

## CONCESSION AGREEMENT

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## CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ 2013;

### BETWEEN

Madhya Pradesh Ecotourism Development Board having its office at A' Wing, Urja Bhawan, Link Road No.-2, Bhopal- 4620003 Bhopal, Madhya Pradesh acting through its Chief Executive Officer (hereinafter referred to as the **Authority**, which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **ONE PART**;

### AND

-----, a Company incorporated under the Companies Act, 1956 and having its registered office at -----, through Mr./Ms. -----, its ----- and duly authorized in this behalf by way of Board Resolution dated -----, hereinafter referred to as the "**Concessionaire**" which expression shall, unless the context otherwise requires, include its successors, permitted assigns and substitutes) of the **OTHER PART**.

**WHEREAS** the Authority intends to develop an Ecotourism & Adventure Park on Design-Build-Finance-Operate-Transfer (**DBFOT**) basis in the City of Rewa, Madhya Pradesh, on the vacant land consisting of two islands in Beehar River and village land located in adjacent Village called Nipania (**the Project**).

**WHEREAS** the Authority is an autonomous organization in the Forest Department, GoMP. The major objectives of the Authority are broadly aimed at the promotion and organized development of ecotourism as a mainstream program of the forest department.

**WHEREAS** the Authority is the rightful owner of the land situated in Village Nipania, Rewa, Madhya Pradesh, India as marked in Schedule VI (hereinafter referred to as "the said **Land/Project Land/ Project Site/Site**"), admeasuring approximately 5.783 Hectares, on which it is proposed to develop an Ecotourism & Adventure Park under PPP mode.

**AND WHEREAS** with an objective to seek private sector participation in the development of the aforesaid Project, the Authority undertook the process of selection of a suitable Concessionaire through competitive bidding, after issuing a Request for Qualification cum Request for Proposal document (RFQ cum RFP) dated \_\_\_\_\_ inviting Bids/ Proposals from prospective Bidders to implement the said Project, containing inter-alia the minimum qualification for a Bidder and the technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project.

**WHEREAS** on evaluation of the submitted proposals, the Authority accepted the proposal of the Consortium/Company and issued Letter of Intent (“LOI”) dated [REDACTED] to the Consortium/Company specifying inter alia the obligation of the Parties to create a Special Purpose Vehicle for implementing the Project. [*Applicable in case of Consortium*]

**WHEREAS** pursuant to the issuance of LOI vide letter no. [REDACTED] dated [REDACTED], the Consortium has incorporated and constituted Concessionaire as the Special Purpose Vehicle created for the sole purpose of implementing the Project.

**AND WHEREAS** the Concessionaire, selected through the transparent competitive Bidding Process, met the Eligibility Criteria and quoted the highest value of the **Annual Concession Fee (Annuity)** for the right of Development, Operation and Maintenance of the Project. Subsequently, the Authority issued Letter of Award dated [REDACTED] to the Concessionaire requiring, inter alia, the execution of this Concession Agreement.

**AND WHEREAS** the Successful Bidder/ Concessionaire acknowledges and confirms that it has undertaken a due diligence and audit of all aspects of the Project Site and Project including technical and financial viability, legal due diligence, tourist volumes and forecast, and on the basis of its independent satisfaction hereby accepts the Concession and agrees to implement the Project at its own cost and expense in accordance with the terms and conditions of this Concession Agreement.

**AND WHEREAS** the Concessionaire hereby accepts the Concession granted and undertakes to implement the Project in accordance to the provisions of this Concession Agreement.

**NOW THEREFORE**, in view of the offer, mutual promises and consideration set out herein, the Authority and the Concessionaire (each individually a “Party” hereto, and collectively the “Parties”) hereby agree to be bound by the provisions of this Concession Agreement.

## **ARTICLE 1. DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Concession Agreement, unless repugnant to the context in which these words and expressions appear, the words and expressions defined below shall have the meanings assigned to them: -

- i. **“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.
- ii. **“Act”** means Indian Companies Act, 1956.

