Independent Engineer, the Lessor and to such other Third Party as the Lessor may direct, within 15 (fifteen) days following the end of each quarter. The Lessee shall, at all times, provide the Lessor any information, data and documents, including but not limited to financial reports, performance reports and technical information, as the Lessor may request for, from time to time, from the Lessee in relation to the Project Assets, Project Site and the Project. Any such information shall be provided by the Lessee to the Lessor within 7 (seven) days from the date of such request, by the Lessor, as the case may be.

6.7 Insurance

The Lessee shall effect and maintain at its own cost, during the Lease Period, such insurances, including but not limited to, external perils, damage to adjacent property, third party insurance, professional liability, defect liability, damage/breakdown during construction etc to cover any and all risks that may arise during the implementation of the Project for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (herein the "**Insurance Cover**"). The Lessee shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Lessor as a consequence of any act or omission of the Lessee during the Term. For the avoidance of doubt, the level of insurance to be maintained by the Lessee after repayment of Lenders dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders dues.

Not later than 45 (forty-five) days from the Execution Date, the Developer shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article. The Lessor may require the Lessee to effect and maintain such other insurances as may be necessary pursuant hereto, and the Lessee shall forthwith procure & maintain such insurances. However, failure by the Authority to intimate the requirement of other insurances to the Lessee shall not, in any manner whatsoever, relieve or absolve the Lessee of its obligation under Agreement.

All insurances obtained by the Lessee in accordance with this Article shall be maintained with insurers on terms consistent with Good Industry Practice. Within 45 (forty-five) days of obtaining any insurance cover, the Lessee shall furnish to the Lessor, notarised true copies of the certificate (s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such

insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Lessee to the Lessor.

If the Lessee shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Lessor shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Lessee, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Lessee.

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

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

Whenever this Agreement is terminated following a Force Majeure Event and insurance proceeds are available in connection with the insurance policies to which the Lessee 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) towards payment of dues, if any, to the Lessor; (b)for the payment towards indebtedness (actual or contingent) owing to the Lenders; (c) and (iii) the residual amount, if any, to the Lessee.

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

Indicative but not exhaustive list of insurances to be taken up is as follows:

Construction Period :

The Lessee 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:

- a) Construction/builders'/contractors' all risk insurance;
- b) Erection all risk policy
- c) Comprehensive Third Party liability insurance including injury or death of personnel of the Lessee and others who may enter the Project Site;
- d) Workmen's compensation insurance;
- e) Any other comprehensive insurance that may be necessary to protect the Lessee, its employees and its assets (against loss, damage or destruction at replacement value)including all Force Majeure events that are insurable;

Operations Period:

The Lessee shall, at its cost and expense, purchase and maintain during the operations period, insurance to cover against:

- (a) Loss, damage or destruction of the Project Assets/Project at replacement value or full market value (including fire, burglary, earthquake, natural calamities, riots, terrorist activities, standard and special peril);
- (b) The Lessee's general liability arising out of this Agreement;
- (c) Liability to Third Parties; and
- (d) Any other insurance that may be necessary to protect the Lessee and its employees, including all Force Majeure events that are insurable

6.8 Access for Supervision

- i. The Lessee shall, at all reasonable times and on reasonable notice, afford access to the Project Site following grant of site possession thereof to the representatives of or Persons duly authorised by the Competent Authority concerned with safety, security or environmental protection to inspect the Project Site and the Facilities thereon and to investigate any other matter within its authority and to carry out their respective duties and functions.
- ii. The Persons obtaining access to the Project Site shall conduct their operations at their own risk, cost and expenses 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.

6.9 Materials of Construction

- i. All materials used in construction shall conform to the specifications & standards

as per the Approved DPR. However, the Lessee shall have freedom to choose best quality building materials of the standard desired for a state of the art Tourism Facility

- ii. The Lessee shall at its own cost and responsibility arrange for construction materials such as bricks, cement, steel, aggregates, soil, bituminous and asphaltic materials, and any other materials and fixtures used in the works, as well as ancillary materials such as shuttering and scaffolding, bearings, joint fillers and similar materials.

6.10 O&M Obligations

- i. Effective from the Commercial Operation Date of the Project and until the end of the Lease Period, the Lessee shall undertake or cause at its cost and risk the operation and maintenance of the Project/Project Facilities, 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, Prudent Utility Practices, Applicable Laws and conditions of Applicable Permits, either on its own through suitable operators / O&M Contractor(s) or through suitable management/service contractors, without in any way relieving the Lessee of its responsibilities, obligations and liabilities as set out in this Agreement; provided that the O&M Contractors shall be formally appointed not less than 2 (two) months before the Scheduled Project Completion Date or upon Project Completion, whichever is earlier. Within 2 (two) weeks of the appointment of such Contractors the Lessee shall inform the Lessor of their appointment.
- ii. The Lessee shall at all times carry out or procure at its cost and expense the O&M Works and maintain (including routine, regular, periodic and preventive maintenance), provide, procure, manage, keep in good operating condition and

