

Madhya Pradesh Ecotourism Development Board

NAME OF WORK: DESIGNING, ENGINEERING, FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF ECOTOURISM PARK NAMED "ARANYAK" AT VILLAGE ARNIA, TEHSIL SONKATCH, DISTT. DEWAS IN THE STATE OF MADHYA PRADESH ON BUILD, OWN, OPERATE AND TRASFER (BOOT) BASIS UNDER PUBLIC PRIVATE PARTNERSHIP (PPP)

REQUEST FOR PROPOSAL (RFP)

BID DOCUMENT

PART - II

DRAFT CONCESSION AGREEMENT (DCA)

DECEMBER, 2009

Chief Executive Officer,
Madhya Pradesh Ecotourism Development Board
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CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the *** day of **, 20**

BETWEEN

1 **Madhya Pradesh Ecotourism Development Board (MPEDB)**, having its principal office at 'A' Wing, Urja Bhawan, Link Road No.-2, Bhopal- 4620003. M.P. acting through its authorized signatory Mr./ Ms _____, Chief Executive Officer (hereinafter referred to as the "**Authority**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 [****] having its registered office at ****, (hereinafter referred to as the "**Concessionaire**") which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) The Authority (MPEDB) is an autonomous organization in the Forest Department, Government of MP. The major objectives of the board are broadly aimed at the promotion and organized development of Ecotourism as a mainstream program of the forest department. The Authority desires to promote private participation and investment for development of Ecotourism Park in Madhya Pradesh.
- (B) MPEDB is having land measuring 4.500 hectares at village Arnia (Sonkatch), Distt. Dewas. The land is situated on main National Highway No 86 (Bhopal- Indore) and bank of Lodhri River.
- (C) In furtherance of its objectives the Authority has resolved to develop Ecotourism Park/ Herbal Garden, Nursery, Relaxation, Leisure, and Entertainment, Amusement rides for children, aqua culture. Picnic spot, Arts & Music, Garden, Musical fountain, Solar Energy use, Vermicomposting, sustainable waste management system, conservation counter, Cafeteria and related activities for creating a facility for the national and international tourists on a "**BOOT**") basis in accordance with the terms and conditions set forth in this Agreement.

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement 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 Priority of Agreements and errors/discrepancies

1.2.1 This Agreement, and all other agreements and documents forming part of 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 shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof;

i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

- a. between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b. between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c. between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- d. between the dimension scaled from the Drawings and its specific written dimension, the latter shall prevail; and
- e. 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 Project

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

- (a) construction, development, finance, operation and maintenance of the Project, on the Site as specified in **Schedule A**, which shall include the construction, development, finance, operation and maintenance of infrastructure and other support facilities in the manner specified in **Schedule B** together with the Project Facilities as specified in **Schedule C**;
- (b) construction, development, finance, operation and maintenance of the infrastructure and Project Facilities in conformity with the Specifications and Standards set forth in **Schedule D**; and
- (c) Performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority during the subsistence of this Agreement to construct, develop, operate and maintain the Project (the “**Concession**”) for a period of **30 (thirty) years** commencing from the Appointed Date and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein:

3.1.2 The Authority shall facilitate and assist the Concessionaire in obtaining all approvals and Applicable Permits that may be required by the Concessionaire from any Government Instrumentality for the implementation, development, construction, operation and maintenance of the Project. The Authority will provide all reasonable support and assistance to the Concessionaire in procuring Applicable Permits as may be required from time to time, however the principal obligation for obtaining the Applicable Permits shall be that of the Concessionaire.

3.1.3 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle the Concessionaire to:

- a. Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- b. investigate, study, design, engineer, procure, finance the Project ;
- c. develop and construct the Project;
- d. manage, operate and maintain the Project and regulate the use thereof by third parties;
- e. demand, collect and appropriate Fee from the persons liable for payment of Fee for using the Project and refuse entry if the Fee due is not paid;
- f. perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement; and
- g. bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 27, 31 and 34, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (the “**Conditions Precedent**”).
- 4.1.2 The Conditions Precedent required to be satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:
- a. provided to the Concessionaire the Right of Way of the Site; and
 - b. The Authority shall on or before the signing of agreement have obtained the Letter of Approval from the Competent Authority.
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
- a. provided Performance Security to the Authority;
 - b. paid the Premium to the Authority;
- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall extend the period of Concession for a period reckoned on a day to day basis, equivalent to number of days of delay attributable to the Authority.

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - b. procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - c. prepare an area development plan in respect of the Project containing the broad details of the development of the entire Site planned by the Concessionaire including provision of facilities for electricity, water, sewage, roads, pathways on the Site (hereinafter referred to as the "Area Development Plan")
 - d. prepare a master plan in respect of the Project containing the details and description of the development of the Project planned by the Concessionaire (hereinafter referred to as the "Master Plan")
 - e. perform and fulfil its obligations under the Financing Agreements;
 - f. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - g. ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - h. ensure optimal operation and maintenance of the Project throughout the Concession Period, either by performing the operation and maintenance itself, or by making durable, effective and permanent arrangements for due performance of the operation and maintenance obligations by third party(s);
 - i. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - j. support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;

- k. shall not indulge/allow the project premises to be used for any unlawful or socially unacceptable activity and
- l. transfer the Project to the Authority upon Termination or expiry of this Agreement, in accordance with the provisions thereof.

