

**RFP No. 583/JTDCL dated 01.07.2025**

# **Request For Proposal**

**Selection of Suitable Private Sector Player  
Operation, Maintenance and Management of  
Hotel Prabhat Vihar, Netarhat, Jharkhand.**

**VOLUME II - Draft Authorization Agreement (DAA)**



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## **PART I PRELIMINARY**

This AUTHORIZATION AGREEMENT (Agreement) is entered into on this \_\_\_\_\_20\_\_\_ at \_\_\_\_\_.

BETWEEN

1. Managing Director, Jharkhand Tourism Development Corporation Limited, with its principal office at \_\_\_\_\_ (hereinafter referred to as the Authority which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns) of One Part;

AND

2. [..... a company incorporated under the provisions of the Companies Act, 1956/2013, bearing corporate identification number [●] with its registered office at [●], India (hereinafter referred to as the “Operator” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

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

WHEREAS:

- A. The Government of Jharkhand is considering private sector participation to augment the tourism facilities in Jharkhand with special emphasis on developing eco-tourism resorts at identified locations in the State of Jharkhand. For this purpose, the Government has empowered the Authority to undertake Selection of Suitable Private Sector Player for Operation, Maintenance and Management of Prabhat Vihar (New Complex) (hereinafter referred to as the Project).
- B. The details of Project Site and its location are as under:

Project Site	Geo-coordinates
Hotel Prabhat Vihar Complex	23°28'26.1"N 84°16'43.9"E

- C. The Authority had invited proposals for the selection of an Operator through the competitive route for the operations and management of the Project from bidders, including [●] (the “Successful Bidder”) by issuing the Request for proposal (“RFP”) document dated [●] 2025 containing inter-alia the minimum qualification for a bidder; the technical and commercial parameters and the terms and conditions for the operations and management of the Project.
- D. Pursuant to the terms of the RFP, bids were received by the Authority on or before [last date of bid submission post extension if any]. The Selected Bidder had also submitted its bid for the Project (the “**Bid**”).

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

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

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

1.1.1 The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 26) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

### 1.2. Interpretation

1.2.1 In this Agreement, except where the context otherwise requires:

- a) references to any legislation or any provision thereof shall include amendment or reenactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye-laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d) the table of contents, headings or sub-headings in this Agreement are only for convenience of reference and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “**build**” shall be construed accordingly;
- g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i) any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00

(five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;

- j) any reference to “**day**” shall mean a reference to a calendar day;
- k) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday or a statutory holiday as declared by the Government of Jharkhand on which Banks in State of Jharkhand are generally open for business);
- l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- n) any reference to any period commencing 'from' a specific date or date and 'till' or 'until' a specific day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- o) the words importing singular shall include plural and vice versa;
- p) references to any gender shall include the other and the neutral gender;
- q) “**lakh**” means a hundred thousand (1,00,000) and “**crore**” means ten million (10,000,000);
- r) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause 1.2.1 (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
- v) references to Recitals, Articles, Sub-Articles, provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sub-Articles, provisos and Schedules of or to this Agreement; reference to an Annexure shall, subject to anything to the contrary specified therein, be construed as a reference to an Annexure to the Schedule in which such reference

occurs; and reference to a paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a paragraph of the Schedule or Annexure, as the case may be, in which such reference appears;

- w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per-diem basis or otherwise, are mutually agreed genuine pre-estimate of loss and damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Operator to the Authority shall be provided free of cost and in 3 (three) copies, and if the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

1.2.3 The rule of upgradation and construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply.

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

### **1.3. Measurements and arithmetic conventions**

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

### **1.4. Priority of agreements, clauses and schedules:**

- (a) This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
  - i. the Agreement;
  - ii. all other agreements and documents forming part hereof or referred to herein;
  - iii. the LOA issued to the Selected Bidder;
  - iv. written addenda to the Bid document such as RFP, response to queries, etc;
  - v. Bid document; and
  - vi. Bid;
- (b) Subject to the provisions of Clause 1.4 (a), in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- i. between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- ii. between the Articles of this Agreement and the Schedules, the Articles shall prevail;
- iii. between any two Schedules, the Schedule more relevant to the issue under consideration shall prevail;
- iv. between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- v. between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- vi. between any value written in numerals and that in words, the latter shall prevail.

## **ARTICLE 2 SCOPE OF THE PROJECT**

### **2.1 Scope of the Work**

2.1.1 The Selected Operator/ Authorizee shall be responsible for the full operational, maintenance, and management services of the Hotel, ensuring high standards of guest service, facility upkeep, and compliance with applicable laws and standards at its own cost unless mentioned otherwise in this Agreement. The Operator shall also manage and provide food and beverage services, including all restaurants and bars within the premises.:

- Operation Management
  - Staff recruitment, training, and management to deliver quality service and maintain high employee morale as per good industry practices.
  - Ensure security of the Project Facility by employing adequate security staffs for 24 hour security of the Project Facility.
  - Day-to-day management of hotel operations, including front desk, housekeeping, concierge, and guest services. Handle procurement and inventory control for cleaning materials and equipment at its own cost.
  - Implement and maintain standard operating procedures (SOPs) for all departments.
  - Ensure compliance with applicable health, safety, and hospitality regulations.
  - Implement and manage guest satisfaction programs, customer feedback systems, and service recovery processes.
- Maintenance and Facility Management
  - Conduct preventive and corrective maintenance programs as per Good Industry Practices.
  - Maintain the physical condition of guest rooms, public areas, back-of-house, and external premises.
  - Maintain a 24/7 technical support and emergency response system.
- Food and Beverage Services
  - Operate and manage all food and beverage outlets, including restaurants, bars, room service, and banquet services.
  - Menu planning, food quality control, and supplier management.
  - Ensure compliance with food safety and hygiene regulations.

- Manage culinary and service staff to ensure a high standard of hospitality.
- Conduct regular promotions, events, and marketing for F&B outlets.
- Handle procurement and inventory consumables for smooth functioning of F&B services.
- Marketing and Sales
  - Develop and execute marketing and sales strategies to drive occupancy and revenue.
  - Manage digital marketing, online travel agency (OTA) listings, and social media presence.
  - Establish partnerships and packages to attract leisure, business, and group travel segments.
  - Conduct public relations and promotional events as required.
- Legal and Compliance
  - Ensure all activities are in compliance with local laws, labor regulations, and environmental standards.
  - Handle legal matters related to operations, including disputes with guests, staff, or suppliers, in consultation with the Authority.
- Insurance and Risk Management
  - Implement risk mitigation and safety protocols.
  - Maintain adequate insurance coverage for liability and personnel as agreed with the Authority.
- Scope Exclusion: The Authorizee scope excludes Major Maintenance of the Project Facility. For the purpose of this Agreement, Major Maintenance includes:
  - Cost involved of INR 10,000 or more at one point of time in the replacement of fittings, fixtures & furniture's or replacement of any related items, civil maintenance works etc.
  - However, the Major Maintenance cost does not includes cost of consumables required for day to day routine maintenance of the Project Facility

2.1.2 Roles & Responsibilities of the Authority: The Authority retains overall Authority-ship and strategic oversight of the hotel property. While day-to-day management is delegated to the Operator, the Authority plays a critical role in governance, capital planning, financial oversight, and protecting long-term asset value.

- Authority-ship and Asset Responsibility
  - Retain legal Authority-ship of the land, building, and all fixed assets.
  - Fund and approve long-term capital investments, major renovations, or expansions.
  - Fund all operative expenses excluding expenses on food & beverages, staff/ manpower laundry services and utility charges.
  - Implement Hotel Management System for reservations, POS, accounting.
  - Maintain insurance coverage for property damage, business interruption, and Authority-related liabilities.
  - Conduct public relations and promotional events as required.
  - Manage digital marketing, online travel agency (OTA) listings, and social media presence.
- Oversight and Strategic Direction
  - Approve the hotel's annual business plan, including budgets, marketing strategy, capital expenditure plans, as proposed by the Operator.
  - Monitor hotel performance through regular reviews of financial and operational reports submitted by the Operator.
  - Set strategic objectives or limitations for the Operator (e.g., branding, target markets, sustainability goals).
- Financial Contributions and Approvals
  - All revenues from the Project shall be deposited directly in a bank or banks designated by the Authority and in accounts established in the name of Owner and under the sole control of the Authority ("Project Revenue Accounts") as more particularly defined under Clause 16.1.3, which monies may be swept or transferred into other Authority accounts as often as Authority determines.
  - Provide funding for initial fit-out and capital improvements unless otherwise agreed.
  - Operation & Maintenance of the Project Site.
- Contractual and Legal Roles
  - Retain legal and tax responsibilities for Authority-ship structure, local taxes, and compliance.
- Capital Expenditure and Long-Term Planning

- Approve and fund capital expenditure budgets (CAPEX), refurbishment plans, expansion and major maintenance works as advised by the Operator.
- Plan for long-term asset value preservation, including periodic property upgrades and brand compliance.
- Limitations (Non-Interference in Day-to-Day Operations)
  - The Authority shall not interfere in daily hotel operations or personnel management, except where specifically provided for in the Draft Authorization Agreement.
  - Any direction to the Operator should be made through the agreed governance structure (e.g., Authority's Representative or formal meeting process).

## **PART II THE AUTHORIZATION**

## ARTICLE 3 GRANT OF AUTHORIZATION

### 3.1 The Authorization

3.1.1 In accordance with the provisions of this Authorization Agreement, the Applicable Laws and the Applicable Approvals, the Authority hereby grants (with effect from Appointed Date) to the Authorizee/ Operator the exclusive right, permission, leave and licence rights in respect of the Project Facility (Schedule A) free of any Encumbrances, to Operate, Maintain & Manage the Project Facility, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Project Facility, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Authorization Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever (hereinafter the “**Authorization**”);, and the Authorizee hereby accepts the Authorization and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein. For avoidance of doubt, it is clarified that at all times the Authority shall have the absolute, unencumbered legal Authorityship rights in respect of the Project Facility and the Project Site and the Authorizee shall only be entitled to exercise its Authorization and/or Operate, Maintain and Manage the Project Facility in Good Working Condition/good condition (as the case may be) till the expiry or earlier termination of the Authorization Period.

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

- a. Exclusive right of way, access, to the Project Facility for the purpose of Operate, maintain and manage the Project Facility as per the terms of this Authorization Agreement;
- b. bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Authorizee under this Authorization Agreement;
- c. perform and fulfil all of the Authorizee’s obligations under and in accordance with this Agreement;
- d. not assign, transfer or sublet or create any lien or Encumbrance on this Agreement and/or Project Site and/or Project Facility or the Authorization hereby granted or on the whole or any part of the Project Facility nor transfer or part possession thereof, save and except as expressly permitted by this Agreement.
- e. Notwithstanding anything to the contrary contained herein, it is hereby clearly understood, agreed, confirmed and recorded between the Parties as follows:
  - i. the legal possession in respect of the Project Facility/ Project Site shall continue to vest in the Authority and the Authorizee shall only be entitled to exclusive license to undertake the implementation of the Project in terms hereof and shall not be entitled to use of the Project Facility for any purpose other than those expressly permitted in terms hereof.

- ii. the grant of Authorization in terms hereof shall not vest or create any proprietary interest in the Project Facility/ Project Site or any part thereof in favour of the Authorizee or any other person claiming under the Authorizee.
- iii. The Authorizee shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise create Encumber in respect of the Authorized/ Licensed Project Facility or the Project Site, or assign or transfer this Authorization Agreement in favour of any person at any time and for any reason whatsoever; save and except as otherwise provided in terms of the Authorization.
- iv. The Authorizee acknowledges, accepts and confirms that the covenant contained herein forms the essence of this Agreement and shall duly bind the Authorizee and/or any person claiming under it.

### **3.2 Authorization Period**

- 3.2.1 The Authorizee has been granted the Authorization to operate, maintain and manage the Project Facility for a Authorization period of 5 (five) years commencing from the Appointed Date.
- 3.2.2 The Authorization Period may be further be extended by the Authority for another 5 (Five) years provided that the Operator is not in the breach of the terms & conditions of this Agreement.
- 3.2.3 It is agreed that upon the expiry of the Authorization Period after 10 (Fifty) years, the same shall not be extended on mutual consent basis without an open competitive bidding process.
- 3.2.4 The Authority agrees that it will not unduly or unreasonably interfere with the exercise by Operator of its managerial rights and authority hereunder, and agrees specifically that it will not seek to appoint other parties to conduct any portion of Project operations (other than expansion, maintenance and repairs required to be performed by Authority), or otherwise seek to exert direct supervision, control or management of Project operations, all subject, however, to Authority's rights as expressly set forth in this Agreement.

### **3.3 Actions in Support of the Authorization**

- a. The Authority shall, on best effort basis, and subject always to Authorizee fulfilling the eligibility criteria and duly complying with all requirements, render such assistance as the Authorizee may reasonably require, from time to time, for availing and obtaining all Applicable Approvals and for completion of formalities relating to the Project provided the Authorizee is in compliance with the rules, regulations and guidelines prescribed by the Statutory Authorities;
- b. The Authority shall, on best effort basis, provide all assistance and recommendations to the Statutory Authority, in support of the Authorizee's applications for Applicable Approvals that may be needed from time to time for the implementation of the Project provided that the Authorizee has made the requisite applications and is

in compliance with the necessary norms and regulations of the Statutory Authority for the grant of such Applicable Approvals.