- repair, renew, replace, restore, rectify and upgrade to the extent reasonably necessary the Project Facilities, normal wear and tear excepted, with the skill, diligence and expertise of operators of similar facilities and in conformity with the provisions hereof, including the Specifications And Standards and Prudent Utility Practices. All such maintenance, repair and O&M Works shall be carried out in such a way as to cause least inconvenience to users of the Project/Project Facilities.
- iii. The Lessee shall provide, manage, operate and maintain the On-Site Infrastructure in accordance with the Specifications and Standards and Good Industry Practice such that the Project/Project Facilities is operated and run efficiently, smoothly, continuously and without any hindrance or inconvenience to the users thereof. The Lessee shall maintain a public relation office within the Project Site and keep it open to public access during the working hours of the Project. A Complaint Register shall be kept at a prominent location. The Complaint Register shall be inspected at regular intervals by the Lessee who shall take prompt action and also record the same in the register. The register shall be opened for inspection of the Lessor.
- iv. The Lessee shall make appropriate arrangements for security and safety at the Project Site and its users and abide by the security regulations/procedures prescribed by the Lessor or any Government Authority from time to time. The Lessee may secure assistance of the police force for maintaining security upon payment of charges for such services.
- v. The Lessee or the Persons claiming through or under it shall be free to determine the User Charges 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.
- vi. The Lessee is encouraged to construct "Green Buildings" on the Project Site to the maximum extent possible as per the guidelines laid down by the Indian Green

Building Council, Bureau of Energy Efficiency, GoI and as per the Leadership in Energy and Environmental Design (hereinafter referred to as LEED-INDIA) Green Building Rating System for new construction with the objectives of efficient resource utilization, energy conservation/savings and environmental protection. The Lessee is also encouraged to maximize utilization of solar energy in the project.

6.11 Sole Purpose of the Lessee

The Lessee having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Lessee shall not, except with the previous written consent of the Lessor, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein. The Lessee shall not do or carry out any illegal trade or activities in the Project that are prohibited under the Applicable laws. A breach of the provisions contained herein by the Lessee shall constitute a Lessee Event of Default that shall entitle the Lessor to terminate the Agreement in accordance with the provisions hereof.. It is made absolutely clear that the Lessee will not use the land for any other purpose other than for which the components of Lease are being granted.

6.12 Obligations of Preferred Bidder

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 Lessee's activities such that the experience and expertise becomes available to the Lessee on an on-going basis:

- (a) Compliance with the Shareholding obligations set forth in clause 3. of this Article 6.
- (b) Preparation of the DPR and the Designs and Drawings;

- (c) Arranging the financing for the Project, including mobilization of debt and Equity;
- (d) Procurement of Applicable Permits for commencing and implementing the Project;
- (e) Award of Project Agreements in respect of engineering, procurement, construction and operation and maintenance of the Project Facilities;
- (f) 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;
- (g) Compliance with and implementation of the environment management plan;
- (h) Marketing of the Project Facilities;
- (i) Compliance with the provisions of this Agreement relating to liability and indemnification; and
- (j) Implementation of measures for safety, security and protection of the works, property, life and materials at the Project Site and the environment;
- (k) Carrying out Operation & Maintenance of the Project;

ARTICLE – 7: OBLIGATIONS OF THE LESSOR

The Lessor agrees to provide support to the Lessee and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- i. upon request from the Lessee, and subject to the Lessee complying with Applicable Laws, provide all reasonable support and assistance to the Lessee in procuring Applicable Permits required from any Government Authority for implementation and operation of the Project;
- ii. Upon request from the Lessee, assist the Lessee in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Lessee than those generally available to commercial customers receiving substantially equivalent services;
- iii. the Lessor subject to local regulations accepts the Lessee's right to advertise and set up and display hoardings, billboards and other information panels at the Project Site or to grant licenses for such rights against payment; provided that such rights shall be exercised in accordance with the Applicable Laws and terms of Applicable Permits.
- iv. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- v. support, cooperate with and facilitate the Lessee in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- vi. upon written request from the Lessee provide reasonable assistance to the Lessee and any expatriate personnel of the Lessee or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Lessee or its Contractors of their obligations under this Agreement and the Project Agreements.

ARTICLE – 8: REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the Lessee

The Lessee represents and warrants to the Lessor that:

- i. it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- ii. it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- iii. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- iv. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- v. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- vi. the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- vii. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association [or those of any member of the Consortium] or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- viii. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- ix. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and. no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- x. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- xi. it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 6 (3) and that the [existing promoters/ Consortium Members] together with their Associates hold 100% (hundred percent) of its issued and paid up Equity of the Lessee as on the date of this Agreement; [that the respective holding of each Consortium Member conforms to the representation made by the Consortium and accepted by the Lessor as part of the Bid; and that no member of the Consortium shall hold less than 26% (twenty six percent) of such Equity during the Construction Period];
- xii. [the Consortium Members and their] Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- xiii. [each Consortium Member] is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Lessor to enter

into this Agreement with the Lessee pursuant to the Letter of Acceptance, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

- xiv. all its rights and interests in the Project shall pass to and vest in the Lessor on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Lessor, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- xv. no representation or warranty by it contained herein or in any other document furnished by it to the Lessor or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

8.2 Representations and Warranties of the Lessor

The Lessor represents and warrants to the Lessee that:

- i. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- ii. it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- iii. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- iv. there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default of this Agreement or which individually or in the aggregate may result

- in any material impairment of its ability to perform its obligations under this Agreement;
- v. 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 which may result in any material adverse effect on the Lessor's ability to perform its obligations under this Agreement;
 - vi. it has good and valid title to the Project Site, and has power and authority to grant a Lease in respect thereto to the Lessee; and
 - vii. upon the Lessee paying the Upfront Premium and performing the covenants herein, it shall not at any time during the Lease Period, interfere with the peaceful exercise of the rights and discharge of the obligations by the Lessee, in accordance with this Agreement.

8.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

8.4 Disclaimer

- i. The Lessee acknowledges that prior to the execution of this Agreement, the Lessee has, after a complete and careful examination, made an independent evaluation of the RFP documents, scope of the Project, the Project Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Lessor or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and

extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 2 of this Article 8, the Lessor makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Lessee confirms that it shall have no claim whatsoever against the Lessor in this regard.