5.3 Obligations relating to Change in Ownership

The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority.

5.4 Employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.5 Obligations relating to medical aid

For providing emergency medical aid to Users, the Concessionaire shall set up and operate a medical aid post (the “**Medical Aid Post**”) to render first aid and to assist in accessing emergency medical aid.

5.6 Obligations relating to quality of the Project

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

5.7 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 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 or arising hereunder.

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

- (a) the Authority shall facilitate the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation, development, construction, operation and maintenance of the Project; however the responsibility for obtaining the Applicable Permits shall always be that of the Concessionaire;
- (b) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services. For the avoidance of doubt, the Authority shall assist in procuring raw water for the Concessionaire at a single point, or make provisions to permit the Concessionaire to extract groundwater from a single point, as the case may be. Similarly, the Authority shall assist in procuring a single point HT connection for the Concessionaire from the electricity utility. All costs, charges and fees, including developmental charges payable to the relevant department/licensee shall be borne by the Concessionaire;
- (c) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
- (d) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a. it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b. 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;
- c. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- d. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- e. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- f. the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or, where applicable, those of any member of the Consortium or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- h. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- i. 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;
- j. 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;
 - k. it shall at no time undertake or permit any Change in Ownership without the prior approval of the authority;
 - l. the bidder has the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
 - m. bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the LOA, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
 - n. 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;
 - o. no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty; and
 - p. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.

7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire 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 the Applicable Laws to authorise the execution, delivery and performance of this Agreement;

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- c. it has the financial standing and capacity to perform its obligations under the Agreement;
 - d. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
 - e. there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
 - f. 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;
 - g. it has complied with Applicable Laws in all material respects;
 - h. all information provided by it in the Request for Proposal in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;
 - i. it has the right, power and authority to grant Right of Way, access and possession of the Site for the Project in accordance with the terms of this Agreement;
 - j. it is the true and lawful owner of the Site and has power and authority to grant a licence in respect thereto to the Concessionaire; and
 - k. upon the Concessionaire paying the Premium and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, in accordance with this Agreement.

7.3 Disclosure

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

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority or obtained 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 and/or completeness of the information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the [*insert name of selected bidder*] or any person claiming through or under any of them.

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority prior to or on the Effective Date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to **Rs. 5,00,000 (Rupees Five Lakhs)** each in the form set forth in **Schedule-F** (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect from the Effective Date till one year following the COD. At the end of one year after the COD, the Performance Security shall be released provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements, the Authority shall release the Performance Security forthwith.

ARTICLE 10 RIGHT OF WAY

10.1 The Site

The site of the Project shall comprise of the land described in **Schedule A** and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the “**Site**”).

10.2 Licence, Access and Right of Way

10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigation, study, design, engineering, procurement, financing, construction, operation and maintenance and all such activities that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Premium, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in **Schedule A** hereto (the “**Licensed Premises**”) on an “as is where is” basis, free of any Encumbrances, to operate and maintain the Site, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the Site or premises or any part thereof belonging to or in anyway appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The licence, access and Right of Way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way.

10.2.4 The licence, access, possession and Right of Way granted by this Agreement to the Concessionaire shall always be subject to Concessionaire performing its duties and responsibilities at all times during the Concession Period as per the terms and conditions of this Agreement.

10.2.5 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by

the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever.

10.3 Procurement of the Site

10.3.1 The Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. Memorandum is to be signed after the execution of Concession Agreement but before the Appointed Date.

10.3.2 On and after signing the memorandum and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.4 Site to be free from Encumbrances

The Site shall be made available by the Authority to the Concessionaire free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing Rights of Way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances.

10.5 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances.

10.6 Access to the Authority

The licence, Right of Way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Authority Representative and other employees and agents of the Authority for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

ARTICLE 11**UTILITIES, ASSOCIATED ROADS AND TREES****11.1 Existing utilities and roads**

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

11.2 Shifting of obstructing utilities

The Concessionaire at its own cost shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes a material adverse effect on the construction, operation or maintenance of the Project.

11.3 New utilities

11.3.1 The Concessionaire shall approach the Appropriate Authorities for laying telephone lines, water pipes, sewage system, electric cables and other public utilities and shall bear the cost for the same. The Concessionaire shall proceed to obtain the Applicable Permits and the Authority shall assist the Concessionaire in obtaining the Applicable Permits. For the avoidance of doubt, it is agreed that use of the Site under this Article shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Concessionaire. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

ARTICLE 12 CONSTRUCTION OF THE PROJECT

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- a. submit to the Authority either directly or through the Authority's Representative its Master Plan, detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule;
- b. appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- c. obtain all requisite approvals of the Master Plan and Area Development Plan from the competent authorities;
- d. undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- e. make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall maintain, at its cost, the Site and shall undertake the necessary maintenance works for this purpose;

12.3 Drawings - Area Development Plan and Master Plan

In respect of the Concessionaire's obligations with respect to the Drawings of the Project, the following shall apply:

- a. The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings including Area Development Plan and Master Plan to the Authority for review and comments;
- b. Within 15 (fifteen) days of the receipt of the Drawings, the Authority shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project, the Specifications and Standards, the Area Development Plan and the Master Plan. The Concessionaire shall not be obliged to await the observations of the Authority on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- c. If the aforesaid observations of the Authority indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, or the Area Development Plan and the Master Plan, such Drawings shall be revised by the Concessionaire and resubmitted to the

- Authority for review. The Authority shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- d. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner;
 - e. Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including the built up area illustrating the layout of the Project and setback lines, forming part of Infrastructure and Project Facilities.

