



TAMIL NADU TOURISM DEVELOPMENT CORPORATION LIMITED
REQUEST FOR PROPOSAL (RFP)

**Development of Glow Garden at Maragatha Poonga,
Mamallapuram on Design, Build, Finance, Operate and Transfer
(DBFOT) Basis through PPP mode**

Volume II: Draft Concession Agreement

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THE CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the ____ day of _____, 20__

BETWEEN

1. **The Tamil Nadu Tourism Development Corporation (TTDC)** constituted in 1971, engaged in development and maintenance of the various tourist locations of Tamil Nadu and represented by its _____ and having its principal office at Tourism Complex, No.2, Wallajah Road, Triplicane, Chennai-600 002, India (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. ¹ _____; a proprietorship firm) incorporated under proprietorship Act with proprietor _____ residing at _____/_____; a partnership firm) incorporated under Indian Partnership Act, 1932 with partner _____ residing at _____/_____; a company incorporated with limited liability under the Indian Companies Act, 1956/2013, having its office at _____ with Authorised Representative _____ residing at _____/_____; a limited liability partnership firm incorporated under Limited Liability Partnership Act, 2008, having its office at _____ with Authorised Representative _____ residing at _____ (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the subject or the context include its successors and permitted assigns and substitutes subject to the provisions of this Concession Agreement²) of the Other Part.

WHEREAS:

- (A.) The Government of Tamil Nadu had entrusted to the Authority the Development of Glow Garden at Maragatha Poonga, Mamallapuram on Design, Build, Finance, Operate and Transfer (DBFOT) Basis through PPP mode, which shall be financed by the Concessionaire

¹ Strike out whichever is not applicable

² Explanation : In case the company is merged with some other company or is taken over by any other company, or rights of the company are assigned to some other company, or any substitute is appointed or according to the opinion of TTDC there is change in management then this Concession Agreement may get terminated

who shall recover its investment and costs through user fees, in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.

- (B.) The Authority had adopted a single stage two envelope bidding process and had accordingly invited proposals by its Request for Proposal dated _____ (the "**Request for Proposal**" or "**RFP**") for selection of the Concessionaire for award of the Project on DBFOT basis.
- (C.) The Authority had prescribed the technical and commercial terms and conditions in the RFP, and invited bids comprising technical and financial bids from the bidders for undertaking the Project.
- (D.) After evaluation of the bids received, the Authority had technically qualified certain bidders including, inter alia, the {the selected bidder/Consortium comprising _____ and _____ (collectively the "**Consortium**") with _____ as its lead member (the "**Lead Member**")} and accepted the financial bid of the {selected bidder/Consortium} and issued its letter of Award No _____ dated _____ (hereinafter called the "**LOA**") to the {selected bidder/ Consortium} requiring, inter alia, the execution of this Concession Agreement within 30 (thirty) days of the date of issue thereof.
- (E.) _____ {The selected bidder/ Consortium} has pursuant to the LOA for undertaking, inter alia, the development, operation and maintenance of the Project, as defined hereinafter on public private partnership basis as referred to in Recital 'B' and to fulfil other obligations of the Concessionaire pursuant to the LOA and has requested the Authority to accept the Concessionaire as the entity which shall undertake and fulfil and perform the obligations and exercise the rights of {the selected bidder/ Consortium} under the LOA, including the obligation to enter into this Concession Agreement for the development, operation and maintenance of the Project on PPP basis.
- (F.) The Authority has agreed to the said request of {the selected bidder/ Consortium} and has accordingly agreed to enter into this Concession Agreement with the Concessionaire pursuant to the LOA for, inter alia, the development operation and maintenance of the Project on PPP basis.
- (G.) The Concessionaire has deposited with the Authority the following:
- (i) The Performance Security in form of demand draft for a sum equivalent to Rs.40,00,000/- (Rupees Forty Lakhs only) in favour of Tamil Nadu Tourism Development Corporation Ltd. payable at Chennai for performance of its obligations during the

Concession Period.

(H.) The Authority has {agreed to the said request of the selected bidder/ Consortium and the Concessionaire, and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on Public Private Partnership (PPP) basis, subject to and on the terms and conditions set forth hereinafter.

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

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.

“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;

“Affected Party” shall have the meaning as set forth in Clause 21.1;

“Agreement” or **“Concession Agreement”** means this Agreement, its Recitals, and 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 State Government including rules, regulations and notifications made thereunder, and judgments, 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, licenses, permits, authorizations, 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;

“Associate” or **“Affiliate”** means, in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is

not a company or corporation, the power to direct the management and Policies of such person, whether by operation of law or by contract or otherwise);

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

“**Authority Default**” shall have the meaning as set forth in Clause 23.2.1;

“**Authority Indemnified Persons**” shall have the meaning set forth in Clause 28.1.1;

“**Authority Representative**” means such person or persons as may be authorized 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;

“**Annual License Fee**” shall have meaning set forth in Clause 18.2;

“**Appointed Date/Effective Date**” shall be the date on which this Agreement is signed;

“**Bank**” means any nationalised/scheduled commercial bank as notified by RBI.