### **3.4 Substitution of the Authority**

- 3.4.1 The Parties expressly agree that the Authority may, in pursuance of any re-organisation or restructuring undertaken in pursuance of Applicable Laws or in the event the Authority-ship of the Project Site is transferred from the Authority to any other public entity, substitute itself by any other public entity having the capacity to undertake and discharge the duties and obligations of the Authority with a similar or greater creditworthiness, and upon such substitution, all the functions, rights and obligations of the Authority under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to Applicable Laws; provided, however, that prior to any such substitution, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder.

## ARTICLE 4 CONDITION PRECEDENT

### 4.1 Conditions Precedent (CP)

4.1.1 Save and except as expressly provided herein, the respective rights and obligations of the Parties under this Authorization Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1.

4.1.2 Condition Precedent to be fulfilled by the Authorizee: The Conditions Precedent required to be satisfied by the Authorizee shall be deemed to have been fulfilled when the Authorizee shall have:

- a) procured within six months from date of execution of this Agreement (“Effective Date”) or such later date as may be mutually agreed by Parties, all the Applicable Approvals/ permits specified in terms hereof unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Approvals/ permits are in full force and effect.
- b) provided the Performance Security to the Authority pursuant to Article 9;
- c) Prepared, submitted and get an approval on the Operation Plan for the Project Facility in accordance with Article 12 of this Authorization Agreement;
- d) Undertaking joint survey of the Project Facility including the equipments/ machineries/ fittings & fixtures.

4.1.3 The performance of obligations set out herein by the Authorizee shall be subject to fulfilment of following Conditions Precedents by the Authority.

- a) Hand over the Project Facility to the Authorizee after completion of all remedial works as decided in the joint survey by the Authority and the Authorizee.
- b) Undertaking joint survey of the Project Facility in order to determine if the assets which are to be handed over to the Authorizee are in functional & operational and in Good Working Condition, and recording the same in and by way of executing a written memorandum, which would also set out therein the detailed list/inventory of the equipments and/or fittings / fixtures being handed over in Good Working Condition; and a separate list (“**Punch List**”) of equipments/ machinery (including parts/sub-assemblies) determined as required to be repaired / replaced / added / installed in order to bring the Hotel in functional condition in consultation with the Authorizee, shall be also drawn simultaneous with such hand over.

The Authority shall complete the remedial works towards fulfillment of the Punch List items before the Appointed Date or such later date as mutually agreed, and forthwith upon completion of the same notify the Authorizee in respect of holding of a joint survey of the same with a view to determine whether the installed/repaired/replaced machines/equipments conform to Good Working Condition. In case the parties, pursuant to such joint survey determines that the Punch List items [including its machines/equipments] conforms to Good Working

Condition (as evidenced by recording the same in a written inventory memorandum) Authority shall issue to Authorizee operation certificate in respect of such Punch List items. In the event, pursuant to such joint inspection, any disagreement/dispute arises as to non-performance of the Punch List equipments as per the Good Working Condition, Authority may (in the event it determines any remedial work is required) address the remedial works (including replacing the sub-parts/sub-assemblies of such equipments) to ensure Good Working Condition or in case Authority determines (in its sole discretion) that Punch List equipments already are operational under Good Working Condition and the dispute raised by Authorizee does not reasonably hold good, select (in its sole discretion) to terminate the Authorization Agreement in which case neither party shall be held to be under any liability arising from such termination, save and except as otherwise provided in terms hereof and particularly the Authorization Agreement.

- c) provide the Authorizee the warranty card, user manuals, annual maintenance contract documents related to the procured equipments/ machineries/ fittings & fixtures. .

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated in respect thereof and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

## **4.2 Obligation to Satisfy Conditions Precedent**

- i. Each Party shall make all reasonable endeavours at its respective cost and expense to comply in full with the Conditions Precedent relating to it within maximum six months of the Effective Date or such later date as may be mutually agreed by Parties; provided however that such condition precedent for completion whereof specific time period has been prescribed herein shall be completed within such time period.
- ii. In the event that any of the Conditions Precedent has not been fulfilled with the time period specifically prescribed or such time period as may be mutually agreed by Parties, then (subject to terms hereof) Authority [in case of non-fulfilment of Authorizee Condition Precedent] or Authorizee [in case of non-fulfilment of Authority Condition Precedent] may terminate this Agreement.

Provided however that neither Party shall be entitled to terminate this Agreement if non-fulfilment of condition precedent by either party is result and/or consequence of Force Majeure event.

Provided further that in the event Agreement is terminated on account of non-fulfilment of Authorizee condition precedent, then Authority shall be entitled to appropriate and forfeit the Bid Security; which in termination on account of other reasons [ i.e reason not attributable to Authorizee non-performance] shall be returned/released to the Authorizee, without any interest thereon, provided there are no outstanding claims of the Authority on the Authorizee.

### 4.3 Damages for delay by the Authority

4.3.1 In the event that: (i) the Authority does not procure fulfilment or waiver of the Condition Precedent set forth in Clause 4.1.3 within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Operator or due to Force Majeure Event, the Authority shall pay Damages to the Operator of an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.

### 4.4 Damages for delay by the Operator

4.4.1 In the event that: (i) the Operator does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in that Clause ; and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure Event, the Operator shall pay Damages to the Authority of 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 fulfilment or waiver of such Conditions Precedent, up to the maximum amount equal to the Bid Security and upon reaching such maximum amount, the Authority may, in its sole discretion and subject to the provisions of Clause 9.1, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause **Error! Reference source not found.**, no Damages shall be due and payable by the Operator under this Clause 4.4 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause **Error! Reference source not found.**

### 4.5 Commencement of the Authorization Period

4.5.1 The Appointed Date shall be the date when both the parties satisfied or waived the Condition Precedent, as the case may be,

4.5.2 The Commencement of Authorization and Operation shall be the Appointed Date. For avoidance of doubt, the Parties agree that the Operator may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence development of the Project in accordance with the terms of this Agreement.

### 4.6 Termination upon delay

4.6.1 Without prejudice to the provisions of Clause 4.3 and Clause 4.4, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of 360 (three hundred and sixty) days from the Execution Date or the extended period provided in accordance with this Agreement, then all rights, privileges, claims and entitlements of the Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have

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

## **ARTICLE 5 OBLIGATION OF THE OPERATOR**

### **5.1 General Obligations of the Operator**

5.1.1 In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Authorizee shall have the following obligations at its own cost:

- a. The Authorizee shall operate, maintain and manage the Project Facility in accordance with the Operation Plan as approved by the Authority and Good Industry Practices.
- b. The Authorizee shall undertake operation of the Project facility by itself and will not outsource to the third party its obligation in full.
- c. Authorizee shall, during the Operations Period and subsistence of this Agreement:
  - i. shall have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project Facility, to deal with the Authority and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - ii. shall, for the purposes of determining that the Project Facility is being maintained in accordance with the O&M Requirements as mentioned under the Approved Operation Plan, the Authorizee shall with due diligence carry out all necessary and periodical Tests in accordance with and as per the instructions of the Authority or its Authorised representatives and such Tests shall be carried out under the supervision of the Authority or its Authorised Representatives. The Authorizee shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- d. The Operator shall maintain in Authority's name or in Operator's name, as determined and agreed by Authority and Operator, or both, as may be required by Legal Requirements, all licenses or permits required for the ongoing operation of the Project and its related facilities, and Operator shall operate the Project in compliance with all material Legal Requirements including the rules, regulations or orders of any agency or instrumentality establishing life safety or fire safety standards applicable to the Project. Authority and Operator shall cooperate with each other in all reasonable respects as may be necessary or advisable to permit the Project to be operated in compliance with Legal Requirements, including, without limitation, preparation and execution of required applications for operational licenses and permits, execution of necessary consents, providing necessary information regarding Authority, Operator or the Project, as applicable, and submitting to requirements of local police and governmental officials regarding specialized licenses such as liquor licenses.

#### **5.1.2 Recruitment, Training and Remuneration**

- a. The Authorizee shall at its cost and expenses recruit and train all personnel required for the operation, maintenance and management of the Project Facilities under this Agreement.
- b. The recruitment, training and remuneration of the personnel, employees and staff required for the operation, maintenance and management of the Project shall be the responsibility of the Authorizee and be in compliance with all statutory provisions enacted under the Labour and other Applicable Laws.
- c. Provided, no personnel, staff or employee under the Authorizee whether temporary or permanently employed for the purposes of implementation of this Project shall, under any circumstances, be deemed to be in employment with the Authority or Government of Jharkhand and the Authorizee shall ensure that its operations are conducted in a manner so that any employer- employee relationship is not imputed between the Authority and the employees, personnel and staff of the Authorizee.
- d. Authorizee shall ensure that all staff engaged in the delivery of the services are all times properly and adequately notified, trained and instructed in accordance with Good Industry Practice and the standards of their relevant professional body, if any, in the execution of their duties and information records are maintained accordingly.
- e. Authorizee shall ensure that all staff are properly and presentably dressed in appropriate uniforms and work wears (including protective clothing and foot-wears wherever required), maintain a high standard of personal hygiene commensurate with their allocated tasks and wear identification badges at all times while working in the Project Facility.
- f. In the event that the Authority decides that a particular staff/personnel should be removed from the position due to lack of requisite qualification, training or has consistently demonstrated lack of capability in providing the required services, the Authorizee shall have to abide by such decision and act on the advice of the Authority promptly. The decision of the Authority in this regard shall be final.

### **5.1.3 FOOD & BEVERAGES SERVICE:**

Food and Beverages (F&B) is a critical component of the management agreement. This typically covers all aspects of operating the hotel's dining facilities and services. The Authorizee shall handles all aspects of the hotel's dining experience to ensure profitability, efficiency, and guest delight.

- a. Designing and regularly updating menus for all F&B outlets (restaurants, bars, room service, banquets, catering) to align with current culinary trends, guest preferences, and the hotel's brand standards.
- b. Considering nutritional aspects, dietary restrictions, and sourcing locally/sustainably where possible.
- c. Experimenting with flavors, textures, and presentations to create unique dining experiences.
- d. Concept Development: Creating distinct concepts for different F&B outlets within the hotel (e.g., fine dining, casual bistro, themed bar).
- e. Pricing and Cost Control:

- i. Developing pricing strategies for all menu items to maximize revenue while remaining competitive.
- ii. Implementing stringent cost control measures for food, beverages, and labor, including managing inventory and reducing waste.
- iii. Monitoring revenues and expenses to ensure profitability.
- f. Marketing and Promotions:
  - i. Developing and executing marketing strategies to promote the hotel's F&B offerings to in-house guests and external customers.
  - ii. Budgeting and Financial Management: Preparing annual operating budgets for the F&B department, managing finances, and providing regular financial reports to the Authority.
- g. Operational Management:
  - i. Overseeing the day-to-day operations of all restaurants, bars, cafes, and lounges.
  - ii. Ensuring high-quality service, efficient order taking, and accurate delivery.
  - iii. Maintaining cleanliness, ambiance, and service standards.
  - iv. Room Service: Managing the room service department, including order taking, food preparation, delivery, and billing.
  - v. Planning, organizing, and executing food and beverage services for events, conferences, weddings, and other special occasions.
  - vi. Managing logistics, staffing, and coordination with event planners.
  - vii. Supervising kitchen operations, including food preparation, cooking, and plating.
  - viii. Ensuring adherence to recipes, quality standards (taste, presentation, temperature), and consistency.
  - ix. Sourcing and purchasing all food and beverage supplies.
  - x. Implementing efficient inventory systems to minimize waste and ensure product availability.
  - xi. Ensuring proper storage and security of F&B products.
  - xii. Establishing and enforcing strict food safety regulations and hygiene standards across all F&B areas.
  - xiii. Conducting regular inspections and audits.
  - xiv. Equipment Maintenance: Ensuring all F&B equipment is in proper operational condition and regularly cleaned and maintained. Notifying engineering immediately of any repair needs.
  - xv. Hiring, training, and supervising all F&B staff, including chefs, cooks, waiters, bartenders, hostesses, and stewards.
  - xvi. Developing and implementing comprehensive training programs for F&B staff on service standards, menu knowledge, responsible alcohol service, food safety, and customer service skills.
  - xvii. Performance Management: Evaluating staff performance, addressing issues, and implementing strategies for improvement.
  - xviii. Shift Scheduling: Managing staff schedules to ensure adequate coverage for all F&B operations.

- xix. Customer Service: Ensuring all guests receive exceptional customer service, from greeting and order taking to handling complaints and special requests promptly and professionally.
- xx. Quality Assurance: Continuously monitoring the quality of food, beverages, and service to ensure guest satisfaction.
- xxi. Feedback and Improvement: Collecting guest feedback (surveys, reviews) and using it to identify areas for improvement and innovation.
- xxii. Compliance: Adhering to all relevant legislation and regulations related to food service and alcohol.