12.4 Scheduled Completion Date

- 12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Mandatory Project and Mandatory Project Facilities as specified in Schedule B and Schedule C. **The 365th (three hundred sixty fifth) day** from the Appointed Date shall be the scheduled date for completion of the Mandatory Project and the Mandatory Project Facilities (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that the construction of the Mandatory Projects and the Mandatory Project Facilities shall be completed on or before the Scheduled Completion Date.

ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Authority.

13.2 Inspection

During the Construction Period, the Authority’s Representative shall inspect the Project as and when necessary or at least once in a quarter and make a report of such inspection stating in reasonable details, the defects or deficiencies, if any, with particular reference to the Scope of the Project. Authority’s Representative shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Authority may require the Concessionaire to rectify and remedy any defects or deficiencies. Such inspection or submission of Inspection Report by the Authority’s Representative shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Completion Certificate

Upon completion of Construction Works and following a written request from the Concessionaire, the Authority, after satisfying itself that the mandatory project and facilities have been created as specified, shall issue a Completion Certificate to the Concessionaire.

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

The Mandatory Project and Mandatory Project Facilities shall be deemed to be complete when the Completion Certificate is issued, and accordingly the commercial operation date of the Project and the Project Facilities shall be the date on which such Completion Certificate is issued (the “COD”). The Project shall enter into commercial service on COD whereupon the Users shall be entitled to use, occupy and possess any part or whole of the Infrastructure and Project Facilities, provided, however, that the entry of Project into commercial service shall be always subject to compliance with the provisions of Applicable Laws in relation to safety of the Project and Users.

15.2 Damages for delay

If COD does not occur on the Scheduled Completion Date unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope. All costs arising out of any Change of Scope under this Article during the Construction Period shall be borne by the Concessionaire.

ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

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

- a. ensuring optimal operation and maintenance of the Project, in accordance with the Specifications and Standards prescribed herein, throughout the Concession Period, either by performing the operation and maintenance itself or by making durable, effective and permanent arrangements for due performance of the O&M obligations by third party(s);
- b. collecting and appropriating the Fees from the Project in accordance with the provisions contained herein;
- c. complying with the Safety Requirements;
- d. carrying out periodic preventive maintenance of the Project ;
- e. carrying out periodic renovation as required from time to time so that the Project is always in conformity with the Scope of the Project;
- f. undertaking routine maintenance including prompt repairs of potholes, cracks, joints, structures, buildings, pavement lighting, sign boards, electricity lines, telephone lines, water facilities, sewage system and other public amenities on the Site;
- g. undertaking major maintenance such as repairs to structures and buildings including repairs and refurbishment of other infrastructure and Project Facilities;
- h. preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the or Site;
- i. preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Site;
- j. protection of the environment and provision of equipment and materials thereof so that the Project is in compliance with Applicable Permits including environmental clearance(s);
- k. operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project; and
- l. maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;

17.2 Maintenance Requirements

The Concessionaire shall conform to the maintenance requirements at all times during the Operation Period;

17.3 Maintenance Manual

17.3.1 Not later than 90 (ninety) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Authority, evolve a repair and maintenance manual (the “Maintenance Manual”) for the regular and preventive maintenance of the Project in conformity with the Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority. The Maintenance Manual shall be revised and updated once every 3 (three) years.

17.3.2 Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

17.5 Safety, breakdowns and accidents

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.5.2 The Concessionaire’s responsibility for rescue operations on the Project shall include safe evacuation of all Users and staff from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth functioning of the Project.

ARTICLE 18

SAFETY REQUIREMENTS

18.1 Safety Requirements

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

ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Quarterly status reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of a quarter, furnish to the Authority a quarterly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Authority.

19.2 Inspection

The Authority Representative shall inspect the Project once every six months. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.3 Remedial measures

19.3.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results and furnish a report in respect thereof to the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be;

19.3.2 The Authority shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire.

ARTICLE 20

PREMIUM AND ANNUAL RENT

20.1 Premium

20.1.1 In consideration of the grant of Concession, the Concessionaire shall pay to the Authority the Premium.

20.1.2 The Concessionaire shall pay the Premium in yearly instalments from the date of signing of the agreement; the first instalment will be paid on or prior to the date of signing the agreement (As quoted in the Bid). Subsequent annual instalments shall be payable by increased amount of 5% over the previous year instalment.

20.1.3 The 2nd instalment will be payable on Appointed Date and balance instalments payable annually on the anniversary of Appointed Date.

20.2 Annual Rent

The Concessionaire shall pay to the Authority annual rent, equal to 7.5% (Seven and a Half) of the first instalment of premium amount, payable each year, for the entire Concession Period. The amount will be payable along with the Premium amount.

ARTICLE 21

FEE

21.1 Collection and appropriation of Fee

21.1.1 On and from the COD or where the Concessionaire puts into commercial service till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee in accordance with this Agreement.

21.1.2 The Concessionaire acknowledges and agrees that upon payment of the Fee, any User shall be entitled to use the Project in accordance with the terms and conditions of this Agreement subject to such conditions, stipulations and restrictions on use notified by the Concessionaire pursuant to any provision contained under the Applicable Law, Applicable Permit or the provisions of this Agreement. The User shall at all times be bound by the terms and conditions of this Agreement and shall not create any Encumbrance on the Site or any part thereof during the Concession Period.