“**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 Consortium in response to the Request for Proposals in accordance with the provisions thereof and “**Bids**” shall mean the bids submitted by any and all pre-qualified bidders;

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

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

“COD” or “Commercial Operation Date” shall have the meaning as set forth in Clause 14.1.;

“Change in Law” means the occurrence of any of the following after the Bid Date:

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

“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 {selected bidder/ Consortium Members}, together with {its/their} Associates, in the total equity to decline below 51% (fifty one per cent) thereof at all times till the end of Concession Period;

“Completion Certificate” shall have the meaning as set forth in Clause 13.1;

“Concession” shall have the meaning as set forth in Clause 3.1.1.;

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

“Concession Period” means the period starting on and from the Appointed Date and ending on the 10 years from the Appointed Date;

“Concessionaire Default” shall have the meaning as set forth in Clause 23.1.1.;

“Conditions Precedent” shall have the meaning as set forth in Clause 4.1.1;

“Consortium” shall have the meaning as set forth in Recital (D);

“Consortium Member” means a company specified in Recital (D) as a member of the Consortium;

“Construction Period” or “Development Period” means the period beginning from the Effective Date/Appointed Date and ending on COD;

“Consideration” means the total benefits to be given to the Authority by the Concessionaire in lieu of concession and lease granted by the authority;

“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;

“DBFOT” or “Design, Build, Finance, Operate and Transfer” shall have the meaning as set forth in Recital (A);

“Damages” shall have the meaning as set forth in Sub-clause (w) of Clause 1.2.1;

“Dispute” shall have the meaning as set forth in Clause 30.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 30;

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

“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;

“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 Clause 11.1;

“Estimated Project Cost” shall be the cost estimated by the Authority for development of the Project and provided in the Request for Proposal Volume I – Instructions to Bidders;

“Fee” means charge levied on and payable for using the Project or a part thereof in accordance with this Agreement;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 23.1;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced 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 and for providing safe, economical, reliable and efficient use of the Project;

“Government” means the Government of the India;

“Government Instrumentality” means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government or the State Government, 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;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 28;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 28;

“Indirect Political Event” shall have the meaning as set forth in Clause 21.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 20, and includes all insurances required to be taken out by the Concessionaire under Clause 20.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“LOA” or “Letter of Award” means the letter of award referred to in Recital (D);

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

“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;

“Non-Political Event” shall have the meaning as set forth in Clause 21.2;

“O&M” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, and provision of services and facilities, 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) premium 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 operation and maintenance period commencing from COD and ending on the 10 years from the Appointed Date;

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

“Performance Security” shall have the meaning as set forth in Clause 9.1.1;

“Project” means the construction, operation and maintenance of the Project in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project. And its subsequent development and augmentation in accordance with this Agreement;

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

“RBI” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

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

“Request for Proposal” or “RFP” shall have the meaning as set forth in Recital (B);

“Safety Requirements” shall have the meaning as set forth in Clause 16.1.1;

“Scheduled Completion Date” shall have the meaning as set forth in Clause 12.2.1;

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

“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 paripassu charge on the assets, rights, title and interests of the Concessionaire;

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

“Specifications and Standards” means the technical specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-C,

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 Chennai and “**State Government**” means the government of that State;

“**Substitution Agreement**” shall have the meaning as set forth in Clause 26.3.1;

“**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 total cost of development of the project, the cost as mentioned in the financing agreements or as certified by the Authority; and

“**User**” means a person who uses or intends to use the Project or any part thereof in accordance with the provisions of this Agreement and Applicable Laws.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the

force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) Reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or project milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) References to any gender shall include the other and the neutral gender;
- (p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);

- (q) **“Indebtedness”** shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the **“winding-up”, “dissolution”, “insolvency”, or “reorganisation”** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, lease, license or document of any description shall be construed as reference to that agreement, deed, instrument, lease, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement and the Request for Proposals (“RFP”) forms an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the **“Damages”**); and
- (x) Time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) this Agreement (Request for Proposal, Common Set of Deviations including Corrigendum & Addendum issued by the Authority); and

(b) all other agreements and documents forming part hereof or referred to herein,

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

1.4.2 Subject to provisions of Clause 1.4.1, 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 any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

Development of Glow Garden at Maragatha Poonga, Mamallapuram on Design, Build, Finance, Operate and Transfer (DBFOT) Basis through PPP mode

- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

Part II - The Concession

ARTICLE 2. SCOPE OF THE PROJECT

2.1 Scope of the Project

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

- (a) Development work related to the Project on the Site set forth in Schedule-A along with support facilities for development of the Project in accordance with scope of work as mentioned in Schedule-B and as per specifications and standards specified in Schedule C;
- (b) operation and maintenance of-the Project in accordance with the provisions of this Agreement; 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.
- (d) Transfer of the Project to the Authority at the end of the Concession Period or upon the premature termination of this agreement for any reason.

ARTICLE 3. GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to develop, operate and maintain the Project (the “**Concession**”) during the total concession period of 10 (ten) years inclusive of Development Period of 4 (four) months 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. The Concession Period of 10 years as mentioned above is extendable for further period of 5 (five) years based on mutually accepted terms and conditions between the Authority and the Concessionaire after the Concession Period of 10 years.

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

- (a) access, license and handover of the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) finance and develop the Project;
- (c) manage, operate and maintain the Project and regulate the use thereof by third parties;
- (d) demand, collect and appropriate Fee from Users liable for payment of Fee for using the Project or any part thereof;
- (e) perform and fulfill all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (g) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

ARTICLE 4. CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 17, 21, 29, 30 and 31 or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, on or before the date of signing of this Agreement, by notice require the Authority to satisfy all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 30 (thirty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have handed over the Site to the Concessionaire in accordance with the provisions of Article 10.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 30 (thirty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) executed and procured execution of the Substitution Agreement;
- (b) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (c) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; and
- (d) delivered to the Authority from the Consortium Members, their respective confirmation of the correctness of the representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement.

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. It is agreed between the Parties that the obligation to fulfil each parties' Conditions Precedent is an independent obligation of the respective Party.