- ii. The Lessee acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub clause i. above and hereby acknowledges and agrees that the Lessor shall not be liable for the same in any manner whatsoever to the Lessee, [the Consortium Members and their] Associates or any person claiming through or under any of them.

8.5 Indemnity

Lessor

- i. Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Lessee agrees to indemnify and hold harmless the Lessor and its officers, employees, agents, trustees and consultants (each a “ **Lessor 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 Lessor 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 Lessee or (ii) the failure by Lessee 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 Lessee claiming through or under the Lessor or (iii) any claim or proceeding by any Third Party against the Lessee arising out of any act, deed or thing done or

omitted to be done by the Lessee or (iv) as a result of failure on the part of the Agreement to perform any of its obligations under this Agreement or on the Lessee committing breach of any of the terms and conditions of this Agreement or (v) on the failure of the Lessee 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 Lessee's Contactors or employees or any Third Party or Government Authority or (vi) as a result of any failure or negligence or default of the Lessee 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 Lessee's use and occupation of Project Site and/or construction, operation and maintenance of the Project.

- ii. For the avoidance of doubt, indemnification of Losses pursuant to this Article 8.5 shall be made in an amount or amounts sufficient to restore each Lessee Indemnified Party to the financial position it would have been in had the Losses not occurred.

- iii. Without limiting the generality of the aforesaid
 - (i) the Lessee shall fully indemnify and defend the Lessor Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Lessee and the Persons claiming through or under the Lessee to comply with Applicable Laws and Applicable Permits, (2) payments of Taxes relating to the Lessee and the Persons claiming through or under the Lessee, including contractors, suppliers and representatives, including the income or other taxes required to be paid by the Lessee/such Persons without reimbursement hereunder, or (3) non-payment of amounts due as a result of materials or services rendered/ provided to the Lessee or any Person claiming through or under the Lessee, which are payable by the Lessee or such Person.

- (ii) the Lessee shall fully indemnify, and defend the Lessor Indemnified Party harmless from and against any and all Losses which the Lessor 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 Lessee or by the Persons claiming through or under the Lessee in performing the Lessee'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 Lessee 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 Lessee shall promptly make every reasonable effort to secure for Lessor, a Lease, at no cost to Lessor Indemnified Party, authorising continued use of the infringing work. If the Lessee is unable to secure such Lease Agreement within a reasonable time, the Lessee shall, at its own expense and without impairing the Specifications and Standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.
- (iii) the Lessee shall further indemnify, defend and hold harmless the Lessor 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 Lessee's performance of this Agreement or arising out of any act or omission of the Lessee, and in turn of the Persons claiming through or under the Lessee.

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.

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.

Except as expressly provided in this Agreement, the Lessee shall carry out and perform its rights and obligations under this Agreement and the other Transaction Documents at its own cost and risk. The Lessee 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 any Losses incurred by the Indemnified Persons including, arising out of or in relation to or as a consequence of any breach of the Representations and Warranties, or any of the covenants or obligations of the Lessee under this Agreement or any of the terms and conditions of this Agreement by the Lessee or any Contractor/licensee/sub lessee or any employee or agent of the Lessee;

ARTICLE – 9: CONSTRUCTION OF THE PROJECT

9.1 Preparation and Review of DPR

- i. Within 90 days of the date of execution of this Agreement, the Lessee shall, at its cost, charges and expenses, prepare or cause preparation of the Detailed Project Report including, the designs and drawings, the project implementation and phasing schedule containing critical project construction milestones the master plan for the Project, layout plans, business plan, detailed cost estimates, year-wise capital expenditure schedule, land requirement and utilization plan, list of all assets, sources of finance, financing mix, management structure, personnel required, environmental management plan, maintenance schedule and plan, equipment replacement plan, management and marketing plan, and any other details specified by the Lessor or the Independent Engineer and/or as required under this Agreement in accordance with the provisions hereof, including the Specifications And Standards, the Applicable Laws, the terms of Applicable Permits and Prudent Utility Practices and with due regard to the Scheduled Project Completion Date, and shall submit the same, to the Independent Engineer for its/his review.
- ii. Within 15 (fifteen) days of the receipt of the DPR, the Independent Engineer shall review the same and convey its observations to the Lessee with particular reference to their conformity or otherwise with the scope of the Project and the Specifications and Standards. The Lessee shall not be obliged to await the observations of the Independent Engineer on the DPR submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin construction works at its own discretion and risk;
- iii. If the aforesaid observations of the Independent Engineer indicate that the DPR or any part thereof is not in conformity with the scope of the Project and or the Specifications and Standards, such portions shall be revised by the Lessee and resubmitted to the Independent Engineer for review. The Independent Engineer

shall give its observations, if any, within 7 (seven) days of receipt of the revised DPR or any portion thereof;

- iv. No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any DPR shall relieve the Lessee of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Lessor be liable for the same in any manner;
- v. Within 90 (ninety) days of completing construction of the entire Project, the Lessee shall furnish to the Lessor three copies of "as built" drawings reflecting such facility as actually designed, engineered and constructed, including without limitation an "as built" survey illustrating the layout of such facility and setback lines, if any, of the buildings and structures forming part thereof.