#### **5.1.4 SECURITY**

- a. Authorizee shall provide security services for maintaining a secure environment within the Project Facility and responding to security incidents within the Project Facility. Authorizee shall ensure that all system and controls are in place and are functional to safeguard property, cash and commodities
- b. The security shall be provided 24 hours per day, 365 days per year.
- c. Authorizee shall:
  - i. provide a security service to ensure the safety and security of all guests, staff and bona fide visitors to the Project Facility;
  - ii. provide professional integrated security services on a scheduled and reactive basis, which are efficient, effective and timely;
  - iii. maintain the safety of all persons, and their belongings, within the Project Facility. This includes the protection of guests, staff, service providers and visitors against violent acts or abuse;
  - iv. protect the Project Facility and property, guests, staff, and visitors against theft, vandalism, malicious tampering and criminal damage; and
  - v. ensure only bona fide visitors are allowed access to the Project Facility. This includes restricting access of undesirable persons to the Project Facility in general and restricting access to sensitive areas to authorised personnel only.
- d. Authorizee shall provide reports on all incidences of crime to the concerned government department and to the Authority within the Project Facility.

#### **5.1.5 LINEN AND LAUNDRY SERVICES:**

- a. The Authorizee shall provide comprehensive linen and laundry service to ensure clean and appropriate linen is available in all areas in volumes necessary to support the smooth running of the Project Facility.
- b. The Authorizee shall:
  - i. Provide a proactive and reactive clean linen supply service.
  - ii. Ensure that the handling and transport of all linen fully complies with the good practices to minimize the risk of contamination within the facilities
  - iii. Manage the linen stock to maximize efficiencies while maintaining high service standards at all times including emergency demands of the Project.

- iv. All linen storage places shall comply with the control of infection practices.
- v. All linen shall be clean and serviceable
- c. Authorizee shall have option to use the onsite laundry or offsite option for laundering of linen and in all cases should abide by all the applicable environmental rules and regulations as applicable.
- d. Curtain and blind laundering: Authorizee shall ensure that all curtains and blinds are clean all time.

#### **5.1.6 PEST CONTROL**

- a. Authorizee shall undertake regular and periodic pest control to ensure that facility is free from the pests and rodents. It shall ensure the use of chemicals for pest control is in compliance with statutory compliance and banned chemicals are not used for this purpose. Authorizee shall maintain the record on number, type and location of infestation reported and signed and dated pest control activity reports.

#### **5.1.7 WASTE MANAGEMENT**

- a. Authorizee shall put in place comprehensive waste management plan for managing and undertaking the safe segregation, handling, transport and disposal of waste.

#### **5.1.8 EQUIPMENT MAINTENANCE**

- a. Authorizee shall undertake comprehensive planned and proactive maintenance of equipment to ensure that equipment is safe, accurate and working to optimum performance and to achieve maximum availability and continuity of services by minimizing the inconvenience caused by equipment breakdowns and interruptions, and achieving effective delivery of service from all medical equipment and services by maintaining standards set by the equipment manufacturer. For abundant clarity, the Authorizee shall have alternate arrangements during any sort of maintenance/repair of equipment's/ machines/ apparatus to ensure delivery of services as envisaged in this Agreement is not hampered/ hindered/ stopped.
- b. The maintenance shall include:
  - i. Planned protective maintenance designed to keep unplanned breakdown and disruptions minimum;
  - ii. Reactive maintenance providing rectification or arranging similar system to provide continuity of services; and
- c. Authorizee shall maintain logbook of planned and reactive maintenance.
- d. Authorizee shall enter into Comprehensive Maintenance Contract with equipment manufacturers/ suppliers valid throughout the Authorization Period. Authorizee shall enter into appropriate contractual arrangement for supply of spare parts and equipment parts/components. Authorizee should also ensure to get these equipment insured at their own cost, the day the equipment is installed at the Project Facility.

- e. Authorizee shall ensure sufficient stocks of materials and consumables are maintained for the provisions of the services and that such materials shall be stored in a clean and tidy manner in earmarked areas.
- f. Scope Exclusion: The Authorizee scope excludes Major Maintenance of the Project Facility. For the purpose of this Agreement, Major Maintenance includes:
  - a. Cost involved of INR 10,000 or more at one point of time in the replacement of fittings, fixtures & furniture's or replacement of any related items, civil maintenance works etc.
  - b. Provided however, in case of delay by the Authority in undertaking the Major Maintenance resulting in revenue loss or operational loss, the Authorizee will undertake such Major Maintenance (after informing the Authority), the cost of which will be reimburse by the Authority on actual basis.

#### **5.1.9 RECORD KEEPING AND REPORTING**

- a. All records and plans related to the Project and Project Facility shall be kept at the Project Facility. The list of records to be maintained shall include following:
  - i. The Project Agreement, its Schedules and the project documents including all amendments to such agreements.
  - ii. Records relating to the appointment and supersession of the Authorizee's representative and the Authority's representative.
  - iii. Project data documents
  - iv. Records relating to any specialist or statutory inspections of the Facilities.
  - v. Notices, reports, results and certificates relating to completion of the Works and completion of the commissioning activities.
  - vi. All operation and maintenance manuals
  - vii. Documents relating to events of Force Majeure, delay events, Events of Default and Relief Events and the consequences of the same.
  - viii. All formal notices, reports or submissions made to or received from the Authority in connection with the provision of services, the monitoring of performance, or the availability of the facilities.
  - ix. All certificates, licences, registrations or warranties related to the provision of Project Facility and services.
  - x. Records related to Taxes.
  - xi. Documents relating to Testing.
  - xii. Records required by Law and all Consents.
  - xiii. Documents relating to insurance and insurance claims.
  - xiv. All other records, notices or certificates required to be produced and/or maintained by Authorizee pursuant to Authorization Agreement or any Project Document.
- b. Authorizee shall report to the Authority in agreed format and quality and at agreed frequency.
- c. Compliant register shall be available at Project Facility at all the times. The Complaint register shall be made available to the Authority as and when asked for.

## **5.2 Obligations relating to Project Agreements**

- 5.2.1 It is expressly agreed that the Operator shall, at all times, be responsible and liable for all its obligations under this Agreement. Notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or any other agreement shall excuse the Operator from its obligations or liability hereunder.
- 5.2.2 Before finalisation, the Operator shall submit to the Authority the drafts of all Project Agreements and the operation and maintenance contract (if any) or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, to the Operator. Operator shall appropriately consider all such comments or observations. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Operator shall submit to the Authority a true copy thereof, duly attested by a Director of the Operator, for its record. For avoidance of doubt, it is agreed that the review and comments or observations by the Authority on any Project Agreement or failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Operator of its obligations and/or liabilities under this Agreement in any manner whatsoever nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Operator shall not sub-Authorization, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-Authorization, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.
- 5.2.4 The Operator shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Operator in the event of Termination or Suspension (the "Covenant"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Operator expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Operator agrees and acknowledges that selection or replacement of the Contractor and execution

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

**5.2.6 *It is expressly agreed that the Operator shall allow expansion of the Project Facility, in case the Authority so desire. In such a case, the Operator shall coordinate and discuss the expansion plan with the Authority so that the such expansion by the Authority of the Project facility can take place without hampering the Operation of the Project Facility. Further, the Operator shall have to undertake the Operation, Maintenance and Management of the expanded Project Facility or such expanded facility within the Project Site on, if the Authority so wished to provide the same to the Operator on similar terms & conditions.***

### **5.3 Obligation relating to employment of foreign nationals**

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

### **5.4 Obligations relating to aesthetic quality of the Project Facilities**

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

## **5.5 Sole purpose of the Operator**

5.5.1 The Operator shall not, except with the prior written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than the business incidental or consequential to the provisions of this Agreement.

## **5.6 EHS Standards and L&FS Standards**

5.6.1 The Operator shall at all times and throughout the Authorization Period comply with Applicable Laws including the relevant “Environmental, Health and Safety” (the “**EHS**”) rules and regulations and “Life and Fire Safety Standards” (the “**L&FS Standards**”).

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

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

## **5.7 Obligations relating to Taxes**

5.7.1 The Operator shall pay within the prescribed time, at all times during the subsistence of this Agreement, all Taxes including GST, fees, levies, duties, cesses and all other statutory charges payable in respect of the Operation of the Project Facilities.

## **5.8 Obligations relating to information**

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

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

## **5.9 Obligations relating to other charges**

- 5.9.1 The Operator shall make timely payments for all utility services in respect of the Project Site, Project Assets, Project Facilities and Project Infrastructure, including water, sewage, electricity, telecommunication, internet and cable charges etc.

## **ARTICLE 6 OBLIGATION OF THE AUTHORITY**

### **6.1 General Obligations of the Authority**

- 6.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.
- 6.1.2 Hand over the Project Facility to the Authorizee after completion of all remedial works as decided in the joint survey by the Authority and the Authorizee.  
In case the Parties, pursuant to such joint survey determines that the Punch List items [including its machines/equipments] conforms to Good Working Condition (as evidenced by recording the same in a written inventory memorandum) Authority shall issue to Authorizee operation certificate in respect of such Punch List items.
- 6.1.3 Provide Operator the sole and exclusive right and full authority to direct, manage and control all aspects of the Operation, maintenance and Management including promotion and marketing of the Project (and its constituent facilities and amenities) in a manner consistent with the Project Standard, as Operator in its reasonable discretion deems advisable, subject only to the express provisions and limitations set forth in this Agreement (including Clause 5.1.2 above). Without limiting the generality of the foregoing, Operator shall have the power and authority, on behalf of Authority, to:
- 6.1.3.1 establish rates for hotel usage including room rates for individuals and groups, charges for room service, food and beverage and for use of recreational, entertainment or other guest facilities or amenities at the Project. It being understood and agreed that the Operator shall have the right, in his/her discretion, to grant discounted or complimentary rooms, food, beverage or other services when he/she reasonably deems the same to be in the best business interests of the Project, consistent with Operator's standard policies and procedures in effect from time to time, and generally in accordance with industry standards regarding the same;
  - 6.1.3.2 establish labour policies and terms of employment (including wage rates and fringe benefits and other items comprising Employee Costs) and arrange for and oversee the hiring, promotion, discharge, supervision and training of all project employees;
  - 6.1.3.3 establish and maintain a system of accounting and record keeping, in accordance with Clause 5.1.9;
  - 6.1.3.4 develop and implement an appropriate records management and retention system, and retention policies, providing for the maintenance, storage and destruction of Project records;
  - 6.1.3.5 use reasonable efforts to maintain the Project in good condition and repair throughout the Term including all portions of the Building Systems, Furniture, Fixtures and Operating Equipment, all in accordance with maintenance programs established by Operator from time to time;
  - 6.1.3.6 procure all necessary inventories of food, beverages and other consumables, and Operating Equipment for the Project;

- 6.1.3.7 take such actions as Operator shall reasonably determine to be necessary to comply with applicable Legal Requirements (to the extent within Operator's reasonable control to do so); and
- 6.1.3.8 take such other actions as Operator reasonably determines to be appropriate to operate the Project to the Project Standard.
- 6.1.4 Provide access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Authorizee than those generally available to commercial customers receiving substantially equivalent facilities/utilities.
- 6.1.5 Provide adequate parking (minimum 50% of the available parking area) space within the Project Site.
- 6.1.6 The Authority shall be solely responsible for providing all necessary funds/ undertake for major capital expenditures, renovations, property improvements, and expansions as identified in a mutually approved Capital Budget/ otherwise.
- 6.1.7 The Authority shall undertake all Major Maintenance work as required from time to time.
- 6.1.8 The Authority shall pay within the prescribed time, at all times during the subsistence of this Agreement, all Taxes including GST, fees, levies, duties, cesses and all other statutory charges payable in respect of the of the Project Facilities.
- 6.1.9 Create Project Revenue Accounts as more particularly defined under Clause 16.1.3.
- 6.1.10 The Authority shall furnish to the Operator all Drawings for the Project Site which includes but not limited to:
- Architectural Drawings
  - Structural Drawings
  - HVAC Drawings
  - Electrical & Plumbing Drawings
  - Firefighter Drawings
  - Landscape Drawings
  - Miscellaneous Drawings
- 6.1.11 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Authority agrees to undertakes to observe, comply with and perform the following:
- a) upon written request from the Operator, and subject to the Operator complying with Applicable Laws, provide reasonable support and assistance to the Operator in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project, subject to the Operator submitting its applications complete in all respect in a timely manner. The Authority agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Operator;
  - b) upon written request from the Operator, provide reasonable assistance to the Operator in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Operator than those generally available to commercial customers receiving substantially equivalent services;

- c) not do or omit to do any act, deed or thing which may in any manner violate the provisions of this Agreement;
- d) support, cooperate with and facilitate the Operator in the implementation and operation of the Project in accordance with the provisions of this Agreement;

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

## **ARTICLE 7 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

### **7.1 Representations and warranties of the Operator**

7.1.1 The Operator represents, warrants and undertakes to the Authority that:

- a) it is duly organised and validly existing under the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- b) it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c) it has 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;
- d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- e) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- f) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- g) the information furnished in the Bid and as updated on or before the Execution Date is true and accurate in all respects as on the Execution Date;
- h) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- i) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial, Government Instrumentality or other authority, the outcome of which may result 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;

- j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- k) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- l) it shall at no time undertake or permit any Change in ownership;
- m) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any Person, save and except as expressly provided in this Agreement;
- n) no representation or warranty given by it contained herein or in any other document furnished by it to the Authority, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- o) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Authorization or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- p) all information provided by the {Selected Bidder/ Consortium Member} in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- q) agree that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts;
- r) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings; and
- s) further representations as may be added depending on the specific circumstances of the Operator.