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

4.2 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 set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to the maximum limit equal to the amount of the Performance Security and upon reaching such limit, the Concessionaire may, in its sole discretion terminate the Agreement. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

Provided further that in the event of delay by the Concessionaire in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.3, no Damages shall be due or payable by the Authority under this Clause 4.2 until the date on which the Concessionaire shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.3.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to the maximum limit equal to the amount of the Performance Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Commencement of Concession Period

The date on which this Agreement is signed shall be the Appointed Date which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence development of the Project.

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 own cost and expense, procure finance for and undertake the design, engineering, procurement, development, 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 fulfil the Scope of Work as mentioned in Schedule B.
- 5.1.3 The Concessionaire shall ensure that the Development of the Project is completed and commercial operations commenced within 04 (four) months from the date of signing of this Agreement.
- 5.1.4 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.5 The Concessionaire is responsible for safe and secure operations of the facilities, and are required to submit a third-party certificate on safety of the installation before starting the commercial operation.
- 5.1.6 All taxes payable, costs incurred in related to the Project or the land allotted for the Project should be borne by the Concessionaire.
- 5.1.7 All internal amenities inside the Glow Garden Boundary wall to be maintained by the Bidder at his own cost
- 5.1.8 All internal Security, Crowd management, Facility management, Fire Safety and Maintenance would be managed and cost borne by the Concessionaire.
- 5.1.9 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.

5.1.10 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 Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
- (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
- (c) perform and fulfil its obligations under the Financing Agreements;
- (d) 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;
- (e) 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;
- (f) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violate any of the provisions of this Agreement; and
- (g) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement.

5.2 Obligations relating to Project Agreements

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

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 30 (thirty) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No

review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire and shall respond to the request for consent no later than 30 days from the receipt of such request from the Concessionaire.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority and / or Lenders Representative to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination (the “Covenant”). Further, it is clarified that in case both the Authority and Lenders’ Representative decide to exercise their right to step-in, the Authority shall have the sole right to step into the Project Agreements.
- 5.2.5 All contracts entered in to by the Concessionaire with contractors, agents, or any other third parties in relation with the scope of Work of this Agreement, shall be coterminous with this Agreement. The Concessionaire shall not enter into any sub-licensing arrangement for the Project Facility with any other party and ensure that all such contracts executed must contain a specific provision to this effect and that the Authority shall in no case be liable for the obligations, if any, arising out of such contracts after the Completion by efflux of time /exercise of exit option /Termination of this Agreement.

5.3 Obligations relating to Change in Ownership

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

5.4 Obligations relating to employment of trained personnel

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

5.5 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.

5.6 Separate Bank Account

The Concessionaire shall open a separate bank account for this Project before the signing of the Concession Agreement and ensure that all revenues of this Project shall accrue to this account. The Monthly Statement of this account should be submitted to the authority within the first 10 days of the following month.

ARTICLE 6. OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expenses 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 Applicable Laws, the following:

- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (c) ensure through reasonable efforts that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
- (d) Subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate use of the Project;
- (e) Assist the Concessionaire in procuring police assistance for regulation of Users, removal of trespassers and security on or at the Project;
- (f) Not do or omit to do any act, deed or thing which may in any manner is violating of any of the provisions of this Agreement; and
- (g) 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 organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (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) Consortium Members and their Associates have the financial standing and resources to fund the required equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (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 hereunder 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 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 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 except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) equity as on the date of this Agreement and till the end of Concession Period;

Provided further that any such request made under Clause 7.1(k) and, at the option of the Authority, may be required to be accompanied by a suitable no objection letter from Senior Lenders

- (l) {the selected bidder/ each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) 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 not misleading;
- (n) 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;
- (o) all information provided by the Consortium Members in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (p) All undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

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 Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) It has the financial standing and capacity to perform its obligations under this Agreement;
- (d) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) It has complied with Applicable Laws in all material respects;
- (g) It has the right, power and authority to manage and operate the Project; and
- (h) It shall procure good and valid right to the Site, and has power and authority to grant a lease in respect thereto to the Concessionaire.

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

Part III Development and Operations

ARTICLE 9. PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its obligations during the Construction Period hereunder, provide to the Authority on or before the date of signing of this Agreement, a performance security in form of demand draft in favour of Tamil Nadu Tourism Development Corporation Limited payable at Chennai from nationalised/scheduled commercial bank for a sum equivalent to Rs.40,00,000/ (Rupees Forty Lakhs only) (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.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire on or before the date of signing of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 23.

Provided that upon appropriation on account of Concessionaire’s Default the Concessionaire shall replenish the Performance Security and upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 23.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect throughout the Concession Period and shall be released to the Concessionaire within 3 (three) months from the expiry of Concession Period provided, however, that the Performance Security shall not be released and shall be kept alive by the Concessionaire if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith.

ARTICLE 10. HANDING OVER OF THE SITE

10.1 The Site

The Site of the Project is described in Schedule-A. The Site would be handed over to the Concessionaire within 7 (Seven) days from the Date of signing of Concession Agreement subject to the provisions of this Agreement.