9.2 Construction and Construction completion

- i. This Agreement will become unconditional and effective from the Compliance Date. Any works of whatever nature, which the Lessee elects to carry out prior to the Compliance Date including design or mobilisation, shall be entirely at the risk and cost of the Lessee. The Lessee shall commence the Construction Works within 30 (thirty) days from the Compliance Date.
- ii. The Lessee shall undertake or procure the design, procurement, construction, development (modular or otherwise), completion, testing and commissioning of the Project/Project Facilities at its cost in accordance with the provisions hereof, including the approved DPR, the Specifications And Standards and Prudent Utility Practices, Applicable Laws and the terms of Applicable Permits by itself or, subject to the provisions of hereof, through Engineering Procurement Contractor(s) (EPC).
- iii. The date falling at the expiry of twenty four months from the Compliance Date

shall be the scheduled date for completion of Project (the "**Scheduled Project Completion Date**") and the Lessee agrees and undertakes that the Project shall be completed on or before the Scheduled Project Completion Date.

- iv. The Lessee shall construct the Project in accordance with the Project Implementation Schedule, so annexed and approved along with the DPR. In the event that the Lessee fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone in the Project implementation Schedule, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Lessor, it shall pay Damages to the Lessor in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Project Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in the Project Implementation Schedule shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Project Implementation Schedule has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Project Completion Date, the Damages paid under this sub clause iv., shall be refunded by the Lessor to the Lessee, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages, in accordance with this Clause 2 of Article 9, shall be without prejudice to the rights of the Lessor under this Agreement, including the right of Termination hereof. In the event that Completion of any milestone except the last milestone is not achieved within 180 (one hundred and eighty) days from the Scheduled Completion Date for the specific milestone, unless the delay is on account of reasons solely attributable to the Lessor or due to Force Majeure, the Lessor shall be entitled to terminate this Agreement in accordance with the provisions hereof.
- v. In the event that Project Completion is not achieved within 270 (two hundred and seventy) days from the Scheduled Project Completion Date, unless the delay

is on account of reasons solely attributable to the Lessor or due to Force Majeure, the Lessor shall be entitled to terminate this Agreement in accordance with the provisions hereof.

- vi. It is clearly understood and agreed that each component is independent and is to be implemented on a standalone basis. Delay in development of any other component(s) shall not be a valid reason for delay in implementation of the component being taken up herein.
- vii. The Lessee agrees and understands that the project is an important public project and needs to be implemented in a fast track manner. It shall endeavour to resolve any issues or disputes including those with other developers in the Tourism Hub in a speedy manner. The Lessee may utilize the dispute conciliation process proposed herein.

9.3 Completion Certificate

- i. At least thirty (30) days before the likely completion of the construction of the Project, the Lessee shall notify the same in writing to the Independent Engineer and the Lessor and of its intention to conduct the Tests for completion of the Construction Works as per relevant specifications and Applicable Laws. 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 ten (10) days following the date of such notice and at least seven (7) days in case of any subsequent Tests or retests}. The Lessor shall have the right to attend such Tests. The Independent Engineer shall attend such tests with a view to determining whether completion of construction has occurred.
- ii. Within one (1) month from the date of inspection of the Project in accordance with sub-Clause (a) above, the Independent Engineer shall issue a Provisional Certificate on successful completion of the Tests if the Project

Facilities, to the Independent Engineer's reasonable satisfaction, can legally, safely and reliably be placed in Commercial Operations despite certain items of work or things forming part thereof (being within the Scope of Works) not being complete as such works and things do not, in any manner whatsoever, affect the safety or commercial operation of the Project in any material respect (referred to as the "**Punch List Items**"). The Punch List Items shall be appended to the Provisional Certificate signed jointly by the Independent Engineer and the Lessee. All Punch List Items shall be completed by the Lessee within sixty (60) days of the date of issue of the Provisional Certificate. The Provisional Certificate shall specify the date on which, in the Independent Engineer's opinion, the Project was substantially completed and ready for Commercial Operations.

- iii. The Lessee shall complete or cause to be completed the Punch List Items appended to the Provisional Certificate within a period of sixty (60) days from the date of issue of the Provisional Certificate and, upon completion thereof, the Lessee shall notify the Independent Engineer. The Independent Engineer shall, within seven (7) days of receipt of such notice, inspect the Project and issue the Completion Certificate (the '**Completion Certificate**'), with a copy marked to the Lessor, to confirm completion of such Punch List Items. The Completion Certificate shall specify the date on which, in the Independent Engineer's reasoned opinion, all parts of the Construction Works in respect of the Project reached completion.

- iv. In the event of the Lessee's failure to complete the Punch List items within the said stipulated period of sixty (60) day from the date of issue of the Provisional Certificate, the Lessor may, without prejudice to any other rights or remedy available to it under this Agreement or at law, have such items completed at the risk and costs of the Lessee and appropriate the cost thereof from the Performance Security.

9.4 Project Completion

- i. The Project shall be deemed to be complete and open for commercial operations only when the Completion Certificate, in respect thereof is issued by the Independent Engineer, with a copy marked to the Lessor, to confirm the construction completion of the entire Project (the "**Project Completion**"). For the avoidance of doubt, the Project Completion herein refers to the construction completion of all Project Facilities in accordance with the provisions hereof. The date on which Project Completion occurs shall be the Project Completion Date

- ii. Subject to the provisions hereof, the Lessee shall commence commercial operations of the Project only upon issuance of Provisional Certificate or Completion Certificate, as the case may be, in respect thereof (the '**Commercial Operations Date**' or '**COD**'), whereupon the Lessee shall be entitled to demand and collect User Charges in accordance with the provisions of Clause 4 of Article 4.