21.2 User's Charges:

On and from the COD, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee as per the market driven rates for the facilities provided by the Concessionaire. However, Concessionaire will inform to the CEO, Ecotourism Board about the charges and its subsequent revision atleast 90 days before COD or any revision thereafter.

Discount for School Children

School Children including teachers sponsored by the school, the visiting charges for the garden shall be free. However, using all other facilities, 50% discount on the existing rates shall be given.

21.4 Display of User Charges

21.4.1 The Concessionaire shall, at the collection booth, prominently display the applicable rates of Fee for information of Users.

21.4.2 The Concessionaire shall not collect any amounts in excess of the user charges payable above.

ARTICLE 22

INSURANCE

22.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the “**Insurance Cover**”). The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period.

22.2 Notice to the Authority

Not later than 30(thirty) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 28. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

22.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 28 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

ARTICLE 23
ACCOUNTS AND AUDIT

23.1 Audited accounts

23.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including Fee derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Project Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Auditors, to be provided to the Authority.

23.1.2 On or before the thirty-first day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the Users using the Project and liable for payment thereof, (b) Fee received and other revenues derived from the Project, and (c) such other information as the Authority may reasonably require.

23.2 Certification of claims by Statutory Auditors

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

ARTICLE 24

FORCE MAJEURE

24.1 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 and Indirect Political Event, 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.

24.2 Non-Political Event

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

- a. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b. strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 7 (seven) days and an aggregate period exceeding 60 (sixty) days in an Accounting Year;
- c. any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable 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 Authority;
- d. the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- e. any event or circumstances of a nature analogous to any of the foregoing.

24.3 Indirect Political Event

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

- a. an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b. industry-wide or State-wide strikes or industrial action for a continuous

- period of 7 (seven) days and exceeding an aggregate period of 60 (sixty) days in an Accounting Year; or
- c. any event or circumstances of a nature analogous to any of the foregoing.

24.4 Duty to report Force Majeure Event

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

- a. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 30 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.

24.4.2 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.

24.4.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as the other Party may reasonably request the Affected Party to provide.

24.5 Effect of Force Majeure Event on the Concession

24.5.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the concession period shall be extended by a period equal in length to the duration of the Force Majeure Event.

24.5.2 At any time after the Appointed Date, if any Force Majeure Event occurs before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

24.6 Allocation of costs arising out of Force Majeure

24.6.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date or during the Concession Period, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof. ;

24.6.2 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.

24.7 Dispute resolution

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

24.8 Excuse from performance of obligations

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 25**SUSPENSION OF CONCESSIONAIRE’S RIGHTS****25.1 Suspension upon Concessionaire Default**

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire’s right to collect Fee pursuant hereto, and (ii) exercise such rights itself or authorise any other person to exercise the same on its behalf during such suspension (the “Suspension”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders’ Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days. Default conditions for suspension under Clause 25.1 shall be the same as mentioned in Clause 26.1.1 for termination.

25.2 Authority to act on behalf of Concessionaire

25.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee under and in accordance with this Agreement and deposit the same in the Project Account.

25.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period.

25.3 Revocation of Suspension

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

25.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

ARTICLE 26

TERMINATION

26.1 Termination for Concessionaire Default

26.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 180 (one hundred and eighty) days, the Concessionaire shall be deemed to be in default of this Agreement (a “**Concessionaire Default**”), unless the default has occurred solely due to Force Majeure. The defaults referred to herein shall include:

- a. the Performance Security has been encashed and appropriated in accordance with Article 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- b. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- c. the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule G and continues to be in default for 180 (one hundred and eighty) days;
- d. the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- e. Project Completion Date does not occur within the period specified in Article 12.4.3;
- f. The Concessionaire defaults in payment of Premium;

26.1.2 Without prejudice to any other rights or remedies of the Authority under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire;

Provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

Provided further, that the Concessionaire shall, until the Concessionaire Default has been cured or this Agreement has been terminated, be liable to pay Damages to the Authority at the rate of 0.1 % (zero point one per cent) of the Performance Security for each day the Concessionaire Default continues.

26.2 Consequences of Termination

Upon Termination for any reason whatsoever, the Authority shall:

- a. be deemed to have taken possession and control of the Project forthwith;
- b. take possession and control of all Parking Infrastructure, Project Facilities and Real Estate Development in the Site forming part of the Project;
- c. be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- d. require the Concessionaire to comply with the Divestment Requirements set forth in Article 27.1; and
- e. succeed upon election by the Authority but without any obligation to do so, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, it is hereby agreed, and the Concessionaire hereby acknowledges, that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be recoverable from the Concessionaire.

ARTICLE 27
DIVESTMENT OF RIGHTS AND INTEREST

27.1 Divestment Requirements

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

- a. notify to the Authority forthwith the location and particulars of all Project Assets;
- b. deliver forthwith the actual or constructive possession of the Project and the Site, free and clear of all Encumbrances;
- c. cure all Project Assets and Project Facilities of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- d. deliver relevant records and reports pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date;
- e. transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- f. execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority; and
- g. comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority.

27.2 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto.