10.2 Access and Site Handover

- 10.2.1 In consideration of the Gross Revenue Share / monthly rent 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, development, operation and maintenance rights of entire Project comprising the Site which is described, delineated and shown in Schedule A hereto, in the good condition to the Concessionaire; free of any Encumbrances, to develop, operate and maintain the said Site, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Site, hereditaments or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.2 It is expressly agreed that the rights granted hereunder as per Article 10 shall terminate automatically and forthwith, without the need for any action to be taken by the Authority in case of Termination.
- 10.2.3 The Authority shall handover existing infrastructure to the Concessionaire in the good condition.
- 10.2.4 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.3 Assessment of Site and structures

- 10.3.1 Pursuant to the notice specified in Article 10, the Authority Representative, and the Concessionaire shall, on a mutually agreed date and time, inspect the Site. The Authority shall prepare a memorandum containing an inventory of the assets (both movable and immovable) to be transferred by the Authority to the Concessionaire for the execution of the Project within 7 (seven) days from the date of signing of the Agreement. A copy of the Memorandum shall be shared with the Authority and the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid proof of handover to the Concessionaire for free and unrestricted use of the Site during the

Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

10.3.2 On and after signing of the Agreement, and until the end of Concession Period, 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 pursuant hereto 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.

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, and shall not place or create nor permit any contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Access to the Authority

The rights and handing over of the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, Authorities Representative, its employees and agent 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.

11.2 New utilities and roads

The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying water pipes, electric cables or other public utilities.

ARTICLE 12. DEVELOPMENT OF THE PROJECT

12.1 Obligations prior to commencement of development

Prior to commencement of Construction/Development Works, the Concessionaire shall:

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

12.2 Development of the Project

12.2.1 On or after the Appointed Date, the Concessionaire shall undertake development of the Project in conformity with the scope of work in Schedule B. The end of 4th month from the Appointed Date shall be the scheduled date for completion of the Project (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date.

12.2.2 The Concessionaire shall develop the Project in accordance with the Completion Date Schedule set forth in Schedule-D. In the event that the Concessionaire fails to achieve the Scheduled Completion Date on time and remains in default for a period of 60 (sixty) days, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until Scheduled Completion Date is achieved.

12.2.3 In the event that the Project is not completed and COD does not occur within 90 (ninety) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement

ARTICLE 13. COMPLETION CERTIFICATE

13.1 Completion Certificate

Upon completion of development works, the Authority shall forthwith issue to the Concessionaire a certificate substantially in the form set forth in Schedule-E (the “**Completion Certificate**”).

ARTICLE 14. ENTRY INTO COMMERCIAL SERVICE

14.1 Commercial Operation Date (COD)

The Project shall be deemed to be complete when the Completion Certificate is issued under the provisions of Article 13, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate is issued (the “**COD**”). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fees in accordance with the provisions of this Agreement.

The Minimum Assured Amount as per Article 18, however, shall be payable from the 5th month of Appointed Date, irrespective of whether or not the Commercial Operation Date is attained.

ARTICLE 15. OPERATION AND MAINTENANCE

15.1 O&M obligations of the Concessionaire

15.1.1 During the Concession Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement. The obligations of the Concessionaire hereunder shall include:

- (a) permitting and ensuring safe, smooth and uninterrupted use of the Project, including prevention of loss or damage thereto, during normal operating conditions, undertaking major maintenance in accordance to the instructions of the Authority;
- (b) collecting and appropriating the Fees;
- (c) minimizing disruption in the event of accidents or other incidents affecting the safety and use of the Project by preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- (d) alarms for fire, security, must be in place and in working order. Routine maintenance records shall be kept, detailing safety checks of the equipment to ensure compliance with Safety Requirements in accordance with Article 16;
- (e) preventing, with the assistance of the concerned law enforcement agencies if needed, any encroachments on, or unauthorized entry to the Project; and
- (b) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and

15.2 Maintenance Requirements

The Authority shall conduct the maintenance review after every 2 (two) years from the Appointed Date and the Concessionaire has to comply with the modifications/

recommendations and timelines for the repair/rectification of defects as pointed out by the Authority at its own cost within the period specified by the Authority. The repair/rectification of defect shall be subject to the verification and acceptance by the Authority. The Concessionaire and the Authority shall arrive at appropriate timelines for the repair program in consultation with the Authority. That Authority has the right to conduct periodic inspections of the site and site facilities.

15.3 Safety, breakdowns and accidents

15.3.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, closures, diversions, breakdowns and accidents, it shall follow the relevant operating procedures. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

15.4 De-commissioning due to Emergency

15.4.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority Without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

15.4.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project and shall notify the Authority of the same without any delay.

15.4.3 Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

15.5 Damages for breach of maintenance obligations

15.5.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency in the appropriate timelines for the repair program, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of the Performance Security, and (b) 0.05% (zero point zero five per cent) of the cost of such repair or rectification as estimated by the Authority. Recovery of such Damages shall be

without prejudice to the rights of the Authority from the Performance Security under this Agreement.

- 15.5.2 The Damages set forth in the Agreement may be assessed and specified forthwith by the Authority. The Concessionaire shall pay such Damages forthwith and, in the event, that it contests such Damages, the Dispute Resolution Procedure under Article 30 of this Agreement shall apply.

15.6 Monthly Fee Statement

- 15.6.1 During the Concession Period, the Concessionaire shall furnish in 2 (two) copies to the Authority. The Authority, within 10 (ten) days of completion of each month, a statement of Fee showing the appropriate details of Users by the Concessionaire as per the format prescribed by the Authority. The Fee statement would be required to be certified by the Authority. The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its functions.

15.7 Restoration of loss or damage to the Project

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

15.8 Excuse from performance of obligations

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

- (a) an event of Force Majeure;
- (b) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project:

Provided, that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority without any delay;

Provided further that the Concessionaire shall keep all unaffected parts of the Project open to Users, provided they can be operated safely.

15.9 Advertising on the Site

The Concessionaire is free to have its own business identity for operating the facility. However, trade name and logo of “TTDC” and ‘Tamil Nadu Tourism’ or as specified by the FIRST PARTY shall also be visibly displayed at the premises by the Concessionaire.