ARTICLE – 10: PROJECT MONITORING

10.1 Independent Engineer

i. Appointment, Functions and Remuneration

- a. The Lessor shall appoint a consulting engineering firm through a transparent bidding process, to be the Independent Engineer under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period until the Project Completion Date.
- b. The Independent Engineer shall monitor the implementation of the Project, review and approve the DPR and the designs and drawings, conduct on behalf of the Lessor the periodic verification of the progress in the construction, issue the Provisional and/or the Completion Certificate and discharge its duties and functions substantially in accordance with the terms of reference agreed with the Independent Engineer. The Independent Engineer shall submit periodic reports (at least once every quarter) in respect of its functions to the Parties in the form and manner as mutually agreed and provide the Parties such additional information as they may reasonably require from time to time to fulfill their obligations hereunder.
- c. The Independent Engineer and /or the Expert appointed by the Lessor in terms of Clause (2) of this Article 10, shall have no authority to relieve the Lessee of any of its obligations or responsibilities under this Agreement. Any proposal, inspection, examination, testing, consent, approval or similar act of or by the Independent Engineer and /or the Expert (including absence of disapproval) shall not relieve the Lessee from its obligations and responsibilities hereunder.

- d. The remuneration, cost and expenses of the Independent Engineer shall initially be paid by the Lessor and shall be reimbursed by the Lessee to the Lessor within 15 (fifteen) days of receiving a statement of expenditure in this regard from the Lessor.

ii. Termination of Appointment

- a. The Lessor may, in its discretion, terminate the appointment of the Independent Engineer at any time,
- b. In the event the Lessee has reason to believe that the Independent Engineer is not discharging his/her duties and functions in a fair, efficient or diligent manner, it may make a written representation to the Lessor, supported with necessary documents and specific instances of causes and grievances and seek termination of the appointment of such consultant. Within 7 (seven) working days of the date of such representation, the Lessor shall hold a tripartite meeting with the Lessee and such consultant for resolving the matter amicably and giving a fair hearing to such consultant. The decision of the Lessor in this regard shall be final and binding..
- c. The replacement of the Independent Engineer shall be effected so as to maintain the continuity in supervision and monitoring of construction of the Project Facilities.

iii. Qualified Personnel

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

- b. The Independent Engineer shall employ appropriately qualified and experienced engineers/accountants and other professionals for discharging its responsibilities under this Agreement; provided such employees of the Independent Engineer shall have no right or claim against or create any obligation on the Parties in respect to their employment.

10.2 Appointment of Expert

The Lessor may at its sole discretion, after the end of the term of appointment of the Independent Engineer, from time to time, appoint Experts to assist it in monitoring the implementation and operation of the Project by the Lessee, the Contractors/licesees 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 equally by the Parties.

10.3 Inspection

- i. The Lessor, the relevant Government Authorities and the Independent Engineer /Expert, and their representatives shall at all reasonable times and upon reasonable notice have access to the Project Site, the Project/Project Facilities and the Works and all related designs, documents, reports, records technology and workmanship to review progress of the construction, operation and maintenance of the Project/Project Facilities 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 Lessee shall provide the necessary cooperation and assistance to them in this behalf.
- ii. Provided that any failure on the part of the Lessor, the concerned Government Authorities and the Independent Engineer/Expert 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 Lessor nor shall the same be deemed to be a waiver of any of the rights of the Lessor under this Agreement; and (ii) release or discharge the Lessee from its obligations or liabilities under this Agreement in respect of such work etc.

ARTICLE – 11: EVENT OF DEFAULT AND TERMINATION OF LEASE**11.1 Lessee Event of Default**

- i. The Lessor shall have a right to terminate this Agreement upon the occurrence of any of the following events, unless such event has occurred solely as a result of any breach of this Agreement by the LESSOR or due to Force Majeure (hereinafter collectively referred to as “**Lessee Event of Default**”):
 - a. any breach by the Lessee of its covenants or obligations or occurrence of any event of default by the Lessee under this Agreement;
 - b. a breach of any representation or warranty by the Lessee;
 - c. suspension by the Lessee of the performance of the obligations under this Agreement for a continuous period exceeding 60 days (except during the subsistence of an event of Force Majeure);
 - d. Failure by the Lessee to operate and maintain the Project in accordance with the Applicable Laws and the terms hereof;
 - e. the Lessee does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Project Implementation Schedule and continues to be in default for 90 (ninety) days;
 - f. Lessee directly or indirectly, undertakes or performs either itself or through its Contractors/licensees or otherwise, any/or any activity other than activities provided for/ envisaged hereunder and or any activity which is violative of the provisions hereof and/or of the Applicable Laws.
 - g. failure of Lessee to maintain Insurance(s) in accordance with the requirements of this Agreement.
 - h. the Lessee has failed to make any payment to the LESSOR within the period specified in this Agreement.
 - i. Any transfer of shares or voting rights in any entity in violation of this Agreement.

- j. Failure to provide, maintain and or replenish the Performance Security to its full amount on encashment, in accordance with the requirements of this Agreement.
- k. if the Lessee becomes insolvent or is wound up whether voluntarily or compulsorily save for the purpose of reconstruction or amalgamation
- l. if a provisional liquidator, receiver or manager of the Lessee is duly appointed; or
- m. if the Lessee shall enter into any arrangement or composition for the benefit of his creditors; or
- n. if the Lessee suffers any distress or execution to be levied upon his assets, or
- o. any representation or warranty of the Lessee herein contained which is, as of the date hereof, found to be materially false or the Lessee is at any time hereafter found to be in breach thereof;
- p. any other events of default/ breach by the Lessee upon the occurrence of which, the LESSOR is entitled to terminate this Agreement under the provisions hereof.