27.3 Divestment costs, etc.

- 27.3.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

ARTICLE 28

ASSIGNMENT AND CHARGES

28.1 Restrictions on assignment and charges

28.1.1 This Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

28.1.2 The Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

28.2 Permitted assignment and charges

The restraints set forth in Article 28.1 shall not apply to:

- a. liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- b. mortgages/pledges/hypothecation of goods/assets including Project Assets, and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- c. assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- d. liens or encumbrances required by any Applicable Law.

28.3 Assignment by the Authority

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

ARTICLE 29

LIABILITY AND INDEMNITY**29.1 General indemnity**

29.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities/enterprises, (“**the Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or the Project Agreements or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Authority Indemnified Persons.

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

29.2 Indemnity by the Concessionaire

29.2.1 The Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

ARTICLE 30

RIGHTS AND TITLE OVER THE SITE

30.1 Licensee rights

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

30.2 Access rights of the Authority and others

30.2.1 The Concessionaire shall allow to the extent required under this Agreement, free access to the Site at all times for the authorised representatives and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

30.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility.

30.3 Property taxes

The Concessionaire shall be liable to pay property taxes for the Site as required under the Applicable Laws.

ARTICLE 31
DISPUTE RESOLUTION

31.1 Dispute resolution

31.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure.

31.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

31.2 Conciliation

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

31.3 Arbitration

31.3.1 Any Dispute which is not resolved amicably by conciliation, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed. Such arbitration shall be held in accordance with the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time. The venue of such arbitration shall be Bhopal, and the language of arbitration proceedings shall be English.

31.3.2 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 31 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

31.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

31.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

ARTICLE 32 DISCLOSURE

32.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office.

32.2 Disclosure of Documents relating to safety

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

ARTICLE 33

REDRESSAL OF PUBLIC GRIEVANCES

33.1 Complaints Register

33.1.1 The Concessionaire shall maintain a public relations office at the Site of the Project where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Site of the Project so as to bring it to the attention of all Users.

33.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

33.1.3 The Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

33.2 Redressal of complaints

33.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

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

ARTICLE 34
MISCELLANEOUS

34.1 Governing law and jurisdiction

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

34.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

34.3 Depreciation

For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

34.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 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 5% (five per

cent) above the SBI PLR Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

34.5 Waiver

34.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:-

- a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- c. shall not affect the validity or enforceability of this Agreement in any manner.

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

34.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

34.7 Exclusion of implied warranties etc.

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

34.8 Survival

34.8.1 Termination shall:

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

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

34.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

34.10 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

34.11 No partnership

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

34.12 Third Parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this

Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

34.13 Successors and Assigns

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

34.14 Notices

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

- (a) in the case of the Concessionaire, be given by facsimile and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Bhopal may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Concessionaire may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile and by letter delivered by hand and be addressed to the Chief Executive Officer of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Bhopal it may send such notice by facsimile and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

34.15 Language

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

34.16 Counterparts

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

34.17 All costs on Stamp Duty under this agreement shall be borne by the Concessionaire.

ARTICLE 35
DEFINITIONS**35.1 Definitions**

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

“Accounting Year” means 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” or **“Concession Agreement”** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Applicable Laws” means all laws, brought into force and effect by GOI or the GoMP including rules, regulations and notifications 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 during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement;

“Appointed Date” means 90 days from the date on which this agreement is signed, and shall be deemed to be the date of commencement of the Concession Period;

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

“Authority Representative” means 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;

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 500 crore (Rupees five hundred crore);

“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being

in effect;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the [Concessionaire] in response to the Tender Notice in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. 5,00,000 (Rupees Five lakhs only), in accordance with the Tender Notice, and which is to remain in force until substituted by the Performance Security;

“**COD**” or “**Commercial Operation Date**” shall have the meaning set forth in Article 15.1;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the existing promoters in the total Equity to decline below (i) 100% (one hundred per cent) thereof during Construction Period, (ii) 51% (fifty one per cent) thereof during a period of 3 (three) years following COD, and (iii) 33% (thirty three per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any transfer of the direct and/or indirect, legal or beneficial ownership leading to acquisition of more than 15% (fifteen per cent) of the total Equity by any person and/ or his Associate at any time during the Concession Period shall constitute a Change in Ownership. Change from partnership firm to a private limited company shall not be treated as a change in ownership.

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

“**Concession Period**” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“**Construction Period**” means the period beginning from the Appointed Date and ending on the COD;

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

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

-
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

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

“Drawings” means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule-H, and shall include ‘as built’ drawings of the Project;

“Effective Date” means the date of signing of this Agreement;

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

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

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

“Encumbrances” means, in relation to the Project, 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, where applicable herein but excluding utilities referred to in Article 11.1;

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

“**Fee**” means all charges, tariff, fees, deposits and amounts received by or paid to the Concessionaire from or with respect to the Project, for services provided and maintenance charges for the Project Facilities, and other tariff and charges including maintenance charges for services provided to the Users;

“**GoMP**” means the Government of Madhya Pradesh;

“**Good Industry Practice**” means the best 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 Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“**Government**” means the Government of India;

“**Government Instrumentality**” means any department, division or sub-division of the Government or the GoMP and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under thontrol of the Government or the GoMP, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“**Material Adverse Effect**” means 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;

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

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

“**O&M Contract**” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

“**O&M Contractor**” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M

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

“Operation Period” means the period commencing from COD and ending on the Transfer Date;