ARTICLE 16. SAFETY REQUIREMENTS

16.1 Safety Requirements

16.1.1 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 Project facility and its 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.

16.1.2 All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire shall be undertaken in accordance with the provisions of Article 16.

Part IV Financial Covenants

ARTICLE 17. FINANCIAL CLOSE

17.1 Financial Close

17.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 30 (thirty) days from the date of this Agreement. In the event of delay in achieving the Financial Close, the Concessionaire shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 30 (thirty) days shall be granted only to the extent of Damages so paid.

17.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

17.2 Termination due to failure to achieve Financial Close

17.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 21.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 17.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

17.2.2 Upon Termination under Clause 17.2.1, the Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Closure has not occurred due to Force Majeure, it shall, upon Termination, release the Performance Security.

ARTICLE 18. CONSIDERATION BY THE CONCESSIONAIRE

18.1 Gross Revenue Share

- 18.1.1 In Consideration of the grant of Concession, the Concessionaire shall, from the commencement of the 5th month from the Appointed Date or the Commercial Operations Date (whichever is earlier) pay to the Authority, the Revenue Share of _____ percentage of Gross Revenue or Minimum Assured Amount of Rs. 2,00,000 (including annual escalation), whichever is higher for that particular month. Applicable GST on the above shall also be paid by the Concessionaire.
- 18.1.2 The Concessionaire shall pay to the Authority, the Revenue Share or Minimum Assured Amount, whichever is higher, from 1st year to 10th year of the Concession.
- 18.1.3 The Minimum Assured Amount or Gross Revenue share payable under the provisions of this Article 18 shall be due and payable monthly and the first such payment (in the first year of scheduled operation) shall be from the 5th month of signing of the Concession Agreement or the Commercial Operations Date, whichever is earlier.
- 18.1.4 The Minimum Assured Amount of Rs. 2,00,000 will be payable from the commencement of 5th month from the Appointed Date even if the Commercial Operation Date of the Project is not attained by the Concessionaire. Minimum Assured Amount shall be payable from the due date as specified above irrespective of the extension in Construction / Development Period beyond 4 months.
- 18.1.5 The Minimum Assured Amount of Rs.2,00,000/- will be incremented by 5% annually and the first such increment will be due 12 months after the Appointed Date. The 5% increment will be calculated on the rent of the previous year.
- 18.1.6 The Minimum Assured Amount shall be payable in advance by the Concessionaire to the Authority on or before 10th day of every month for that particular month. The balance if any, between the minimum assured amount incremented for that particular year and the revenue share quoted in terms of percentage of gross revenue on actual basis shall be paid on or before 10th day of the following month.
- 18.1.7 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Gross Revenue in an honest and faithful manner, depute its representatives to the Project and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary to ascertain the actual Revenues.
- 18.1.8 All amounts due and payable by the Concessionaire under the provisions of this Agreement shall be paid on or before the time period stipulated in Article 18. In the event of delay beyond

such period the Concessionaire shall pay interest for the period of delay, calculated at the rate specified in Clause 31.2.

- 18.1.9 The Authority shall appoint and depute employee / employees, as necessary, who will be present at the billing counters to monitor the billing operations from the Commercial Operation Date to the end of the Concession Period.

ARTICLE 19. FEE

19.1 Collection and Appropriation of Fee

- 19.1.1 On and from the COD till the end of concession period, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate fee from the Users in accordance with this Agreement provided that for ease of payment and collections, such fee shall be rounded off to the nearest 1 (one) rupee.

- 19.1.2 The Concessionaire acknowledges and agrees that upon payment of Fee, any User shall be entitled to use the Project and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

- 19.1.3 The Concessionaire acknowledges and agrees that any User who is not liable for payment of the Fee shall be entitled to use the Project without any restrictions, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

19.2 Display of User Fee

- 19.2.1 The Concessionaire shall, at entry of the Project premises, prominently display the applicable User Fee for information of Users in English, Hindi and Tamil.

- 19.2.2 The Authority shall, from time to time, inform the Concessionaire of the applicable User Fee. Such information shall be communicated at least 15 (fifteen) days prior to the revision of User Fee.

- 19.2.3 The Concessionaire shall display direction boards at various places on Site for entrance to the Project and ticket counters. Such instructions shall be visible and shall be in English, Hindi and Tamil.

ARTICLE 20. INSURANCE

20.1 Insurance during Concession Period

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

20.2 Insurance Cover

Without prejudice to the provisions contained in Clause 20.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

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

20.3 Notices to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

20.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 20 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, notarized 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 nonrenewal has been delivered by the Concessionaire to the Authority.

20.5 Remedy for failure to insure.

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

20.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

20.7 Concessionaire's waiver

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

20.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

20.9 Compliance with conditions of insurance policies

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

Part V Force Majeure and Termination

ARTICLE 21. FORCE MAJEURE

21.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 21.2, 21.3 and 21.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

21.2 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 ionizing 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 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 21.3;
- (c) any failure or delay of a contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (d) any judgment 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;
- (e) 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
- (f) Any event or circumstances of a nature analogous to any of the foregoing.

21.3 Indirect Political Event

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

- (a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) failure of the Authority to permit the Concessionaire to continue its construction/manufacturing works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (e) Any failure or delay of a contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (f) Any Indirect Political Event that causes a Non-Political Event; or
- (g) Any event or circumstances of a nature analogous to any of the foregoing.

21.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 27;
- (b) Compulsory acquisition in national interest or rights of the Concessionaire or of the contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such

clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor; or
- (e) Any event or circumstance of a nature analogous to any of the foregoing.

21.5 Duty to report Force Majeure Event

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

- (a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 21 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;
- (d) Any other information relevant to the Affected Party's claim.