## **7.2 Representations, warranties and Covenants of the Authority**

7.2.1 The Authority represents, warrants and covenants to the Operator that

- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- c) it has the financial standing and capacity to perform its obligations under this Agreement;
- d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement; and
- f) it has good, legal and valid right to Project Site and has the power and authority to handover Project Site to the Operator for the development of the Project in accordance with the provisions of this Agreement.

### **7.3 Disclosure**

- 7.3.1 In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of it. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of a Party under this Agreement.
- 7.3.2 Neither the Authority nor any of its agents or employees shall be liable to the Operator in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
  - a) any inaccuracy, omission, unfitness for any purpose of inadequacy of any kind whatsoever in the data disclosed by the Authority to the Operator in relation to the Project; and/or
  - b) any failure to make available to the Operator any materials, documents, drawings, plans or other information relating to the Project.

## **ARTICLE 8 DISCLAIMER**

### **8.1 Disclaimer**

- 8.1.1 The Operator acknowledges that prior to the execution of this Agreement, the Operator has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of Users, market potential and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability or completeness of any assessment, assumption, statement or information provided by it and the Operator confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Operator acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Operator, Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Operator pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Operator and the Authority shall not be liable in any manner for such risks or the consequences thereof.

## **PART III    OPERATION**

## ARTICLE 9 PERFORMANCE SECURITY

### 9.1 Performance Security

- 9.1.1 The Operator shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority on or before the Appointed Date, the following irrevocable and unconditional guarantee from a Schedule Commercial Nationalized Bank for a sum equivalent to Rs. 70,00,000.00 (Rupees Seventy Lacs only) substantially in the format set forth in Schedule E (the "Performance Security"). The Operator shall maintain and keep in force the Performance Security for the entire duration of the Performance Security Period in accordance with this Article 9. Until such time the Performance Security is provided by the Operator pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Operator
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the Performance Security is not provided by the Operator within the above specified period, the Authority shall have the right to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### 9.2 Appropriation of Performance Security

- 9.2.1 Upon occurrence of an Operator Default or failure to meet any Condition Precedent or failure to make any payment which becomes due and payable to the Authority under and in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable as liquidated damages from the Performance Security as Damages for such Operator Default or failure to meet any Condition Precedent or failure to pay such amounts which are due and payable by the Operator to the Authority under and in accordance with the provisions of this Agreement. Upon such encashment and appropriation of the Performance Security, the Operator shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 18 **Error! Reference source not found.** Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Operator shall be entitled to an additional Cure Period of 60 (Sixty) days for remedying the Operator Default or for satisfying any Condition Precedent, and in the event of the Operator not curing its default or meeting such Condition Precedent within such Cure

Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 18.

### **9.3 Release of Performance Security**

9.3.1 The Performance Security shall remain in force and effect for a period of 6 (six) months from the Transfer of the Project (the "Performance Security Period"); provided, however, that the Performance Security shall not be released if the Operator is in breach of this Agreement. Upon request made by the Operator for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith.

## ARTICLE 10 PROJECT FACILITY

### 10.1 The Project Facility

#### 10.1.1 Rights, Title and Use of the Project Site and Project Facility

- a) The Authorizee shall have the right to the use of Project Site & Project Facility in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same by third parties.
- b) The Project Site including the Project Facility developed thereon belongs to the Authority and shall continue to be the property of the Authority.
- c) The Authorizee shall not part with or create any Encumbrance on the whole or any part of the Project Site, save and except as set forth and permitted under this Agreement.
- d) The Authorizee shall not without the prior written approval of the Authority use the Project Facility for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- e) The Authorizee shall allow access to and use of the Project Site for laying/ installing/ maintaining telegraph lines, electric lines or for such other public purposes as the Authority may specify. Provided that such access or use shall not result in a Material Adverse Effect and that the Authority shall, in the event of any physical damage to the Project Site/ Project Facility/ on account thereof, ensure that the Project Site/ Project Facility is promptly restored at its cost and expenses.
- f) Provided further, that to the extent such access and use allowed by the Authorizee affects the performance of any of its obligations hereunder, the Authorizee shall not be deemed or construed to be in breach of its obligations nor shall it incur/ suffer any liability on account thereof.
- g) The Authorizee shall not demolish the existing structures within the Project Site.

#### 10.1.2 Peaceful Possession

The Authority, as Licensing Authority, hereby warrants that:

- a) The Project facility together with the necessary right of way/ way-leaves:
  - i. has been acquired through the due process of law
  - ii. belongs to and is vested in the Authority and that the Authority has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Authorizee shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.
- b) The Authorizee shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site or part thereof until expiry of the Authorization Period. In the event, the Authorizee is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any

interest in/charge on the Project Site or any part thereof, the Authority shall, if called upon by the Authorizee, defend such claims and proceedings and also keep the Authorizee indemnified against any consequential loss or damages which the Authorizee may suffer, on account of any such right, title, interest or charge.

#### 10.1.3 Applicable Permits

The Authorizee shall obtain and maintain all Applicable Permits in such sequence as is consistent with the requirements of the Project.

## **ARTICLE 11 ENTRY INTO COMMERCIAL SERVICE**

### **11.1 Commercial Operation Date**

11.1.1 The Appointed Date shall be the date of start of Commercial Operation and thereupon the Operator shall be entitled to put such Project Facility on commercial operations ("Project COD"), provided however, that the entry of any Project Facility into commercial service shall always be subject to compliance in accordance with the provisions of this Agreement and subject to Applicable Laws, Applicable Permits and Good Industry Practice.

## **ARTICLE 12 OPERATION AND MAINTENANCE**

### **12.1 O&M Obligations of the Operator**

12.1.1 The Operator shall submit a detailed operational plan for Operation, Maintenance and Management of the Project Facility to the Authority for approval and carry out the operation as per the approved Operational Plan (Schedule B). (the "Approved Operational Plan").

12.1.2 The operation plan so prepared by the Operator shall be in line with 3-star category Hotel requirements as detailed out in Annexure III of the revised guideline for approval of hotels and star classification/ re-classification of Ministry of Tourism (H&R Division), Government of India, dated 19.02.2018 or as revised from time to time.

12.1.3 During the Operation Period, the Operator shall operate and maintain the Project and the Project Infrastructure in accordance with this Agreement and if required, modify, repair or otherwise make improvements to the Project Assets and the Project Infrastructure to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Operator hereunder shall include:

- a) ensuring safe, hygienic and efficient Hospitality cum Tourism Services and maintaining a high standard of cleanliness and hygiene in the Project Facilities;
- b) undertaking operation and maintenance of the Project Facilities in an efficient, coordinated and economical manner, in compliance with the Specification and Standards;
- c) undertaking operation and maintenance of the Project Infrastructure in accordance with the Specification and Standards, operation and maintenance manual provided by the original equipment manufacturers and the terms of this Agreement to ensure that the Operator is able to optimally use the Project Infrastructure during the Operation Period such that the Project is self-sustained;
- d) carrying out preventive maintenance of the Project Facilities and Project Infrastructure;
- e) undertaking routine maintenance including prompt repairs of all elements and components of the Project Facilities and Project Infrastructure so as to ensure compliance with the Maintenance Requirements and the Specification and Standards;
- f) providing round the clock security at the Project Site and preventing with the assistance of the concerned law enforcement agencies, any encroachments on or authorised entry on the Project Site;

- g) protection of environment and provision of equipment and materials therefor in accordance with the Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice;
- h) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project Facilities and Project Infrastructure and for providing Hospitality cum Tourism Services in conformity with the Good Industry Practice;
- i) maintaining a public relations unit to interface with and attend to suggestions from the Users, Government Instrumentality, media and other agencies;
- j) complying with the Safety Requirements; and
- k) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement;
- l) responsible for the acts or defaults of any of its contractors, its agents or employees, as if they were the acts or defaults of the Operator.

12.1.4 The cope of Operator under Operation, Maintenance and management excludes Major maintenance like replacement of components and parts, repairs to structures, and repairs and development of associated facilities, including the Project Infrastructure;

12.1.5 If the Operator fails to comply (for any activity undertaken by him after taking over the Project facility, however the Operator shall not be liable for past liability arising out of the default on the part of the Authority) with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Operator, and shall not be claimed from the Authority. For avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to and independent of the Damages payable under this Agreement. In the event the Authority is required to pay any penalty to the Government Instrumentality under any Applicable Laws then the Authority shall be entitled to be indemnified by the Operator under Article 19.

## **12.2 Maintenance Requirements**

12.2.1 The Operator shall procure that at all times during the Operation Period, the Project Facilities and the Project Infrastructure are maintained in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (Schedule F).

## **12.3 Safety, breakdowns and accidents**

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

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

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

## 12.4 Overriding powers of the Authority

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

- 12.4.2 In the event the Operator, upon notice under Article **Error! Reference source not found.**, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may take over the performance of any or all the obligations of the Operator to the extent deemed necessary by it for removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Operator in accordance with the provisions of Article 12 along with the Damages specified therein.

## 12.5 Excuse from performance of obligations

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

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

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

Notwithstanding the above, the Operator shall keep all unaffected parts of the Project Facilities open to Users provided that Hospitality cum Tourism Services can be provided safely.

## **12.6 Authority's right to take remedial measures**

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

## **ARTICLE 13 MONITORING OF OPERATION AND MAINTENANCE**

### **13.1 Monthly Status Reports**

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

### **13.2 Inspection**

13.2.1 The Authority shall inspect the Project Facilities and the Project Infrastructure at regular interval (least once a month). It shall make a report of such inspection at the Project Site (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements and Safety Requirements and send a copy thereof to the Authority and the Operator within 7 (seven) days of such inspection.

### **13.3 Tests**

13.3.1 If required and deemed fit by the Authority, for determining that the Project Facilities and the Project Infrastructure conforms to the Maintenance Requirements, the Authority shall require the Operator to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Operator shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority and furnish the results of such tests forthwith to the Authority.

### **13.4 Remedial measures**

13.4.1 The Operator shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 13.3 and furnish a report in respect thereof to the Authority within 15 (fifteen) days of receiving the O&M Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Operator shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

## ARTICLE 14 HOSPITALITY CUM TOURISM SERVICES

### 14.1 Quality of Services

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

### 14.2 Hotel Management System

- 14.2.1 All **bookings** and invoicing for the Project shall be undertaken through a dedicated Hotel Management System (HMS System) implemented by the Authority. However, the Operator shall have the right to finalize the pricing of hotel, right to grant discounted or complimentary rooms, food, beverage or other services when he/she reasonably deems the same to be in the best business interests of the Project. The Authority shall also share the data in terms of the Bookings undertaken, payment collected from the Users under Core Services and Associated Services. All rights of managing HMS system shall be provided by the Authority to the Operator.

## **ARTICLE 15 : CHANGE OF SCOPE**

### **15.1 Change of Scope**

- 15.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “Change of Scope”). Provided that, the Authority shall be entitled to require the Authorizee to undertake any Change of Scope only during the Construction Period. Any such Change of Scope shall be made in accordance with the provisions of this Article 15 and the costs thereof shall be expended by the Authorizee and reimbursed to it by the Authority in accordance with Clause 15.3.
- 15.1.2 Any works or services which are provided under and in accordance with this Article 15 shall form part of the Project Facilities and Project Infrastructure and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

### **15.2 Procedure for Change of Scope**

- 15.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Authorizee a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 15.2.2 Upon receipt of a Change of Scope Notice, the Authorizee shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documents in support of:
- a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period;
  - b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, any impact on the operations or the cost of operation of the Project Facilities and Project Infrastructure, along with the proposed premium or discount on such rates; provided that the cost incurred by the Authorizee in providing such information shall be reimbursed by the Authority as reasonable; and
  - c) its likely impact on the Gross Revenue and profitability of the Project.
- 15.2.3 Upon receipt of information set forth in Clause 15.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Authorizee, and the Parties shall, make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “Change of Scope Order”) requiring the Authorizee to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of

Scope Order, require the Authorizee to proceed with the performance thereof pending resolution of the Dispute.

- 15.2.4 The provisions of this Agreement, insofar as they relate to Development Works and Tests, shall apply mutatis mutandis to the works undertaken by the Authorizee under this Article 15.

### **15.3 Payment for Change of Scope**

- 15.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Authorizee of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost. The Authorizee shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documents as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Authorizee such amounts as are certified by the Authority, as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure in Article 22.