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

“Premium” shall have mean the upfront premium payable by the Concessionaire as per the Bid submitted by the Concessionaire;

“Project” means the construction, operation, development and maintenance of the Ecotourism Park/ Herbal Garden, Nursery, Relaxation, Leisure, and Entertainment, Amusement rides for children, aqua culture. Picnic spot, Arts & Music, Garden, Musical fountain, Solar Energy use, Vermicomposting, sustainable waste management system, conservation counter, Cafeteria, and related activities and Project Facilities in accordance with the provisions of this Agreement, and includes all works, development operation, maintenance and services relating to or in respect of the Scope of the Project;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, all agreements that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include Project Account Agreement and the Substitution Agreement;

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

- a. rights over the Site in the form of licence, Right of Way or otherwise;
- b. tangible assets such as civil works and equipment including foundations, embankments, pavements, interchanges, bridges, drainage works, electrical systems, communication systems, rest areas and administrative offices;
- c. Project Facilities situated on the Site;
- d. buildings and immovable fixtures or structures forming part of Real Estate Development;
- e. all rights of the Concessionaire under the Project Agreements;
- f. financial assets, such as receivables, security deposits etc;
- g. insurance proceeds and

h. Applicable Permits and authorisations relating to or in respect of the Project,

“Project Facilities” means all the amenities and facilities required as basic and support infrastructure for the project for the optimal functioning thereof, including but not limited to sewage and sanitation system, water supply, electricity distribution and supply, paved roads and lanes, and specific equipment and facilities, situated on the Site, as described in Schedule C;

“Re.”, “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

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

“Senior Lenders” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold parri passu charge on the assets, rights, title and interests of the Concessionaire;

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

“State” means the State of Madhya Pradesh and “State Government” means the government of that State;

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

- (a) the principal amount of debt provided by lenders or the Concessionaire for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not

include any interest that had fallen due one year prior to the Transfer Date;

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

“Taxes” means 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 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” means the expiry or termination of this Agreement and the Concession hereunder;

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

“Total Project Cost” means the lowest of:

- a. the capital cost of the Project, as set forth in the Financial Package;
- b. the actual capital cost of the Project upon completion of the Project and Mandatory Project Facilities; and
- c. a sum of Rs. 1.00 crore (Rupees one crore);

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

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

SIGNED, SEALED AND
DELIVERED
For and on behalf of
Madhya Pradesh Ecotourism Board

SIGNED, SEALED AND
DELIVERED
For and on behalf of
CONCESSIONAIRE

by:

by:

(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)

In the presence
of: 1.

2.

SCHEDULE – A

(See Article 10.1)

SITE OF THE PROJECT

1 The Site

1.1 The proposed land is as follows :

Location: Site is located 26 Km from Dewas towards Bhopal at village Arnia (Sonkatch), Distt. Dewas right on the main Bhopal - Indore Highway No. 86 on the bank of Lodahri River.

Land Details:

Status of land: Non-forest revenue land in the possession of the Forest Department

Area: 4.500 Hectare

Village: Arnia

Tehsil: Sonkatch

District: Dewas

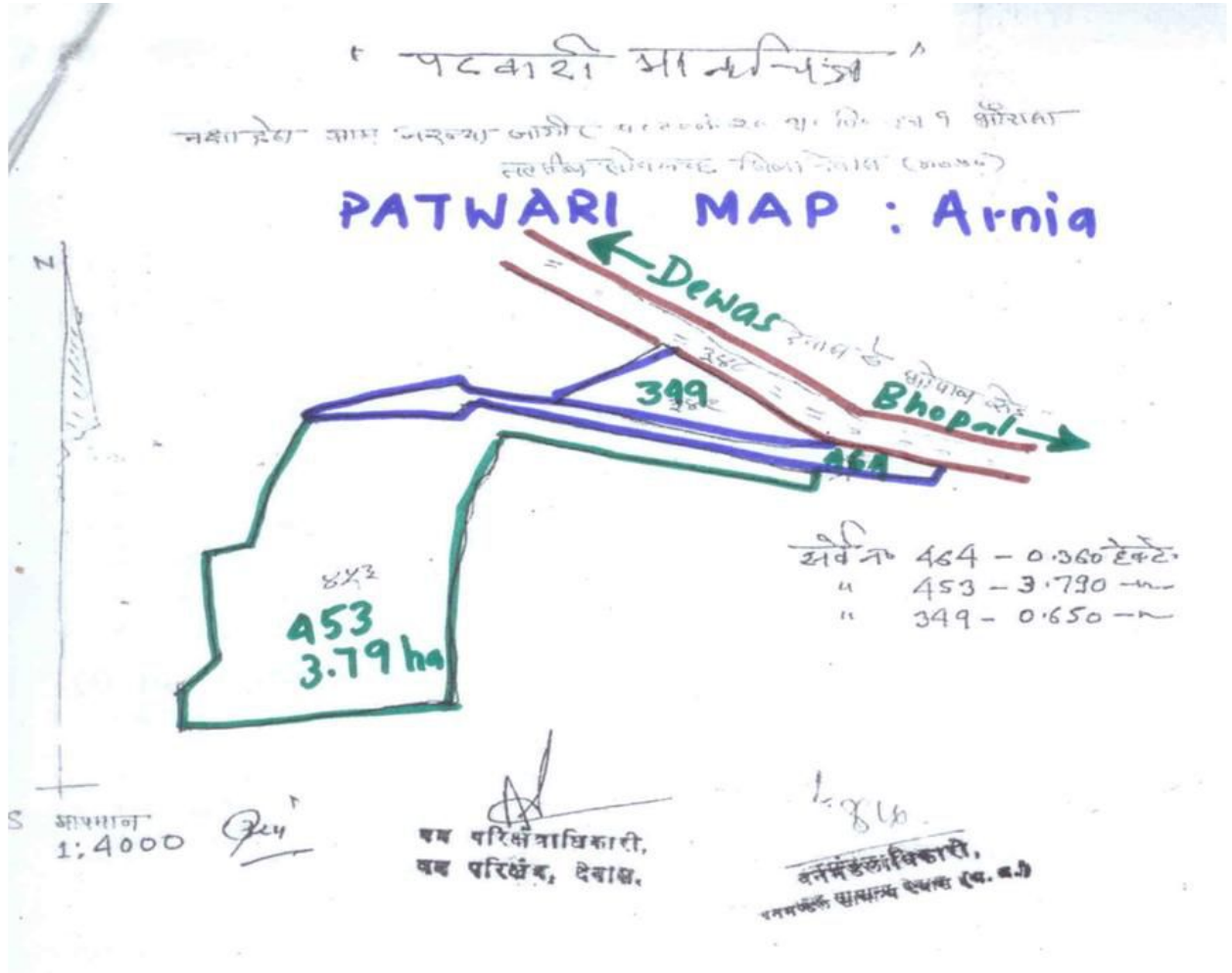
Survey No.: 349, 453 & 464.