21.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no 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.

21.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 21.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

21.6 Effect of Force Majeure Event on the Concession

21.6.1 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Construction Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) After COD the Concession Period shall not be extended for any reason even for Force Majeure Event.

21.7 Allocation of costs arising out of Force Majeure

Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof. 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.

21.8 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.

21.9 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 22. SUSPENSION OF CONCESSIONAIRE'S RIGHTS

22.1 Suspension upon Concessionaire Default

22.1.1 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, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

22.1.2 A separate Escrow Account shall be created which shall be operated by the Authority and Fees collected by the Authority; on behalf of the Concessionaire during such suspension period shall be deposited in the Escrow Account. During the period of Suspension hereunder, all things done or actions taken, by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement, shall be paid out of the Escrow Account and any expenditure in excess of amount in the Escrow Account 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.

22.2 Revocation of Suspension

22.2.1 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. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

22.2.2 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.

22.3 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders', the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 22.1 for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

22.4 Termination

22.4.1 At any time during the period of Suspension under Article 22, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement.

22.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 22.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 23. TERMINATION

23.1 Termination for Concessionaire Default

23.1.1 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 30 (thirty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) COD does not occur within the period specified in Clause 12.2.3;
- (d) The Concessionaire abandons or manifests intention to abandon the development or operation of the Project without the prior written consent of the Authority;
- (e) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (f) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement and remains in default for a period of 30 (thirty) days from the due date of payment;
- (g) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (h) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (i) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (j) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (k) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

- (l) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (m) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (n) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (o) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (p) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) Each of the Project Agreements remains in full force and effect;
- (q) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (r) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

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

23.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 23.1.3.

23.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 23.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

23.2 Termination for Authority Default

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

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

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire; and
- (b) The Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

23.3 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) Be deemed to have taken possession and control of the Project forthwith;
- (b) 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; and
- (c) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such contractors as being -due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.
- (d) Require the Concessionaire to comply with Divestment Requirements in Clause 24.

23.4 Survival of rights

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

ARTICLE 24. DIVESTMENT OF RIGHTS AND INTEREST

24.1 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 the Project Assets
- b) deliver forthwith the actual or constructive possession of the Project and Project Infrastructure, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- c) cure all Project Assets of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Development Period, all Project Assets shall be handed over on an as is where is basis after bringing them to a safe condition;
- d) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- e) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee
- f) Notify to the Authority forthwith the location and particulars of the Project Assets

24.2 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 in the form of a “Vesting Certificate”, which shall 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. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

ARTICLE 25. DEFECTS LIABILITY AFTER TERMINATION

25.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 60 (sixty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof.

Part VI Other Provisions

ARTICLE 26. ASSIGNMENT AND CHARGES

26.1 Restrictions on assignment and charges

26.1.1 Subject to Clauses 26.2 and 26.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

26.1.2 Subject to the provisions of Clause 26.2, the Concessionaire shall not create nor permit to subsist any Encumbrance.

26.2 Permitted assignment and charges

The restraints set forth in the Clause 26.1 shall not apply to:

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

26.3 Substitution Agreement

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

26.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Concessionaire substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 90 (Ninety) days (or as

specified by the Authority except last year when cure period shall be 30 days) to the Concessionaire for curing such breach.

26.4 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 and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 27. CHANGE IN LAW

27.1 No claim in the event of recovery from users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law.

27.2 No claim in the event of change in tax regulations and developmental control regulations

Notwithstanding anything to the contrary contained in this Agreement, it is hereby clarified, that the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a change in taxation regulations/rates of any taxes and any change in developmental control regulations for both land use and building regulations and the same shall not constitute a Change in Law for the purposes of this Agreement.

27.3 Restriction on cash compensation

The Parties acknowledge and agree that there shall be no demand for cash compensation under this Article due to the effect of Change in Law during the respective Accounting Year.

ARTICLE 28. LIABILITY AND INDEMNITY

28.1 General indemnity

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

28.1.2 The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) 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.

28.2 Indemnity by the Concessionaire

28.2.1 Without limiting the generality of Clause 28.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) Failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) Payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or

- (c) Non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

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

28.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 28 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

28.4 Defense of claims

28.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such

Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 28, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

28.4.2 If the Indemnifying Party has exercised its rights under Clause 28.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

28.4.3 If the Indemnifying Party exercises its rights under Clause 28.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) The employment of counsel by such party has been authorized in writing by the Indemnifying Party;
- (b) The Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (d) The Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) That such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 28.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

28.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 28, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

28.6 Survival on Termination

The provisions of this Article 28 shall survive Termination.

ARTICLE 29. RIGHTS AND TITLE OVER THE SITE

29.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as a 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.

29.2 Access rights of the Authority and others

29.2.1 The Concessionaire shall allow free access to the Project Site at all times for the Authority representatives, and for the persons duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions. The Concessionaire shall also allow access to the persons from mobile tower agency or any other, for repairs and maintenance of the mobile tower installed over the administrative building.

29.3 Restriction on sub-contracting for operations

The Concessionaire shall not sub-contract or sub-let the whole of the Site, save and except as may be expressly set forth in this Agreement. However, the Concessionaire shall be allowed to license/ sub contract part of facility of Project with prior approval of the Authority. To clarify, the restrictions on sub-contracting mentioned in this Clause 29.3 is only limited to sub-contracting / licensing of part operations activity and not to subleasing of wholesale / retail shops to traders. All agreements or arrangements with the sub-licensees shall specifically have stipulation of a covenant that the sub-licenses / sub-contracts shall be co-terminus with the termination of this agreement.