11.2 Deleted

11.3 Parties Rights

- i. Upon the occurrence of the Lessee Event of Default, the Lessor, shall without prejudice to any other rights and remedies available to it under this Agreement, is entitled to terminate this Agreement in accordance with the provisions hereof.
- ii. deleted

11.4 Notice of Termination & Suspension

a) Notice of Termination

- (i) Without prejudice to any other rights or remedies which the non-defaulting Party may have under this Agreement, upon the occurrence of either a Lessee

Event of Default , the defaulting Party shall be liable for the breach caused and consequences thereof and the Lessor Party shall have the right to issue a notice expressing its intention to terminate this Agreement to the other Party (herein the “**Notice of Intention to Terminate**”) and requiring the defaulting party to rectify the Event of Default within thirty (30) days of the date of Notice of Intention to Terminate. A copy of Notice of Intention to Terminate shall be sent to the Lenders Representative/Lenders.

- (ii) In case of the failure by the Lessee to rectify the Event of Default within thirty (30) days of the date of Notice of Intention to Terminate, the Lessor shall issue a notice to the Lessee (herein the ‘**Suspension Notice**’), a copy of which shall be sent to the Lenders Representative/Lenders for taking action in terms of the Substitution Agreement.
- (iii) Without prejudice to any other right under this Clause (4), the non-defaulting party may, in case of the failure by the defaulting party to rectify the Event of Default within thirty (30) days of the date of Notice of Intention to Terminate, also terminate the Agreement through a notice (herein the ‘**Termination Notice**’).

b) Suspension upon Lessee’s Event of Default

- (i) Upon occurrence of a Lessee Event of Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Lessee under this Agreement; and (ii) exercise such rights itself or authorise any other person to exercise the same on its behalf during such suspension (herein the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issuance of Suspension Notice by the Lessor and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such Suspension Notice.

- (ii) During the period of Suspension, the Lessor shall be entitled, on behalf of the Lessee, to collect all User Charges (including user fees and charges) under and in accordance with this Agreement..
- (iii) During the period of Suspension hereunder, all rights and liabilities vested in the Lessee in accordance with the provisions of this Agreement shall continue to vest therein, and all things done or actions taken, including expenditure incurred by the Lessor for discharging the obligations of the Lessee under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Lessee and the Lessee undertakes to indemnify the Lessor for all costs incurred during such period. The Lessee hereby licenses and sub-licenses respectively, to the Lessor or any other person authorized by it to use during Suspension, all Intellectual Property belonging to or licensed to the Lessee with respect to the Project and its design, engineering, construction, operation and maintenance and which is used or created by the Lessee in performing its obligations under the Agreement.

11.5 Not Used

11.6 Not Used

11.7 Rights & Obligation of the Parties upon Termination

The Termination of this Agreement shall be without prejudice to any other right or remedies which are exercisable by the Parties either under this Agreement or equity or law. Upon Termination of this Agreement for any reason whatsoever, the Lessor shall have the power and authority to:

- (i) enter upon and take possession and control of the Project Site, the Project Assets and the Project Facilities along with the Works and related original construction documents, certificates, manuals, instruction booklets, guarantees/ warranty cards in

respect of, material and equipment included as part of the construction works forthwith;

(ii) prohibit the Lessee and any person claiming through or under the Lessee from entering upon/ dealing with the Project Site, the Project Assets and the Project Facilities upon the Project Site.

(iii) Notwithstanding anything contained in this Agreement, the Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Lessee in connection with the Project, and the taking over of the Project Site, the Project Assets and the Project Facilities upon the Project Site by the Authority shall be free from any such obligation

ARTICLE 12 – CONSEQUENCES OF TERMINATION AND/ OR EXPIRY**12.1 Condition Survey**

- i. The Lessee agrees that on the service of a Termination Notice or 6 (six) months prior to the expiry of the Lease Period by efflux of time, it shall conduct or cause to be conducted by an Expert under Lessor's supervision, a condition survey of the Project, Project Facilities and the Project Assets to ascertain the condition thereof, verifying compliance with the Lessee's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project.
- ii. If, as a result of the condition survey, the Lessor shall observe/notice that the Project or Project Facilities or the Project Assets or any part thereof has/have not been operated and maintained in accordance with the requirements therefore under this Agreement (normal wear and tear excepted) the Lessee shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.
- iii. In the event the Lessee fails to comply with the provisions of this Clause (1) of Article 12, the Lessor may itself cause the condition survey and inventory of the Project, Project Facilities and the Project Assets to be conducted. The Lessor shall be compensated by the Lessee for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project, Project Facilities and the Project Assets in good working condition.

12.2 Obligations upon Termination

The transactions to be consummated and the formalities to be completed by the Parties on the Transfer Date shall be the following:

The Lessee shall

- (a) hand over fully vacant, peaceful, unencumbered and un-encroached possession of all the Project Assets, the Project Site and the Project to the Lessor for Re 1/- only;
- (b) transfer all its rights, titles and interests in the assets comprised in the Project, the Project Site and the Project Assets which are required to be transferred to the Lessor in accordance with this Agreement and execute deeds of conveyance, documents and other writings as the Lessor may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Lessee in the Project and the Project Facilities, including the right to receive outstanding insurance claims to the extent due and payable to the Lessee, absolutely unto the Lessor or its nominee; and;
- (c) hand over to the Lessor all documents including as built drawings, manuals and records relating to operation and maintenance of the Project and the Project Facilities;
- (d) transfer technology and up-to-date know-how relating to operation and maintenance of the Project Assets and/or the Project;
- (e) transfer or cause to be transferred to the Lessor any Project Agreements and Applicable Permits which are (i) valid and subsisting, (ii) legally capable of being transferred to the Lessor and (iii) those that the Lessor has chosen to take over, and cancel or cause to be cancelled such Project Agreements not transferred to the Lessor.
- (f) to the extent possible assign to the Lessor or its nominated agency at the time of transfer all unexpired guarantees and warranties by subcontractors and suppliers and all insurance policies;
- (g) at its cost remove from the Project Site all moveable assets and movable property comprised in the Project/Project Facilities, which are not taken over by or transferred to the Lessor. In the event the Lessee fails to remove such objects within the stipulated time, the Lessor or its nominated agency may remove and transport or cause removal

and transportation of such objects, after giving the Lessee notice of its intention to do so to a suitable location for safe storage. The Lessee shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage;