## ARTICLE 16 TARIFF AND FEE

### 16.1 Tariff Structure

- 16.1.1 The Operator may determine the tariff structure for different categories of rooms and other services in such manner as it deems fit; provided however, that such tariffs shall not be combined with any facility or service that is not directly connected with the Hotel.
- 16.1.2 The Operator may, for occupancy of Keys in the Project by Users, levy and recover such tariffs as it may determine from time to time and shall also be entitled to charge market related rates for other services and allied infrastructure such as retail outlets, telephone, telefax, laundry, food, beverages, liquor, recreation amenities (pool, health club, spa, sauna, fitness facility, outdoor catering, vending machines, Wi-Fi services and any other relevant service (the “**Associated Activities**”). The Operator may also recover rent or fee for use of commercial or other spaces of every description and kind, provided by the Operator.
- 16.1.3 All revenue shall go directly to the Authority designated project specific accounts. Towards the same, the Authority shall create 2 project specific accounts (Project Revenue Accounts) to:
- i. **Account 1 (Revenue from Core Activities):** For Revenue generated from Core activities like room rent and space rent out for MICE & other activities.
  - ii. **Account 2 (Revenue from Associated Activities):** Directly receiving and managing all revenue arising out of food & beverages, bar, spa services, laundry Services to the guests and other incidental services. The Authority shall provide the necessary infrastructure and access to the Operator for efficient revenue collection processes that feed directly into the Authority's system.
- 16.1.4 To the extent possible, the Operator shall not promote cash transaction. The Operator shall endeavour to keep the cash transaction to below 5% of the total revenue.
- 16.1.5 Any cash received by the Operator shall be deposited in the Authority designated project specific account by the next working day of the receipt of such amount with due information to the Authority about the same and also to keep a record of the same.

### 16.2 Payment of Management Fee by the Authority

- 16.2.1 In consideration of the Operation, Maintenance and Management of the Project Facility in terms of this Agreement, the Authority shall pay to the Operator the following:
- a) **Management Fee shall consist of the following:**
    - (i) **Fee for Revenue from Core Activities:** the Authority shall pay the Operator a Management fee equivalent to percentage of Gross Revenue earned by the Authority from the Core Activities (...% of gross revenue) as quoted by the Successful Bidder in its Bid (Schedule C).

- (ii) **Fee for Revenue from Associated Activities:** the Authority shall pay the Operator 80% of the gross revenue (including revenue in cash generated and deposited from Associated Activities) generated from Associated Activities.
- b) Along with the Fee as mentioned above, the Authority shall also pay the GST at applicable rates to the Operator.
- c) The Authority shall pay the above-mentioned fee within 15 days of issuance of invoice by the Operator.

***For illustration: If the total revenue earned by the Authority is 2 crores from the Core Services and 1 crore from the Associated Activities, and if the Operator quote is 50% of gross revenue from the Core Activities then, the Operator is eligible for Management Fee as per the following:***

- 1. Management Fee against Core Activities:  $50\% \times 2 \text{ crores} = \text{INR } 1 \text{ crores}$ ; and***
- 2. 80% Fee from the Associated Activities:  $80\% \times 1 \text{ crore} = \text{INR } 0.80 \text{ crore}$ .***

***Total Management Fee payable to the Operator = INR 1.8 crores plus GST at applicable rate. However, actual payment of this shall be done on the monthly basis.***

- d) Provided that In case the net revenue earned by the Authority (revenue left after paying the Management fee) from the Project is less than INR 1.41 crore for the first Financial year (Minimum Guarantee Revenue) of Operation (to be calculated on the pro-rata basis), the Bidder/ Operator shall pay such deficit amount to make the net revenue of the Authority to INR 1.41 crores for the first Financial year of Operation (to be calculated on the pro-rata basis). The amount of Minimum Guarantee Revenue shall be increased by 10% every 3 years.***

### **16.3 Interest on Delayed Payments**

- 16.3.1 All amounts due and payable by the Authority under the provisions of this Agreement shall be paid on or before the time period stipulated in Clause 16.2.1 (d). In the event of delay beyond such period the Authority shall pay interest for the period of delay, calculated at the rate specified in the Clause 26.3 of this Agreement.

### **16.4 Disputed Amounts**

- 16.4.1 The Operator shall, within 10 (ten) days of receiving the Fee (both for Core Services and Associated Services), notify the Authority of the disputed amounts along with details thereof (the "Disputed Amounts") if any. Within 15 (fifteen) days of receiving such notice, the Authority shall present any information or evidence as may be reasonably required for determining that such Disputed Amounts are payable/ not payable. The Authority may, if necessary, meet a representative of the Operator for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure in accordance with the Article 22 shall apply.

16.4.2 If any amount is payable by either Party upon determination of a dispute regarding any Disputed Amount, such amount shall be deemed to be payable on the date when it first became due and interest for the period of delay shall be due and payable at the rate specified in Clause 26.3.

## **16.5 Keys Reserved for the Authority**

16.5.1 The Operator shall made available 2 suite rooms, free of cost (including breakfast for 2 persons per guest rooms) as & when requisition in respect thereof is received by the Operator from the Authority. Such request shall be made by the Authority at least 2 days in advance.

## **ARTICLE 17 : FORCE MAJEURE**

### **17.1 Force Majeure**

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in sub-clauses 17.1, 17.2 and 17.3 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### **17.2 Non-Political Event**

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

- a. strikes or boycotts (other than those involving the Authorizee, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services and/or the upgradation, operation and maintenance of the Project Facility for a continuous period of 24 (twenty four) hours and an aggregate period, exceeding 30 (thirty) days in a financial year, and not being an Indirect Political Event set forth in Clause 17.3;
- b. any judgement or order of any court of competent jurisdiction or statutory authority made against the Authorizee in any proceedings for reasons other than (i) failure of the Authorizee to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the GoJ;

### **17.3 Indirect Political Event**

An Indirect Political Event shall mean an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents operation of the Project facility by the Authorizee for period exceeding a continuous period of 30 (thirty) days in a financial year.

### **17.4 Political Event**

A Political Event shall mean one or more of the following acts or events by GoJ or Gol:

- a. compulsory acquisition in national interest or expropriation of the Project Site Assets, if any created by the Authorizee under the Project or rights of the Authorizee;
- b. unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, no objection certificate, consent, approval or exemption required by the Authorizee to perform their respective obligations under this Authorization Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Authorizee's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, no objection certificate, exemption, consent, approval or permit; or
- c. any event or circumstance of a nature analogous to any of the foregoing.

## **17.5 Duty to report Force Majeure Event**

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

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

17.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (Seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

## **17.6 Effect of Force Majeure Event on the Authorization**

17.6.1 The Authorizee shall be eligible for extensions as provided hereunder only on the occurrence of Force Majeure Events, with respect to the Project.

- a. at any time after the Appointed Date, if any Force Majeure Event occurs:
  - I. before COD, the Authorization Period shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

- II. after COD, whereupon the Authorizee is unable to operate and maintain the Project Facility in terms of the Authorization Agreement despite making best efforts, the Authorization Period shall be extended by a period, equal in length to the period during which the Authorizee was unable to perform its obligation under the Agreement.

17.7 Save and except as expressly provided in this Article 17, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

17.8 Notwithstanding anything contained in this Article 17, in case Force Majeure Event subsists for a continuous period of thirty days, Authority shall be entitled to terminate this Agreement in which case the Authority shall pay to the Authorizee the pro-rata Management Fee (fee from Core Activities and Associated Activities) and payable in terms hereof until date of such termination.

## ARTICLE 18 : EVENTS OF DEFAULT

### 18.1 The Authority Event of Default

- a. Each of the following events or circumstances, to the extent not caused by a default of the Authorizee or Force Majeure, shall be considered for the purposes of this Authorization Agreement as events of default of the Authority (“the Authority Event of Default”) which, if not cured within the time period permitted, if any, shall provide the Authorizee with the right to terminate this Authorization Agreement in accordance with Article 18 hereof:
  - I. a Material Breach by the Authority of its obligations under this Authorization Agreement which is not remedied within 90 days from the date [or such later date as parties may mutually agree,) of receipt of written notice from the Authorizee specifying such breach and requiring the Authority to remedy the same;
  - II. a breach of any express representation or warranty by the Authority which has a Material Adverse Effect and such breach is not remedied within 90 (Ninety) days from the date (or such later date as parties may mutually agree) of receipt of written notice from the Authorizee specifying such breach and requiring the GoJ to remedy the same.

### 18.2 Authorizee Event of Default

- a. Each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure, shall be considered for the purposes of this Authorization Agreement as Events of Default of the Authorizee (“**Authorizee Event of Default**”) which, if not cured within 15 days of notice as issued by the Authority, if any, shall provide the GoJ, with the right to terminate this Authorization Agreement in accordance with Article 18 hereof:
  - I. Material Breach of its obligations under the Authorization Agreement which has a Materially Adversely Effect on the Authority or the Project and such breach is not remedied within 15 days of notice as issued by the Authority of specifying such breach and requiring the Authorizee to remedy the same;
  - II. The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Authorizee fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
  - III. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, or cure the Authorizee Event of Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 60 (Sixty) days;
  - IV. For each default of Approved Operation Plan, the Authority shall deduct 2% of the Performance Security, subject to a maximum of 6% in a quarter.

- V. Continuous failure to adherence to the Approved Operation Plan. In case, the failure of Authorizee to adhere to Approved Operation Plan resulted in deduction of Management Fee by more than 6% in a quarter for more than 2 quarter in a year, such failure shall be treated as Authorizee Events of Default.
- VI. subject to the provisions of this Authorization Agreement failure to take possession or achieve Project COD on or before the Appointed Date;
- VII. a breach of any express representation or warranty by the Authorizee which has a Material Adverse Effect and such breach is not remedied within 15 days of notice as issued by the Authority from the Authority specifying such breach and requiring the Authorizee to remedy the same;
- VIII. any actions or omissions attributable to Authorizee, including delay on the part of the Authorizee to discharge any of its obligations, that has a Material Adverse Effect on the implementation of the Project;
- IX. dissolution of the Authorizee pursuant to Applicable Law, except for the purpose of a merger, consolidation or reorganization that does not affect the ability of the resulting entity to perform all the obligations of the Authorizee under this Authorization Agreement and provided further that such resulting entity expressly assumes all such obligations;
- X. declaration of insolvency or the appointment of a liquidator in a proceeding for dissolution of the Authorizee after lawful notification and due hearing, which declaration or appointment has not been set aside within 60 (Sixty) days thereof;
- XI. failure of the Authorizee to procure requisite Approval with respect to any change in the functioning, management and operation process of the Project Facility;
- XII. Abandonment of the Project by the Authorizee;
- XIII. if there is a change in the rights of ownership of the Authorizee or in the powers of any trustee/member of the governing body to direct the management or the policies of the Authorizee where such change would be reasonably likely to have a Material Adverse Effect on the ability of the Authorizee to comply in all material respects with its obligation under this Authorization Agreement;
- XIV. Authorizee creates or permits to subsist any Encumbrance, or otherwise transfers or disposes of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Authorizee is a party.
- XV. If the Authorizee sub-Authorizations, encumbers, sells/transfer any part or whole of the Project Site/Project Facility to any person in any form or under any arrangement, device or method
- XVI. Such other events which have been specifically set out in terms hereof as Authorizee Event of Default.

## **18.3 Termination due to Event of Default**

### **a. Termination for Authorizee Event of Default**

- I. Without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of a Authorizee Event of Default, the Authority may immediately terminate this Agreement by issue of Termination Notice in the manner set out under Clause 18.3(d).
- II. If the Authority decides to terminate this Agreement pursuant to Clause 18.3 a (I), it shall in the first instance issue Notice of intention to terminate to the Authorizee. Within 30 days of receipt of the Notice of intention to terminate, the Authorizee shall submit to the Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Authorizee's Proposal to Rectify"). In case of non-submission of the Authorizee's Proposal to Rectify within the said period of 15 days, the Authority shall be entitled to terminate this Agreement by issuing Termination Notice.
- III. If the Authorizee's Proposal to Rectify is submitted within the period stipulated therefor, the Authorizee shall have further period of 15 days ("Cure Period") to remedy/ cure the underlying Event of Default. If, however the Authorizee fails to remedy/ cure the underlying Event of Default within such further period allowed, the Authority shall be entitled to terminate this Agreement, by issue of Termination Notice.

### **b. Termination for the Authority Event of Default**

- I. Without prejudice to any other right or remedy which the Authorizee may have in respect thereof under this Agreement, upon the occurrence of the Authority Event of Default, the Authorizee shall be entitled to terminate this Agreement by issuing Termination Notice.
- II. If the Authorizee decides to terminate this Agreement pursuant to Clause 18.3 b (I), it shall in the first instance issue Notice of intention to terminate to the Authority. Within 30 days of receipt of Notice of intention to terminate, the Authority shall forward to the Authorizee its proposal to remedy/ cure the underlying Event of Default (the "the Authority's Proposal to Rectify"). In case of non submission of the Authority's Proposal to Rectify within the period stipulated therefor, Authorizee shall be entitled to terminate this Agreement by issuing Termination Notice.
- III. If the Authority's Proposal to Rectify is forwarded to the Authorizee within the period stipulated therefor, the Authority shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however the Authority fails to remedy/ cure the underlying Event of Default within such further period allowed, the Authorizee shall be entitled to terminate this Agreement by issuing Termination Notice.