1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum of the Agreement.

Annex – I A

(Schedule-A)

Map of the Site with co ordinates



Plot No.	Area (hectares)
464	0.360
453	3.790
349	0.650
All the three plots are non-forest revenue land.	

SCHEDULE - B (See Article 2.1)

DEVELOPMENT OF THE PROJECT

1 Development of the Project

- 1.1 The Project shall be developed and constructed in conformity with Schedule-B, Schedule-C and Schedule-D.
- 1.2 The operation and maintenance of the Project shall be in conformity with the Maintenance Requirements specified in the agreement.

2. Mandatory Project to be Developed by the Concessionaire

Ecotourism: Ecotourism is responsible travel and tourism to natural areas. It is a non-consumptive use of natural resources and teaches that the responsible tourism safeguards the integrity of the ecosystem one is visiting and produces intangible benefits for conservation ethics and economic benefits for local communities. When it is successful, ecotourism meets the needs of both conservation and local economic development.

The Project: To achieve the objective of ecotourism, the Authority intends to develop the above land on PPP basis. The objective of land use will be nature interpretation, entertainment, food, health, education, beautification and plantation.

The Project comprises the design, development, construction, operation and maintenance of the following:

A) Mandatory Activities/Amenities-

It shall be mandatory to incorporate the following in the Project:

- Ecotourism Park as a picnic spot and place for ecotourism
- Nature trail
- Rest rooms
- Play zone for children, swings, amusement rides
- Landscaping, lawns, plantation, musical fountain, gazebos, signage
- Ayurvedic Consultation cum Vindhya Herbal Sale Counter
- Sale Counters for conservation items, plants, Board's publicity material
- Herbal Garden, Butterfly Park
- Mandatory Project Facilities (Schedule - C)

B) Non-Mandatory Activities/Amenities-

The following list is suggestive and it will be optional to incorporate any or all of them in the Project:

- Cafeteria, Outdoor Barbeque, Ethnic & Multicuisine Restaurant
- Ethnic Dwelling units with modern amenities
- Conference Hall
- SPA, Ethnic Herbal Treatment Centre, Panchkarm Centre
- Gymnasium
- Water Sports
- Adventure Sports
- Arts, Music & Cultural Events, Leisure and Entertainment
- Nursery

The successful bidder is expected the following:

- Develop Park facilities in accordance with the suitable theme and guidelines of MPEDB
- Create conducive facilities with 'Park Friendly' and 'Family Oriented' ambience, beautification of structures and activities; use appropriate modern technology and provide adequate security.
- Facilitate the achievement of MPEDB's objective of protecting, and enhancing the unique landscapes, environments and vistas of the park and herbal garden in Arnia, Distt. Dewas to encourage wider access to them and to increase opportunities for enjoyment, delight, information, education, creativity and healthy recreation for all; and
- Enhance Highway Tourism Potential as a "Green Stop"

Note:

1. As per Clause 16.1, further construction can be allowed with the prior approval of the Authority during the Concession Period.

2. Water Sports is optional, subject to approvals and rights on water bodies and the availability of water.

SCHEDULE – C

(See Article 2.1)

PROJECT FACILITIES

1 Project Facilities

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement.

2 Mandatory Project Facilities

The Concessionaire shall construct the Mandatory Project Facilities required to adequately and efficiently support the Mandatory Project and shall include but not be limited to adequate:

- a. water supply and distribution;
- b. electricity supply and distribution with generator sets;
- c. sewage and sanitation facilities with zero waste management system;
- d. changing rooms (separate for ladies and gents);
- e. toilets (separate for ladies and gents);
- f. tree plantation and green areas;
- g. refreshment facilities;
- h. public access telephones;
- i. parking facilities;
- j. guides
- k. and such other facilities as may be necessary and required to establish and operate and the Project in accordance with the Specifications and Standards.