The Lessor shall ensure that all Project Assets shall have been renewed and cured of all defects and deficiencies as necessary so that the Project assets are compliant with the Specifications and Standards set forth in this Agreement. The assets, prior to transfer, shall be subject to Condition survey

Any failure on part of Lessee in handover of project and project assets, in terms of timeliness and condition and extent of transfer of project site and assets, shall be treated as a Lessee event of Default.

12.3 Risk

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

12.4 Defects Liability Period

The Lessee shall be responsible for all defects and deficiencies in the Project Facilities for a period of 120 (One hundred and twenty) days after the Transfer Date, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer/ Expert in the Project during the aforesaid period. In the event that the Lessee fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by The Lessor in this behalf, the Lessor shall be entitled to get the same repaired or rectified at the Lessee's risk and cost so as to make the Project

conform to the maintenance requirements and standard and specifications. All costs incurred by the Lessor hereunder shall be reimbursed by the Lessee to the Lessor within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Lessor shall be entitled to recover the same from the O&M Performance Security

ARTICLE – 13: DISPUTE RESOLUTION

- (1) Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in discussion with each other.
- (2) The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- (3) The work under the Contract shall, however, continue during the proceedings and no payment due or payable to the concerned party shall be withheld (except to the extent disputed) on account of initiation, commencement or pendency of such proceedings..
- (4) The fees and expenses of conciliation if any, shall be borne equally by the parties.
- (5) In the event no amicable resolution or settlement is reached within a period of thirty (30) days of the date on which the dispute or the difference arose , such dispute or difference shall be referred to arbitration by either of the parties. The sole Arbitrator should be a Retired High Court Judge or a Retired Chief Secretary/Additional Chief Secretary/Principal Secretary /Secretary to the Government of West Bengal or a Retired Auditor General of Government of West Bengal. The provisions of the Arbitration and Conciliation Act, 1996 would apply for the arbitration proceedings. The Arbitral Award given by the Sole Arbitrator shall be a reasoned order.
- (6) The Contract shall be governed by and constructed according to the laws in force in India. The parties hereby submit to the exclusive jurisdiction of the Courts within the original jurisdiction of High Court at Calcutta.

ARTICLE – 14: FINANCING AND ASSIGNMENT

14.1 Financing

- (1) The Lessee agrees and undertakes to organize requisite financing for the Project in the form of equity and debt, 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 companies as it may deem necessary for achieving Financial Closure.

14.2 Restrictions on assignment and charges

The Lessee can mortgage the leasehold interest on the demise land whether in full or part only with the prior written permission of the Lessor.

The Lessee is not entitled to assign its leasehold interest whether in full or part without prior written approval of the Lessor and the assignee shall hold the same on the same terms and conditions as in the original lease and subjected to such terms and conditions as may be considered to be imposed by the Lessor while granting such approval. In case of such assignment of the leasehold interest the assignee shall have to obtain fresh lease after expiry of the unexpired period of the lease on payment of such consideration money and annual rent based on the prevailing market value as then may be fixed by the Lessor in granting such lease.

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14.3 Permitted assignment and charges

The restraints set forth in Clause (2) above, shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;

- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets, and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Lenders under the Financing Documents and/or for working capital arrangements for the Project;
- (c) liens or encumbrances required by any Applicable Law.

14.5 Assignment by the Lessor

Notwithstanding anything to the contrary contained in this Agreement, it is hereby clarified that the Lessor may assign any of its rights and benefits and / or obligations under this Agreement with 30 days prior written notice to the Lessee.

ARTICLE – 15: FORCE MAJEURE

- (1) None of the Parties shall be liable to the other Party or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of its own obligations in relation to the Agreement, if the delay to failure is due to any Force Majeure. It is also agreed that the Lessee shall have no claim on the Lessor for any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.
- (2) Provided such events are beyond the reasonable control of any party and incurred not as a product or result of the negligence or malfeasance of a party, which have a materially adverse effect on the ability of such party to perform its obligations and shall include the following.:
- a. act of God ;
 - b. war, hostilities , invasion, act of foreign enemies, mobilisation, requisition, or embargo;
 - c. rebellion, revolution, insurrection, or military or usurped power, or civil war;
 - d. contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- (3) The Parties hereby agree and undertake that this Agreement shall be correspondingly extended for the period the Force Majeure Events continues to fulfill their respective obligations and the other party shall not claim any damages or lodge any other claim in respect of loss incurred by reason of delay.
- (4) In order for a Party taking benefit of the provisions of Force Majeure in this Article 14, a Party claiming Force Majeure relief shall:

- (i) Give immediate notice to the other Party of the event said to constitute Force Majeure, and the obligations whose performance could be delayed, reduced, or prevented thereby, and as soon as practicable information about the circumstances of such event, in as much detail as is then reasonably available, and the steps and time believed necessary to mitigate and remedy the Force Majeure situation.
 - (ii) Supplement and update the above Notices on a weekly basis during such claimed Force Majeure period;
 - (iii) Give or procure access, at the request, expense, and risk of the other Party and at reasonable times for a reasonable number of the other Party's representatives, to examine the scene of the event which gave rise to the Force Majeure claim; and
 - (iv) Proceed with diligence and at its own expense to take such steps as would be taken in accordance with prudent utility practice to mitigate and remedy the failure as soon as possible.
- (5) Prior to resumption of normal performance, the Parties shall continue to perform their obligations pursuant to this Agreement, to the extent not prevented by such Force Majeure event. Within three (3) days starting on the day the Force Majeure Event ends, the Affected Party shall notify the other party in writings that the Force Majeure Event has ended and resume performance of its obligations under this contract.
- (6) Either Party may terminate this Agreement after giving the other Party a prior notice of thirty (60) days in writing in the event Force Majeure continues for a period beyond six (6) months.