The subcontractor however cannot subcontract / license the space further to another party. The subcontractor shall be involved directly in the operation and maintenance of the facility outsourced.

ARTICLE 30. DISPUTE RESOLUTION

30.1 Dispute resolution

30.1.1 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 set forth in Clause 30.2.

30.1.2 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.

30.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the engineer or without the intervention of the engineer, either Party may require such Dispute to be referred to the [Chairman] of the Authority and the Chairman/Director 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) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 30.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 30.3.

30.3 Arbitration

30.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 30.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance

with Clause 30.3.2. Such arbitration shall be held in accordance with the Indian Arbitration and Conciliation Act, 1996 and any amendments thereto.

30.3.2 Both parties shall nominate one arbitrator each and the two nominated arbitrators shall appoint the third Presiding Arbitrator.

30.3.3 The arbitrator shall issue a reasoned Award.

30.3.4 The venue of such arbitration shall be Chennai, India.

30.3.5 The Concessionaire and Authority undertake to carry out any decision or award of the arbitrator (the “**Award**”) without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

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

30.4 Costs associated with Dispute Resolution

30.4.1 The Cost incurred on Adjudication including inter alia, the cost of Regulatory Authority proceedings shall be borne by the parties in equal proportions.

30.4.2 Each party shall bear its own legal fees incurred as a result of Dispute.

30.5 Performance during Dispute

30.5.1 Performance of this Agreement shall continue during the settlement of any Dispute under this Article 30. The Provision of this Dispute Resolution Procedure shall be binding on successors, assigns, and any trustees, or receivers of either Authority or the Concessionaire.

ARTICLE 31. MISCELLANEOUS

31.1 Governing law and jurisdiction

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

31.2 Delayed payments

31.2.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 4% (four per cent) above the daily average Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

- (a) 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.

31.3 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.

31.4 Survival

31.4.1 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.

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

31.5 Entire Agreement

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

31.6 Severability

If for any reason whatsoever, 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.

31.7 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.

31.8 Third parties

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

31.9 Successors and assigns

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

31.10 Notices

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

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

{Attention:

Designation:

Address:

Fax No:

Email ;}

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

{Name:

Designation:

Address:

Fax No:

Email :} and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

31.11 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.

31.12 Counterparts

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

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

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:

SIGNED, SEALED AND DELIVERED For and on behalf of THE CONCESSIONAIRE by:

Signature

Signature

Designation :-

Designation :

Name :-

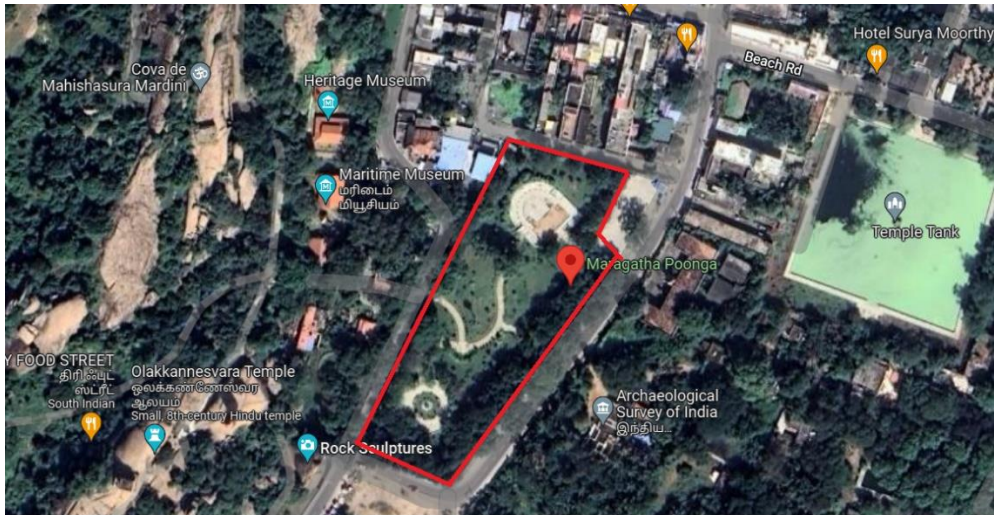
Name :-

SCHEDULES

Development of Glow Garden at Maragatha Poonga, Mamallapuram on Design, Build, Finance, Operate and Transfer (DBFOT) Basis through PPP mode

SCHEDULE A. SITE OF THE PROJECT

MARAGATHA POONGA, MAMALLAPURAM – 9000 sq ft.



SCHEDULE B. SCOPE OF THE PROJECT

Project: Development of Glow Garden at Maragatha Poonga, Mamallapuram on Design, Build, Finance, Operate and Transfer (DBFOT) Basis through PPP mode

The project will include the following components:

- a) Glow Park with various attractive elements like backlit 3D Animals, Glowing Trees, LED Flowers, Sound & other decorative elements
- b) Small Amusement Rides for children such as Carousel Wheel, Bumper Car, Umbrella Flying Chair, Motorcycle racing, Mini Ferris Wheel, Trampoline, etc.
- c) 5D Mini Cinema Theatre and other attractions
- d) Food Court to serve quality food & beverages to the visiting families

Development of the Project shall include development of the Glow Garden and related infrastructure and amenities. The Development shall conform with the provisions of this schedule and should be in conformity with Specifications and Standards set forth in Schedule C.