**c. Completion of 10 years from the Appointed Date**

Before the completion of 5 years from the Appointed Date, the Authority shall review the performance of the Authorizee. If the Authority is of a view that the performance of the Authorizee is in compliance with the terms of the Agreement, the Authority may in its sole discretion, subject always to the Authorizee not being in any material default of its obligations hereunder, consider granting another Authorization term of 5 years to the Authorizee on such terms as Authority would then deem appropriate.

In the event Authority does not decide to grant another Authorization term to the Authorizee, then upon expiry of the Authorization Period, vacant possession in respect of all the Project Facility [along with Project Site and all assets] shall revert to Authority free and clear from all Encumbrances.

**d. Termination Notice**

If a Party, having become entitled to do so, decide to terminate this Agreement pursuant to the preceding sub clause 18.3 (a) or (b), (c) it shall issue Termination Notice setting out:

- I. in sufficient detail the underlying Event of Default;
- II. the Termination Date which shall be a date occurring not earlier than seven days from the date of Termination Notice;
- III. the estimated termination payment including the details of computation thereof; and,
- IV. any other relevant information.

**e. Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- I. until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility,
- II. the termination payment, if any, payable by the Authority in accordance with the terms hereof is paid to the Authorizee on the Termination Date and
- III. the Project Facility is handed back to the Authority by the Authorizee on the Termination Date free from any Encumbrance along with any payment that may be due by the Authorizee to the Authority as per the Provisions of Article 21.

**f. Termination Payments**

- I. In case of termination of the Authorization Agreement on account of Authority Event of Default, the Authorizee, shall forthwith transfer and hand over the peaceful possession of the Project Facility, together with Project Site and all movable & immovable assets created by the Authority to the Authority without any Encumbrances, charge or lien. In such circumstances, the Authority shall, provided there are no outstanding

claims of the Authority on the Authorizee, pay to the Authorizee by way of termination payments the following within 180 days of the Transfer Date:

- a. Pro-rata amount of Management Fee payable in terms hereof until date of termination,
- II. Upon Termination of this Agreement on account of Authorizee Event of Default, the Authorizee shall not be entitled to receive any payment from the Authority and also the Performance Security as provided by the Authorizee shall be forfeited.

#### 18.4 Rights of the Authority on Termination

- a. Upon Termination of this Agreement for any reason whatsoever, the Authority shall upon making (subject to terms hereof) the Termination Payment, if any, to the Authorizee have the power and authority to:
  - I. enter upon and take possession and control of the Project Site / Project Facility forthwith;
  - II. prohibit the Authorizee and any person claiming through or under the Authorizee from entering upon/ dealing with the Project Site /Project Facility
- b. 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 regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Authorizee in connection with the Project, and the handback of the Project Facility by the Authorizee to the Authority shall be free from any such obligation.

#### 18.5 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.



## **ARTICLE 19 : LIABILITY AND INDEMNIFICATION**

### **19.1 Liability to Third Parties**

- 19.1.1 A Party shall promptly inform the other Party of any claims or proceedings or anticipated claims or proceedings against the other Party in respect of which the other Party is entitled to be indemnified under this Article 19 as soon as a Party becomes aware of the same. Each Party shall give reasonable assistance to the other in defending such claims and the Party giving such assistance shall be entitled to be indemnified to the extent of the costs incurred by it in this regard;
- 19.1.2 None of the Parties shall permit any claim or proceedings referred to in Clause 19.1.1 above to be settled without the prior written consent of the other Party;
- 19.1.3 The GoJ shall not be liable in any manner whatsoever for the obligations and liabilities incurred by the Authorizee for the Project Facility during the Authorization Period and for the Authorizee's contracts with Third Parties.

### **19.2 Indemnification**

The Authorizee shall indemnify, defend and hold harmless the GoJ during and after the term of this Authorization Agreement from and against all liabilities, damages, losses, expenses, deaths, demands, actions, proceedings, costs and claims of any nature whatsoever, including without limitation legal fee and expenses, suffered by the GoJ or any Third Party as a result of or arising out of or in any way connected with the acts, omissions, negligence, nuisance, breach of this Authorization Agreement and failure to perform obligations hereunder of or by the Authorizee and its employees, agents, representatives and Contractors, including the use or violation of any copyright work or literary property or patented invention, article or appliance, except to the extent that such injury, damage or loss is attributable to a negligent or wilful act or omission of the GoJ.

### **19.3 Risk and Liability**

- 19.3.1 Except as expressly provided in the Authorization Agreement, the Authorizee shall carry out and perform its rights and obligations under the Authorization Agreement at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to the Authorization Agreement.

## **ARTICLE 20 : INSURANCE**

### **20.1 Coverage**

20.1.1 The Authorizee shall, on and from the date of taking over the possession of the Project Site and Project Facility if any, up to the end of Authorization Period, maintain or cause to be maintained, at its own expense, the following insurance policies in the name of the Authority:

- I. Fire & Theft;
- II. Loss or damage to Equipments/Instruments/machines installed in the Project Facility and Assets created by the GoJ and the Authorizee, due to events like earthquake, floods, lightening etc.; and
- III. In respect of claims for personal injury to or death of any person employed by the Authorizee or its Contractor, subcontractors and arising out of such employment.

20.1.2 The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Authorizee.

### **20.2 Evidence of Insurance Coverage**

20.2.1 The Authorizee shall furnish to the GoJ copies of certificates of insurance in respect of the Insurance Policies referred to in Clause 20.1 as soon as reasonably practicable after they are received by the Authorizee and from time to time shall furnish evidence to the GoJ that all premiums have been paid, and that the relevant policies remain in existence. In the event that the Authorizee fails to maintain the Insurance Policies as required under this Authorizee Agreement, the GoJ may take such required policies and recover the costs and expenses incurred in this regard from the Authorizee.

## **ARTICLE 21 : TRANSFER OF PROJECT**

### **21.1 Scope of Transfer**

21.1.1 The Authorizee shall at the end of the Authorization Period or earlier termination of the Authorization Agreement, as the case may be, forthwith and in any case not later than 60 days from expiry or earlier termination of the Agreement, hand over to the Authority, Project Site, Project Facility and all other Assets created/installed during the Authorization Period by the Authority, free and clear of any liability, charge, lien, Encumbrances along with all of the Authorizee's right, title and interest in the Assets constructed/installed by the Authorizee on the Project Site. The Authorizee shall also deliver to the Authority on such date such operating manuals, plans, design drawings and other information as may reasonably be required by the Authority to enable it to continue the operation of the Project Facility;

- a. All service contracts/Project Agreements of the Authorizee shall specify the Transfer Date & its corresponding effect. Failure to specify the Transfer Date & its corresponding effect in the service contracts shall not adversely affect the Authority and the Authorizee shall be solely responsible for handover of the Project Facility along with Project Site and Assets on the Transfer Date at its own risk & cost.

### **21.2 Right of the Authority to choose Insurance and Contractor Warranties**

21.2.1 the Authority shall on the Transfer Date have the right to chose and retain all or any of the unexpired Insurance Policies, contractor warranties in relation to the Project Facility. The Authorizee shall ensure that any rights which are to be so assigned are capable of assignment and such assignment has been approved under the terms of the relevant contract by the counterparty to the Authorizee.

### **21.3 Assignment of Contracts**

21.3.1 The Authority may, in its sole and absolute discretion, have the right to choose and retain on the Transfer Date all or any of the contracts, equipment maintenance contracts, supply contracts and all other contracts except service contracts with the Staff and Faculty relating to the Institute, entered into by the Authorizee and subsisting as on the Transfer Date;

### **21.4 Condition of the Facility upon Transfer**

21.4.1 On the Transfer Date the Project Facility and the Project Assets shall be in fair, usable/habitable and in a state of good working conditions as per Good Industry Practices, subject to normal wear and tear, having regard for the nature, construction and life of the facilities, constructions, structures etc ..

21.4.2

## **21.5 Passing of Risk**

21.5.1 Until the Transfer Date, all risks shall lie with the Authorizee for loss of or damage to the whole or any part of the Project Facility, Project Site and the Assets created by the Authorizee during the Authorization Period. On and from the Transfer Date all risks except risks arising out of service contracts, if any, in relation to the transferred Project Facility, Project Site and the Assets created by the Authorizee during the Authorization Period shall be deemed to have been transferred to and lie with the Authority.

## **21.6 Transfer Costs**

21.6.1 The Authorizee shall transfer the possession of Project Site, Project Facility along with all the Assets, to the GoJ free from any charge, Encumbrance, liability or obligation in terms of this Authorization Agreement, through appropriate legal document executed in respect thereof, if any;

21.6.2 The Authorizee shall be responsible for the costs and expenses with the transfer of the possession of the Project Facility, Project Site and Assets. The Authorizee hereby undertakes to indemnify the Authority against any liability arising out of any statutory liability till the Transfer Date that may be sought to be or is imposed on a later date on the Authority by any statutory authorities, in relation to the Project Facility and the assets there under.

## **21.7 Handing Over Procedure**

21.7.1 Two months prior to the expiry of the Authorization Period the Authority and the Authorizee shall meet and agree by mutual consensus on detailed procedures for the handing over of the possession of the Project Facility and Assets. In the event the handing over of the possession of Project Facility, is required pursuant to Article 17 hereof, the Parties shall meet to agree on such procedures as soon as possible and in any event within 3 (three) days of either Party giving notice to the other Party requesting such meeting. At the time of such meeting, the Authorizee shall submit a detailed list of the structures, equipment, Assets created by the Authority to be handed over to the Authority in terms hereof and the names of its representatives in charge of such transfer, and the Authority shall inform the Authorizee of the identity of its representatives in charge of the handing over procedure;

21.7.2 During the two month period prior to the handing over of the Project Facility at the expiry of the Authorization period, the Authorizee shall provide such training services to the representatives and employees of the Authority as may be reasonably necessary for them to operate and maintain the Project Facility efficiently and safely following such transfer;

21.7.3 Notwithstanding anything contained in this Authorization Agreement, in the event the Parties do not go through the transfer procedure, the Authority shall suo-moto re-enter the Project Facility and take possession of the Project Facility and Assets created by the Authority on the Project Facility.

21.7.4 The Authorizee shall hand over to the Authority or its nominated agency all documents including the operations manuals, designs, documents, and records relating to the Users, bookings made and such other information relating to the Project and the Project Assets.

21.7.5 To the extent possible the Authorizee shall assign to the Authority or its nominated agency at the time of handover/ transfer all unexpired guarantees and warranties by sub-contractors and suppliers and all insurance policies in respect of the Project Facility and assets.

21.7.6 The Authorizee shall at its cost remove from the Site all such moveable assets which are not taken over by or transferred to the Authority or its nominated agency. In the event the Authorizee fails to remove such objects within the stipulated time, the Authority or its nominated agency may remove and transport or cause removal and transportation of such objects, after giving the Authorizee notice of its intention to do so to a suitable location for safe storage. The Authorizee shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.

21.7.7

## **21.8 Effect of Transfer**

21.8.1 **Licenses and Permits:** All transferable licenses or permits relating to the Project which have been obtained in the name of Operator shall be transferred and assigned to Authority or the Successor Manager and Operator shall provide Authority with a complete listing of all permits and licenses (whether or not transferable and whether in Operator's name or in the name of Authority) as soon as reasonably practicable prior to the effective date of termination so as to permit Authority or Successor Manager sufficient time to apply for new licenses or permits or to effect transfer to Authority's name or the name of Successor Manager. With respect to any non-transferable licenses or permits, Operator agrees that it shall cooperate reasonably with Authority and Successor Manager in obtaining new licenses or permits, and, in connection therewith, shall surrender or agree to surrender corresponding licenses or permits to the extent applicable solely to the Project which are then carried in Operator's name

21.8.2 on the Transfer Date the Authorizee shall hand over peaceful possession, of the Project Facility, Project Site and Assets to the GoJ and the Authorizee, its Contractors, sub-contractors, agents, employees appointed by the Authorizee shall vacate the Project Facility, Assets if any;

21.8.3 The personnel of the Authorizee shall continue to be the employees of the Authorizee and reverting back of the Project Facility/ Premises shall not in any manner affect their status as employees of the Authorizee and they shall have no claim to any type of employment or compensation from the Authority.

21.8.4 From the Transfer Date, the obligations and the rights of the Authorizee under this Authorization Agreement shall terminate vis-à-vis the Authority and the Authority shall take over the Project Facility and its operation and maintenance and any other rights

or obligations arising out of this Authorization Agreement which either expressly or implicitly survive termination of this Authorization Agreement.