ARTICLE - 16: INTELLECTUAL PROPERTY RIGHTS

- i. The Lessee accepts and agrees that the Lessor shall be the absolute and exclusive owner and proprietor of the all details, plans, specifications, schedules, programs, budget, reports, calculations and other work relating to the Project (hereinafter referred to as "**Proprietary Material**"), which have been or are hereafter written, originated or made by any of the Lessee 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. The Lessor shall own all the intellectual property rights in or relating to the Proprietary Material and all rights, privileges, entitlements, whatsoever therein for the full period in accordance with the Applicable Laws, including without limitation the right to reproduce, translate, edit, modify, distribute, sell or assign such rights, with or without consideration.
- ii. The Lessor 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.
- iii. The Lessee and the Lessor hereby grant to each other an irrevocable, royalty-free, non-exclusive agreement 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 Lease agreement 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 agreement shall discontinue on the termination or expiry of this Agreement or the discharge by any Party of its duties hereunder.
- iv. No form of Lessor's name or any other intellectual property rights associated with it or belonging to Lessor shall be used in any promotional materials, signs,

announcements or other forms of communication or advertising by the Lessee or in any other manner whatsoever, unless the Lessor's express written permission for such use has been obtained in advance by the Lessee.

- v. It is clarified that only the assets of the Lessee shall be taken over and no liabilities, including without limitation liabilities relating to labor and personnel related obligations of the Lessee shall be taken over by the Lessor.

ARTICLE - 17: MISCELLANEOUS

17.1 Change in Law

- i. In the event of a Change in Law results in a material adverse effect on the Project, the Lessor or the Lessee may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Lessee and the Lessor shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure described under Article 13 of this Agreement.
- ii. For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

17.2 Joint and Several Liability of the Preferred Bidder/Lessee

The Preferred Bidder (or the Consortium members) and the Lessee shall be jointly and severally liable to the Lessor for compliance with the terms of this Agreement. Without prejudice to the foregoing, in the event the non-lead members cannot be made liable or recourse cannot be had to them for any reason whatsoever, the Lead Member shall solely liable for compliance with the terms hereof. The Lead Member shall have the Lessor to bind the consortium comprising the Preferred Bidder and each of its members.

17.3 Entire Agreement

This Agreement and the Appendices thereto together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless

such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

17.4 Notices:

All notices, demands or other communication required or permitted to be given or made hereunder shall be in writing and delivered personally or sent through pre-paid registered post with recorded delivery to the intended recipient at its address set out below in this Agreement or to such other address as any Party may from time to time duly notify the other Party. All such notices, demands and/or communications pursuant or relevant to this Agreement shall be in English language.

In case of Lessor

To

The Director

Tourism Department

Government of West Bengal

In case of Lessee

To.....

17.5 Modifications:

In the event that any provision of this Agreement is found to be contrary to the Applicable Law administered or applied by any applicable court or Government Authority, such provision shall be modified to the extent necessary to comply with the statutory requirement while retaining as much as possible of the original intent of the Parties.

17.6 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

17.7 Severability:

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect. The Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted, as nearly as practicable, to such invalid, illegal and unenforceable provision. Provided that failure to agree upon any such provisions shall not be subject to the dispute resolution procedure under this Agreement or otherwise.

17.8 Third Parties

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

17.9 Waiver

- i. Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-
 - a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
 - b. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
 - c. Shall not affect the validity or enforceability of this Agreement in any manner.
- ii. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

17.10 Governing Law:

The laws applicable to this Agreement shall be the laws in force in India. The Courts within original jurisdiction of High Court at Calcutta shall have exclusive jurisdiction in all matters arising under this Agreement.

17.11 Counterparts

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

IN WITNESS WHEREOF the Lessor, the Lessee and the Preferred Bidder, through their respective authorized officials subscribe their respective signatures and seals hereto on this _____ day of _____ 2013:

Signed, sealed and delivered by:

Authorised Signatory For and on behalf of Lessor,

Name

Designation

Witness:

1.

2.

Place: _____

Signed, sealed and delivered by:

For and on behalf of the.....(Lessee)

Name

Designation

Witness:

1.

2.

Place: _____

Signed, sealed and delivered by:

For and on behalf of the.....("Preferred Bidder")

Name

Designation

Witness:

1.

2.

Place: _____

SCHEDULE A: PROJECT SITE

Project Site of approximately _____ Acres bearing Survey No under _____
Village, Jalpaiguri District belonging to the Lessee and shown in the flowing survey map
(Details to be filled as per the applicable component and site plan to be accordingly inserted
before signing)

SCHEDULE B: ADDITIONAL DOCUMENTS

The following documents are to be inserted before signing:

Schedule B- Part 1: Request for Proposals

Schedule B- Part 2: Bid Document submitted by the Preferred Bidder

Schedule B-Part 3: Letter of Intent

Schedule B-Part 4: Letter of Acceptance