SCHEDULE – D (See Article 2.1)

SPECIFICATIONS AND STANDARDS

1 Project

The Concessionaire shall comply with the Specifications and Standards for construction of the Project and shall always adhere to Good Industry Practice.

2 Specifications and Standards to apply

Subject to the provisions of Paragraph 2 of this Annex-I, the Project shall conform to the provisions, principles and guidelines laid down under:

- (a) The PWD Schedules;
- (b) The regulations of the Town and Country Planning Department and the Municipal Corporation;
- (c) Regulations and approvals under the Environmental Protection Act, 1986;
- (d) The Concessionaire shall design, construct, operate, maintain, develop, finance and manage the Project at a standard equivalent to the standards for projects of this nature in the region in terms of the quality of the facilities, management and the quality of service.

The entrepreneur has to design facilities in an eco-friendly manner as per the established principles and practice of ecotourism - e.g. maximum use of natural products plus alternatives to polluting/non-biodegradable substances; external/internal finish/contours of construction/interior to merge with natural surroundings and be/resemble natural material; interior decor to have ethnic and elegant look with modern comforts; lush greenery, quiet ambience, subdued and natural colour scheme, tasteful landscaping; use of energy efficient devices and renewable sources, waste recycling, treatment and safe disposal; crowd-avoiding layout of facilities; etc.

SCHEDULE –E

(See Article 4.1.3)

APPLICABLE PERMITS

1 Applicable Permits

1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Article 4.1.3 of the Agreement:

- (a) Permission of the State Government/Departments for running of Project as given in Schedule B;
- (b) Permission of the Authority for drawing water from river/reservoir/ground;
- (c) Clearance of Pollution Control board for installation of diesel generator sets/filtration plant, etc;
- (d) Fire safety clearance from fire authorities;
- (e) Clearances, permissions and approvals required under the building bye-laws
- (f) Permission of State Government for cutting of trees;
- (g) Any other permits or clearances required under Applicable Laws.
- (h) Permission from the Town & Country Planning Department of the GoMP related to the Master Plan and Area Development Plan.
- (i) Permissions from the Municipal Corporation for Master Plan, Area Development Plan and building permissions.

SCHEDULE –F

(See Article 9.1)

PERFORMANCE SECURITY

- **** (the “**Concessionaire**”) and the Commissioner, _____ (the “**Authority**”) have entered into a Concession Agreement dated *** (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking a Project on build, own, operate and transfer (“**BOOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of [Rs. (Rupees)] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, ***** through our Branch at ***** (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto 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 the Managing Director of the Authority that the Concessionaire 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 Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire 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 Concessionaire 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 Concessionaire 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, fulfillment and/ or performance of all or any of the obligations of the Concessionaire 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 Concessionaire, 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 Concessionaire 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 fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire 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, not 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 on the first anniversary of the COD provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [five] year or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this ** day of ***, 20** at ***.

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Address)

SCHEDULE –G

(See Article 18.1)

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Site, irrespective of the person(s) at fault.
- 1.2 Users of the project include staff of the Concessionaire and its contractors working on the Project.
- 1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

2 The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Fire safety norms as per Good Industry Practice;
- (c) provisions of this Agreement;
- (d) usage of earthquake resistant materials and designs in accordance with Good Industry Practice, in the event the Site is prone to seismic activity
- (e) relevant Standards/Guidelines contained in internationally accepted codes; and
- (f) Provisions of the Environmental Protection Act, 1986

3 Safety measures during Construction Period

The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones, and notify the Authority about such arrangements.

4 Safety measures during Operation Period

- 4.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 4.2 The Concessionaire shall establish a Safety Management Unit (the "SMU") to be functional on and after COD, and designate one of its officers to be in-charge of the SMU.

Annex - I
(Schedule-G)
Safety Guidelines

1 Safe movement:

In the design, construction and operation of the Project, particular care shall be taken to ensure safety of Users. This shall include facilities for safe and efficient evacuation in case of emergency.

2 System integrity:

In the design of power supply, circuits and equipments, particular care shall be taken to minimise the likely incidence of failure.

3 Restoration of service:

The Project shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

4 Safety management:

A safety statement shall be prepared by the Concessionaire once in every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Authority within 15 (fifteen) days of the close of every quarter.

5 Safety equipment:

The following equipment shall be provided in adequate numbers:

- (a) Fire extinguishers and fire alarms at the appropriate locations;
- (b) stretchers and standard first aid boxes; and
- (c) such other equipment as may be required in conformity with Good Industry Practice.

6 Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a Disaster Management Manual to be prepared and published by the Concessionaire prior to COD.

7 Fire safety

7.1 The Concessionaire shall adopt provisions of the National Fire Protection Association (NFPA).

7.2 To prevent fire in the User areas, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit harmful gases when burning.

7.3 Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the building in case of emergency.

7.4 Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Article 7.4, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardised.

8 User safety and information system:

8.1 The Concessionaire shall provide the SMU with the facilities required for supervising User areas, and shall provide visual information to Users. The Concessionaire shall also provide one way communication to Users through a Public Announcement (PA) system. The User call points should be located at convenient locations to allow Users to contact the SMU in emergencies.

8.2 The User information system shall comprise dynamic visual displays and loudspeakers.

9 Life guard

The Concessionaire shall provide adequate number of lifeguard for saving the life of the users.

10 Education Guide

The Concessionaire shall provide adequate number of education guide for the users.