- 21.8.5 The Authorizee or its nominee(s) or sub-contractor or sub-Authorizee, and or persons claiming through or under them, as the case may be, shall cease to conduct all commercial activities within the Project Site from the Transfer Date.
- 21.8.6 Pursuant to the reverting back of the possession of the Project Facility/ to the Authority, the obligations and the rights of the Authorizee under this Authorization Agreement shall terminate vis-à-vis the Authority and the Authorizee shall no longer act in its capacity as Authorizee in relation or pursuant to this Authorization Agreement.
- 21.8.7 The handover of immovable property comprising the Project Facility and the Project Assets shall be deemed to be a termination of all right of way and Authorization rights granted to the Authorizee in relation to the Project Site and the Project Facility. The movable assets installed by the Authorizee comprising the Project and the Project Assets shall be deemed to be transferred by delivery of possession.
- 21.8.8 On the Transfer Date, the possession of the Project Facility along with all the movable & immovable assets (created by the Authority) shall revert back to the Authority or its nominee, free and clear of any charges, liens and Encumbrances created or suffered by the Authorizee.

## **21.9 Deemed Transfer**

- 21.9.1 Notwithstanding anything contained in this Authorization Agreement, failure of the Authorizee to;
- a. handover the physical possession of the Project Facility along with the Project Site and all Assets created by the Authority and Authorizee on the Project Site ; and
  - b. execute a conveyance deed, if required, stating that the Authorizee shall have no claim on the Project Facility along with the Project Site, Assets if any created by the Authorizee on the Project Site.
  - c. shall not adversely affect the transfer of the Project Facility along with Project Site and all Assets created by the Authority and Authorizee on the Project Site to the Authority

Notwithstanding anything contained above, on the end of the Authorization Period the Project Facility along with the Project Site with all its Assets created by the Authority and the Authorizee shall be deemed to have reverted to the Authority on the expiry of the Authorization Period or on the date of termination of this Authorization Agreement, as the case may be, and from such date the Authority shall be deemed to have assumed full Authorityship/ charge over such Project Facility without any liability and/or Encumbrance, whatsoever, towards the Authorizee or any person claiming through it.





## **ARTICLE 22 : DISPUTE RESOLUTION**

### **22.1 Amicable Settlement**

22.1.1 In the event that any dispute, controversy or claim arises among the Parties in connection with or under this Authorization Agreement or the interpretation of any of its provisions or upon the occurrence of an Event of Default, GoJ and the Authorizee shall constitute a consultation panel consisting of one senior representative appointed by each Party, and such consultation panel shall endeavour to resolve such dispute, controversy or claim. All such disputes shall be amicably settled through mutual consultation and negotiation between the representatives in the consultation panel. The decision of the consultation panel shall be binding upon the Parties. Each Party shall bear all the expenses of its representative. The Parties hereto agree to use their respective best efforts to resolve all disputes arising hereunder through the consultation panel. The consultation panel shall be situated at Ranchi.

22.2 In the event the Parties are unable to resolve any dispute, controversy, or claim in accordance with sub-clause 22.1, such dispute, controversy or claim shall be referred to courts at Ranchi.

### **22.3 Performance during Dispute Resolution**

22.3.1 Pending the submission of a dispute, controversy or claim to the consultation panel or to the arbitral tribunal, and thereafter until the final decision of the consultation panel or the arbitral tribunal, as the case may be, the Parties shall continue to perform all of their obligations under this Authorization Agreement, without prejudice to a final adjustment in accordance with such decision. Further, this Authorization Agreement shall remain subsisting and operative during the consultation or adjudication proceedings and no payment due and payable to either Party shall be withheld except the payment in dispute, if any.

## **ARTICLE 23 : ACCOUNTS AND AUDIT**

### **23.1 Audited accounts**

23.1.1 The Authorizee shall maintain books of accounts (project specific account) recording all its receipts including income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. The Authority shall have the right to inspect the Revenue records of the Authorizee in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

### **23.2 Appointment of Auditors**

23.2.1 The Authorizee shall appoint and have during the subsistence of this Agreement as its Auditors/ Statutory Auditor (as the case may be), a firm having at least 05 (five) practicing Chartered Accountants on its rolls. All fees and expenses of the Statutory Auditors shall be borne by the Authorizee.

23.2.2 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right but not the obligation, to appoint at its cost from time to time and at any time, another firm of chartered accountants (the "Additional Auditors") to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

### **23.3 Certification of claims by Statutory Auditors**

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

### **23.4 Set-off**

23.4.1 In the event any amount is due and payable by the Authority to the Authorizee, it may set-off any sums payable to it by the Authorizee and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 23.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

## **ARTICLE 24 REDRESSAL OF PUBLIC GRIEVANCES**

### **24.1 Complaints Register**

- 24.1.1 The Authorizee shall maintain a public relations office at the Project Facilities where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by Users (the “**Complainant**”) in compliance with the minimum standards set out in Clause 14. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Authorizee at the Project Facilities and its website so as to bring it to the attention of all Users.
- 24.1.2 The Complaint Register shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Authorizee. Immediately after a complaint is registered, the Authorizee shall give a receipt to the Complainant stating the date and complaint number.
- 24.1.3 Without prejudice to the provisions of Clause 24.1.1 and Clause 24.1.2, the Authority may, in consultation with the Authorizee, specify the procedure for making complaints in electronic form and for responses thereto.

### **24.2 Redressal of complaints**

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

## **ARTICLE 25 MISCELLANEOUS**

### **25.1 Amendments**

Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Authorization Agreement shall be effective unless such modification, amendment or waiver is approved in writing by each of the Parties.

### **25.2 Severance of Terms**

Whenever possible, each provision of this Authorization Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Authorization Agreement is held to be invalid, illegal or unenforceable in any respect under any Applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Authorization Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

### **25.3 Interest for Delayed Payment**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 4% (four per cent) above the Bank Rate and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rates

### **25.4 Language**

All notices, certificates, correspondence or other communications under or in connection with this Authorization Agreement shall be in English.

### **25.5 Notices**

Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by registered post, telex, facsimile transmission, electronic mail or other means of telecommunication in permanent written form. The addresses and numbers for service of notice shall be given to the Parties at their respective addresses set forth below:

Authorizee : \_\_\_\_\_

Authority

.....  
.....  
.....  
.....  
: .....  
.....  
.....  
.....  
.....

or such other address, telex number, or facsimile number as may be notified by that Party to any other Party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Parties in writing prior to the adoption thereof.

## 25.6 Governing Law

This Authorization Agreement shall be governed by and construed in accordance with the Laws of India and the courts at Ranchi shall have jurisdiction over the disputes arising between the Parties.

## 25.7 Original Document

This Authorization Agreement is made in two original copies, each having the same contents and the Parties have read and thoroughly understood the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

## 25.8 Relationship

Nothing in this Authorization Agreement shall constitute or be deemed to constitute a partnership between the Parties or confer on any Party any authority to bind the other or to contract in the name of the other or to incur any liability or obligation on behalf of the other or make or deem to be the agent of the other in any way.

## 25.9 Survival

The provision relating to liability and indemnification, intellectual property and confidentiality and dispute resolution contained in this Authorization Agreement shall survive the termination or expiry of this Authorization Agreement.

## 25.10 Authorized Representative

Any action required or permitted to be taken and any document required or permitted to be executed under this Authorization Agreement may be taken or executed

- a. on behalf of the Governor of Jharkhand by the representative as mentioned in Clause 25.5 above
- b. on behalf of the Authorizee by the representative as mentioned in Clause 25.5 above

Each Party hereto undertakes and agrees that in case of replacement of its authorized representative, it shall notify the other Party hereinabove of its name and title at least five days prior to his taking office. In the event of default of this undertaking, all the notices, instructions, correspondences, received from or addressed to the last recorded authorized representative shall be deemed valid for all purposes.

## 25.11 Waiver

The failure of any Party to insist upon strict adherence to any term of the Agreement on any occasion shall not be considered a waiver of any right hereunder nor shall it deprive such Party of the right thereafter to insist upon strict adherence to that term or any other of the Agreement.

## 25.12 Others

Prior to executing this Authorization Agreement, the Authorizee has conducted a due diligence audit to its satisfaction in respect of the GoJ, contractual structure for implementing the Project, technical and financial feasibility of the Project, the Applicable Laws, applicable taxes levied and payable during the term of this Agreement, in respect of the Project Site and/or Project Assets to any Government authority and Applicable Approvals and all matters concerning or related to the Project. The Authorizee is entering into this Authorization Agreement on the basis of its own satisfaction based on its due diligence.

**IN WITNESS WHEREOF** this Authorization Agreement has been executed by the duly authorized representatives of the Parties hereto on the day and year first above written.

<b>SIGNED ON BEHALF OF</b> .....	<b>SIGNED ON BEHALF OF</b> .....
-------------------------------------	-------------------------------------

..... .....	..... .... ..... .....
----------------	---------------------------------

**SIGNED AND DELIVERED**

***For and on behalf of ..... (Confirming Party)***

Through its authorized representative.

.....

(.....)

**In the presence of**

Witness:

Witness

1.

1.

## ARTICLE 26 DEFINITIONS

### 26.1 Definitions

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

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

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

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

**“Applicable Permits”** shall meaning as set forth in Clause 10.1.3:

**“Appointed Date”** shall meaning as set forth in Clause 4.5.1;

**“Approved Operation Plan”** shall have the meaning set forth in Clause **Error! Reference source not found.**;

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

**“Associated Activities”** shall have the meaning set forth in Clause 16.1.3

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

**“Authority Event of Default”** shall have the meaning set forth in Clause 18.1;

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

**“Authorizer's Proposal to Rectify”** shall have the meaning set forth in Clause 18.3 (a):

Authority's Proposal to Rectify shall have the meaning set forth in Clause 18.3 (b):

**"Bank"** shall mean a bank incorporated in India and having a minimum net worth of Rs 1,000 crore (Rupees one thousand crore) or any other bank acceptable to the senior Lenders, but does not include a bank in which the Senior Lender has an interest;

**"Bank Rate"** shall mean the rate of annual interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

**"Bid"** shall mean the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof;

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

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

**"Change of Scope"** shall have the meaning set forth in Clause 15.1.1;

**"Change of Scope Notice"** shall have the meaning set forth in Clause 15.2;

**"Change of Scope Order"** shall have the meaning set forth in Clause 15.2;

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

**"Complainant"** shall have the meaning set forth in Clause 24.1;

**"Complaint Register"** shall have the meaning set forth in Clause 24.1;

**"Core Activities"** shall have the meaning set forth in Clause 16.1.3;

**"Authorization"** shall have the meaning set forth in Clause 3.1;

**"Operator"** shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

**"Operator/ Authorizee Event of Default"** shall have the meaning set forth in Clause 18.2 **Error! Reference source not found.**;

**"Authorization Period"** shall have the meaning set forth in Clause 3.2;

**"Conditions Precedent"** shall have the meaning set forth in Clause 4.1;

**"Confidential Information"** shall mean all information that either party discloses to the other party, whether in writing, electronically, or orally and in any form (tangible or intangible), that is confidential, proprietary, or relates to the Project and/or this Agreement.

**"Covenant"** shall have the meaning set forth in Clause 5.2.4;

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

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

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

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

**“Dispute”** shall have the meaning set forth in Clause 22.1;

**“Disputed Amounts”** shall have the meaning set forth in Clause 16.4;

**“Dispute Resolution Procedure”** shall mean the procedure for resolution of Disputes set forth in Article 22;

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

**“EHS”** shall have the meaning set forth in Clause 5.6;

**“Encumbrances”** shall mean, in relation to the Project Facilities and Project Infrastructure, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Facilities and Project Infrastructure, where applicable herein but excluding utilities referred to in Clause 3.1.1;

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

**“Financial Year”** shall mean a year commencing on 1<sup>st</sup> April of a calendar year and ending on 31<sup>st</sup> March of the immediately succeeding calendar year;

**“Force Majeure”** or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 17.1;

**“GOI”** shall mean the Government of India;

**“Good Industry Practice”** shall mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as

envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and Applicable Permits and includes prudent Project Facilities and Project Infrastructure practices generally accepted by the hotel and hospitality industry for ensuring reliable, safe, economical and efficient construction, operation and maintenance of the Project Facilities and Project Infrastructure;

**“Government Instrumentality”** shall mean any department, division or sub-division of the Government of India or the State Government of Jharkhand and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government of Jharkhand, as the case may be, and having jurisdiction over the Project Facilities and the Project Infrastructure or the performance of all or any of the services or obligations of the Operator under or pursuant to this Agreement;

**“Gross Revenue”** of the Project for and in respect of any Accounting Year shall mean the total amount of gross Revenues and receipts of every kind (from both cash and credit transactions computed prior to payment of any commission or service charge or fee thereon) derived by the Authority from the operation of the Project and its facilities and provision of Associated Services, Hospitality and tourism services and/or any other activity related to the Project, if any, , and shall include Revenues and receipts from and on account of room occupancy charges, telephone including telefax and telex charges, laundry, food, beverages, liquor, recreational amenities (including outdoor pool, health club, spa, sauna, fitness facility etc.), outdoor catering, vending machines, parking, use of commercial or other spaces for rent or fee of every description and kind, and any other services or facility provided by the Operator to the Users, which are availed or realized by the Authority from an outside party(ies) at a consideration but shall exclude the following:

1. All statutory applicable indirect Taxes such as, GST, expenditure tax, and the like by whatever name called now or in future, which the Authority is bound to pay unless otherwise decided by the Authority;
2. Any revenue earned by the Authority on sale of assets of a capital nature which are owned by the Authority; and
3. any insurance proceeds received by the Authority relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against; and (ii) any form of physical damage of assets, and the Authority has incurred or will incur an expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently of such assets, and shall not include any exclusion of insurance proceeds received for loss of revenues and/or business interruption
4. Any monetary benefit derived by the Authority under the Tourism Policy of the State Government of Jharkhand or the Government of India.