- The Concessionaire shall carry out development of the Project, which shall include development of the Glow Garden, activities and related infrastructure and amenities.
- The cost of all infrastructure and site development works will be borne by the Concessionaire. All elements inside the park such as Luminaries, Glowing elements, Pathways, Amusement rides, civil work for internal cabling etc. are to be provided by Concessionaire.
- The Concessionaire shall prepare detailed design for the proposed project in accordance with the approved Conceptual plans and get them approved by Tamil Nadu Tourism Development Corporation prior to commencement of development works. The development work should not impact the natural environment of the site.
- The Concessionaire shall procure all applicable approvals, clearances/permits, utilities and license for the development and maintenance of the Glow Park during Concession period from the Applicable authorities, local bodies and other agencies.
- The Development shall conform with the provisions of this schedule and should be in conformity with Specifications and Standards set forth in Schedule C.
- The Concessionaire shall fulfil all obligations mentioned in the Concession Agreement.
- All Operations and Maintenance cost to be borne by the Concessionaire during the Concession Period.
- The Concessionaire shall transfer the Project to the Authority as per terms of the Concession Agreement.

SCHEDULE C. SPECIFICATIONS AND STANDARDS

Specifications and Standard

All elements installed in the Project shall conform to ISO and Safety Standards wherever applicable including:

- All LED installations should conform to applicable ISO standards and applicable safety standards
- All Amusement rides should conform to applicable safety standards
- All supply and execution work to be carried out as per applicable Bureau of Indian Standards

(The details will be incorporated based on the design and components proposed before signing the agreement)

SCHEDULE D. COMPLETION DATE SCHEDULE

(The Completion Date Schedule i.e. development completion schedule shall be provided by the Concessionaire and shall be an integral part of this Agreement)

SCHEDULE E. COMPLETION CERTIFICATE

(See Clause 13.1)

COMPLETION CERTIFICATE

1. /We, _____ (Name of the Authority), under and in accordance with the Concession Agreement dated _____ (the "**Agreement**"), for Development of Glow Garden in Maragatha Poonga, Mamallapuram on Design Build Finance Operate and Transfer Model on PPP Mode (the "**Project**"), through _____ (Name of Concessionaire), hereby certify that the Concessionaire have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project components built can be placed in commercial service.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed.

SIGNED, SEALED AND DELIVERED

For and on behalf of

AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE F. SUBSTITUTION AGREEMENT

(See Clause 26.3)

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

AMONGST

1. Tamil Nadu Tourism Development Corporation represented by the _____ and having its principal office at _____India which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. *****(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);
3. *****(insert name and particulars of Lenders’ Representative) and having its registered office at *****, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes)

WHEREAS:

- (A.) The Authority has entered into a Concession Agreement dated ***** With the Concessionaire (the “**Concession Agreement**”) for Development and Operation/Maintenance of Glow Garden (the “**Project**”) on design, build, finance, operate and transfer basis (the “**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B.) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C.) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Concessionaire in accordance with the provisions of this Agreement and the Concession Agreement.
- (D.) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign

the Concession to a Nominated Concessionaire in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Concessionaire” means a new Concessionaire, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2. Interpretation

1.2.1. References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. ASSIGNMENT

2.1. Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1. Rights of substitution

3.1.1. Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Concessionaire under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2. The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Concessionaire selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2. Substitution upon occurrence of Financial Default

3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Concessionaire in accordance with the provisions of this Agreement.

3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession

Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3. Substitution upon occurrence of Concessionaire Default

- 3.3.1. Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Concessionaire in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4. Procedure for substitution

- 3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Concessionaire upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2. To be eligible for substitution in place of the Concessionaire, the Nominated Concessionaire shall be required to fulfil the eligibility criteria that were laid down by the Authority for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) Accede to transfer to the Nominated Concessionaire the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (b) Endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) Enter into a Substitution Agreement with the Lenders' Representative and the Nominated Concessionaire on the same terms as are contained in this Agreement.
- 3.4.4. If the Authority has any objection to the transfer of Concession in favour of the Nominated Concessionaire in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Concessionaire shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Concessionaire where upon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Concessionaire in place of the Concessionaire.
- 3.4.5. The transfer of Concession hereunder to a Nominated Concessionaire may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by

transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Concessionaire, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Concessionaire under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5. Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Concessionaire shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. PROJECT AGREEMENTS

4.1. Substitution of Nominated Concessionaire in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Concessionaire to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Concessionaire's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1. Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 23 of the Concession Agreement.

5.2. Termination when no Nominated Concessionaire is selected

In the event that no Nominated Concessionaire acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty)

days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

6. DURATION OF THE AGREEMENT

6.1. Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) No sum remains to be advanced and no sum are outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1. General indemnity

7.1.1. The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions 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 on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2. The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3. The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1. Dispute resolution

8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Arbitration and Conciliation Act 1996.

8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1. Governing law and jurisdiction

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

9.2. Waiver of sovereign immunity

The Authority 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 Authority 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 judgment 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 judgment that may be made or given in connection therewith).

9.3. Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

9.5. Waiver

9.5.1. Waiver by any Party of a default by another 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 authorized representative of the Party; and
- (c) Shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2. 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 another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6. No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7. Survival

9.7.1. Termination of this Agreement:

- (a) Shall not relieve the Parties 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, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8. 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 dispute resolution under Clause 8 of this Agreement or otherwise.

9.9. Successors and assigns

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

9.10. Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11. Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12. Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

9.13. Original Document

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

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

Development of Glow Garden at Maragatha Poonga, Mamallapuram on Design, Build, Finance, Operate and Transfer (DBFOT) Basis through PPP mode

SIGNED, SEALED AND DELIVERED
For and behalf of THE CONCESSIONAIRE
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

SIGNED, SEALED AND DELIVERED
For and behalf of THE AUTHORITY by:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of SENIOR LENDERS by
Lenders' Representative:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)

In the presence of:
1

2