**“Hospitality cum Tourism Services”** shall mean the services performed under this Agreement such as reception of Users, provision of food and beverages, room services and any other services performed by the Operator towards creating Revenue from the Project;

**“Indemnified Party”** shall mean the Party entitled to the benefit of an indemnity pursuant to Article 19;

**“Indemnifying Party”** shall mean the Party obligated to indemnify the other Party pursuant to Article 19;

**“Indirect Political Event”** shall have the meaning set forth in 17.3;

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

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

**“Insurance Coverage”** shall mean the aggregate of the maximum sums insured under the insurances taken out by the Operator pursuant to Article 20, and includes all insurances required to be taken out by the Operator under Clause **Error! Reference source not found.** but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**“Keys”** shall mean a lettable room with minimum occupancy of two persons;

**“L&FS”** shall have the meaning set forth in Clause 5.6;

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

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

**“Maintenance Requirements”** shall have the meaning set forth in Clause 12.2;

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

**“Management Fee”** shall have the meaning set forth in Clause 15.2.1;

**“Non-Political Event”** shall have the meaning set forth in Clause 17.2;

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

**“O&M Inspection Report”** shall have the meaning set forth in Clause 13.2;

**“Operation Period”** shall mean the period commencing from Project COD and ending on the Transfer Date;

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

**“Performance Security”** shall have the meaning set forth in Clause 9.1;

**“Performance Security Period”** shall have the meaning set forth in Clause 9.3;

**“Political Event”** shall have the meaning set forth in Clause 17.4;

**“Project”** shall mean Operation, Maintenance and Management of Prabhat Vihar (New Complex)

**“Project Agreements”** shall have the meaning set forth in Clause 5.2

**“Project Assets”** shall mean all physical and other assets relating to and forming part of the Project Facilities, Project Infrastructure as provided by the Authority under this Agreement including:

- a. rights over the Project Site in the form of Right of Way;
- b. tangible assets such as civil works including foundations, drainage works, pavements, electrical systems, communication systems, fare collection systems, rest areas and administrative offices;
- c. ancillary facilities situated on the Project Site;
- d. Buildings or structures with all movable and immovable fittings & fixtures, furniture & furnishing forming part of the Project Facilities and Project Infrastructure;
- e. all rights of the Operator under the Project Agreements;
- f. financial assets, such as receivables, security deposits etc.;
- g. insurance proceeds; and

h. Applicable Permits and authorizations relating to or in respect of the Project Facility and Project Infrastructure;

**“Project COD”** shall have the meaning set forth in Clause 11.1 and shall include commercial operations date the Project Facility;

**“Project Facility/ Project Facilities”** shall refer to the assets and facilities located at the Project Site, which are constructed, upgraded, developed, designed, redesigned, refurbished, and equipped by the Authority as set forth in this Agreement, and as handed over to the Operator for Operation, Maintenance and Management by the Authority.

**“Project Infrastructure”** shall mean collectively the captive facilities to be developed at the Project Site for the exclusive use of the Project, the trunk infrastructure including water treatment plant, sewage treatment plant; the RO plant and other related infrastructure;

**“Project Revenue Accounts”** shall have the meaning set forth in Clause 16.1.3;

**“Project Site”** shall have the meaning set forth in Clause 10.1;

**“Request for Proposals”** or **“RFP”** shall have the meaning set forth in Recital (C);

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

**“Schedule”** shall mean a schedule under this Agreement;

**“Scope of the Project”** shall have the meaning set forth in Clause 2.1;

**“Selected Bidder”** shall mean the Bidder selected by the Authority to award the Project following the completion of the Bidding Process (as defined under the RFP);

**“State”** means State of Jharkhand and **“State Government”** means the Government of Jharkhand;

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

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

**“Termination Notice”** shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

**“Termination Payment”** shall mean the amount payable by the Authority to the Operator, under and in accordance with this Agreement, upon Termination;

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

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

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

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

<p>SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:</p> <p>(Signature)                  (Designation)                  (Name)                  (Address)                  (Fax No.)                  (e-mail)</p>	<p>THE COMMON SEAL OF OPERATOR has been affixed pursuant to the resolution passed by the Board of Directors of the Operator at its meeting held on the [**] day of [**]20[**] hereunto affixed in the presence of [**] Director, who has signed these Presents in token thereof and, Company Secretary/Authorized Officer who has countersigned the same in token thereof:</p> <p>(Signature)                  (Designation)                  (Name)                  (Address)                  (Fax No.)                  (e-mail)</p>
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In the presence of:

Witness 1

Witness 1

Witness 2

Witness 2

## **Schedule A: Project Site & Facility**

### 1. The Project Facility

- 1.1. The Project Facility means the new building of Hotel Prabhat Vihar, Netarhat as described in Annex-I of this Schedule A.
- 1.2. The list of the assets, which shall be handed over to the Operator as a part of the Project, is provided at **Annex-2 of this Schedule A**. These assets shall be handed over to the Operator.

## Annex-I (Schedule A)

### Existing Facilities

#### Project Facilities :

#### Existing New Hotel Complex at Prabhat Vihar

The Hotel building comprises of 24 guest rooms of 4 different typologies.

S.no.	Room Typology	Nos.
1	Suite - Sunrise View	2
2	Family Suite - sunrise view	2
3	Deluxe Room	12
4	Premium Room - Sunrise view	8
	<b>Total</b>	<b>24</b>

**Reception & Waiting Area:** The reception & waiting lounge is incorporated in the new building (with a seating capacity of 20 pax). The well-lit space then leads to a corridor connecting the Restaurant one side and the Kitchen at another. The waiting area provide a clear view of the valley. The private partner can further plan to redesign the space to allow comparatively larger seating capacity at the waiting lounge.

**Koyal Restaurant:** The Hotel has an indoor restaurant with a capacity of 100 pax which is generally utilized for attending the F&B needs of the tourists staying in the accommodation or the ones visiting the facility. Occasionally the restaurant space is also rented out for small scale social events, such as birthday parties, corporate parties & get-togethers. It is located at the ground floor and open up to the parking at one end and to the reception and lobby area via a corridor at other.

Additionally, the Koyal restaurant is open to guests visiting the project site for sunrise point & children's park and is a preferred F&B Facility for outside guests, in addition to providing F&B services to guests staying within the hotel facility.

#### **MICE Infrastructure**

The Hotel does not offer any MICE infrastructure; however, the restaurant and the terrace area (Capacity: 30 Pax) are often utilized to organize social events & parties. No additional fee is charged for renting out these spaces for events.

### Project facility



**Annex-II to Schedule A (List of Assets) – To be listed after the joint survey by the Authority and the Operator**

## **Schedule B: Operation & Maintenance Plan**

- a. The Operation, Maintenance and Management of the Hotel Services shall conform with the Specifications and Standards as specified in this Schedule-C and in this Agreement. Also the Operation, Maintenance and Management should conform to 3-star category Hotel mandatory requirements as prescribed by Ministry of Tourism (HRACC Division), Government of India vide its notification No8-TH-I(3)/2013-Pt-1 dated: 19.01.2018..... its amendments, modifications or any re-notification thereof.
- b. The Operation & Maintenance Plan to include all activities of Operation, Maintenance and Management but not limited to the following:
  - i. Resource Planning
  - ii. Housekeeping
  - iii. Routine & Preventive Maintenance (Project Facility and Infrastructure)
  - iv. Operation of Food & Beverages Services
  - v. Safety & Security
  - vi. Environmental, Health and Safety
  - vii. Pest Control
  - viii. Waste Management
  - ix. Marketing
  - x. Others

## **Schedule C: Financial Quote of the Authorizee**

## **Schedule D: Drawings**

### **1. Drawings**

The Authority shall furnish to the Operator all Drawings for the Project Site and as per the provision of this agreement) listed below:

- Architectural Drawings
- Structural Drawings
- HVAC Drawings
- Electrical & Plumbing Drawings
- Firefighter Drawings
- Landscape Drawings
- Miscellaneous Drawings

## Schedule E: Performance Security

(See Clause 9.1)

### WHEREAS:

- A. ...., (the “**Operator**”) and the Jharkhand Tourism Development Corporation (JTDC) represented by the Managing Director, JTDC (“**Authority**”) and having its principal offices at.....have entered into a Authorization Agreement dated.....(the “**Agreement**”) whereby the Authority has agreed to the Operator undertaking the Operation & Maintenance and Management of Hotel Prabhat Vihar (New Complex) at Netarhat in the State of Jharkhand through Public Private Partnership, subject to and in accordance with the provisions of the Agreement.
- B. The Agreement requires the Operator to furnish a Performance Security to the Authority in a sum of [Rs. \_\_\_\_\_ cr. (Rupees \_\_\_\_\_ crore)] (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, valid during the Agreement Period.
- C. We, ..... through our Branch at (the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Operator’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of a Secretary or equivalent, that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator

and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect after expiry of a period of 6 (six) months from the Project Project Completion Date, and provided the Operator is not in breach of this Agreement. Upon request made by the Operator for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Operator, the Authority shall release the Performance Security forthwith.

The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it

has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of 36 (thirty six) months from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.
11. Signed and sealed this .....day of ..... 202.... at .....

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature) (Name) (Designation) (Code Number) (Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

## **Schedule F: Maintenance Requirements**

### **1. Maintenance Requirements**

- 1.1. The Operator shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In particular, the Operator shall, at all times during the Operation Period, conform to the Maintenance Requirements set forth in this Schedule G.
- 1.2. The Operator shall repair or rectify any defect or deficiency set forth in Clause 2 of this Schedule G within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement.

### **2. Repair/rectification of defects and deficiencies**

- 2.1. The obligations of the Operator in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in the Project within reasonable time limit set forth in Annex-I of this Schedule G.
- 2.2. The Operator shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

### **3. Other defects and deficiencies**

- 3.1. In respect of any defect or deficiency not mentioned in Annex- I of this Schedule G, the Operator shall undertake repair or rectification in accordance with Good Industry Practice within the time specified by the Authority.
- 3.2. In respect of any defect or deficiency not specified in Annex - I of this Schedule G, the Authority may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Operator in accordance with Good Industry Practice and within the time limit specified by the Authority

### **4. Extension of time limit**

- 4.1. Notwithstanding anything to the contrary specified in this Schedule G, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Operator shall be entitled to additional time in conformity with Good industry Practice. Such additional time shall be determined by the Authority and conveyed to the Operator and the Authority with reasons thereof.

### **5. Emergency repairs/restoration**

- 5.1. Notwithstanding anything to the contrary contained in this Schedule G, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Operator shall promptly take all reasonable measures for eliminating or minimising such danger.

### **6. Inspection by the Operator**

- 6.1. The Operator shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Project and maintain a record thereof in a register. Such record shall be kept in safe custody of the Operator and shall be open to inspection by the Authority at any time during office hours.

**Annex-I  
(Schedule F)**

The Operator shall repair and rectify the defects and deficiencies specified in this Annex-I to Schedule J within the time limit set forth herein:

S. No.	Nature of defect or deficiency	Time limit for repair / rectification
<b>Project Facilities</b>		
i.	Failure of electric supply (substitution by UPS / generator)	10 seconds
ii.	Damage to floor, walls or paint	48 hours
iii.	Breakage of glass	24 hours
iv.	Breakage of furniture	24 hours
v.	Removal of debris and unclaimed materials	1 hour
vi.	Dirt, garbage, stains or dust on floors, walls, fixtures, signage, counters and furniture	1 hour
vii.	Damage or malfunction of electricity, water and sanitary fittings	4 hours
viii.	Discontinuation of drinking water supply	2 hours
ix.	Choking and/or blockage of sewer lines, drains or rain water pipes	2 hours
x.	Malfunctioning of doors, windows or fixtures	4 hours
xi.	Malfunctioning of lifts, if available	1 hour
xii.	Waste bins when 3/4" full	15 minutes

**Other Maintenance Requirements**

The Operator shall at all times procure that:

- (a) the hours of availability of all services provided by the Project Facilities conform to Good Industry Practice and are posted on its website;
- (b) all the Hospitality and tourism services, as may be required in accordance with Good Industry Practice and Applicable Laws, are available 24 (twenty-four) hours a day and on all days in a year;
- (c) the Keys are clean, hygienic and ensure pleasant and healthy environment for its Users;
- (d) all recreational facilities and infrastructure services are in working condition and are readily available for use to its Users.
- (e) proper room service is provided to maintain cleanliness & hygiene of Project Facilities;

- (f) there is adequate lighting within the Project in conformity with the Specifications and Standards; and
- (g) Hospitality and tourism services are carried out in a manner that it conforms to the environment standards prescribed under Applicable Laws and Applicable Permits.