- iii. **“Affected Party”** shall have the meaning set forth in Article 26.1.
- iv. **“Annual Concession Fee” (Annuity)** means the fee as defined in Article 5.1 of the Concession Agreement.
- v. **“Applicable Laws”** means all laws which are applicable to the Project and/or the Concessionaire extending to the State of Madhya Pradesh, having been enacted or brought into force by Government of India or GoMP including regulations and rules made there under, and judgments, decrees, injunctions, writs and orders of any Court of Record, as may be in force and effect during the subsistence of this Agreement.
- vi. **“Applicable Permits”** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Concessionaire under Applicable Laws during the subsistence of this Agreement.
- vii. **“Approvals”** means all approvals, permissions, authorizations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals of the Authority, Secretariat for Industrial Assistance, Reserve Bank of India and any other regulatory authority, as may be applicable.
- viii. **“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 and the Rules there under and shall include modifications to or any re-enactment thereof, as in force from time to time.
- ix. **“Associates”** 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 corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
- x. **“Bank Guarantee”** means an irrevocable and unconditional bank guarantee payable on demand issued by a bank in favour of Concessioning Authority and furnished by the Concessionaire to Concessioning Authority for guaranteeing the due performance of the obligations of the Concessionaire under this Agreement. Here Bank means SBI or any Indian Nationalized Bank or any Indian Scheduled Commercial Bank whose net worth is not less than Rs.1000 crores as on 31st March 2012
- xi. **“Bid”** means the documents in their entirety comprised in the bid submitted by the Concessionaire in response to the RFQ cum RFP in accordance with the provisions thereof.
- xii. **“Business Day”** means a day on which banks are generally open for business in the city of Bhopal, Madhya Pradesh in India.
- xiii. **“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 change in management

- structure of the Bidder Company according to the opinion of the Concessing Authority;
- xiv. **“Clearance/s”** means, as on the date of execution of this Concession Agreement, any and all consents, no-objections, licenses, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective implementation of the Project.
- xv. **“Commercial Operation Date”** means the date on which the Independent Engineer issues the Provisional Certificate or the Construction Completion Certificate, as the case may be, for the Project and the Project is ready for its commercial operations.
- xvi. **“Competent Authority”** means any agency, authority, department, ministry, public or statutory Person of the Government of Madhya Pradesh or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Site or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession Agreement.
- xvii. **“Compliance Date”** means the later of the date of issuance of the Certificate of Compliance to the Authority or Concessionaire under Article 4.3.
- xviii. **“Concession”** or **“Concession Agreement”/“Agreement”** means and includes this signed Concession Agreement (including the Schedules of the Concession Agreement, the “Letter of Award” issued by the Authority, the written clarification(s), addendums, amendments, etc. to the RFQ cum RFP Document issued subsequently to the Bidders and all other documents/papers attached as annexure).
- xix. **“Concessionaire”** means -----, a company incorporated, by the Consortium Members (in case of Consortium) under the Companies Act, 1956 or the Individual Successful Bidder or -----, a Special Purpose Company incorporated by the Individual Successful Bidder under the Companies Act, 1956), having its registered office at ----- and includes its subsidiaries, successors and permitted assigns.
- xx. **“Concessing Authority/Authority”** means Madhya Pradesh Ecotourism Development Board.
- xxi. **“Concessionaire's Equipment”** means all machinery, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, and includes any equipment referred to as "Construction Equipment" but does not include Plant and Materials.;
- xxii. **“Concessionaire's Representative”** means the Person appointed by Concessionaire under Article 8.5.
- xxiii. **“Concession Period”** is the period of 30 (thirty) years, for which this Concession is granted, commencing from the Compliance Date.
- xxiv. **“Condition Precedent”** means the conditions set out in Article 4 hereof.

- xxv. **“Consortium”** means the group of entities that have jointly submitted the Bid for the Project.
- xxvi. **“Consortium Members”** means -----, ----- & -----.
- xxvii. **“Construction Completion Certificate”** means the Certificate issued under Article 14.1.
- xxviii. **“Concession Agreement Completion Certificate”** means the certificate issued under Article 16, after the termination of this Concession Agreement.
- xxix. **“Construction Documents”** means and includes all drawings, calculations, computer application software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature prepared in relation to the Project.
- xxx. **“Construction Period”** or **“Time for Completion of Construction”** means the period from the Compliance Date to the date of issue of Construction Completion Certificate in accordance with the Project Implementation Schedule, which involves the design, setting out, construction of works, erection and installation of equipments, commissioning, testing and certification of works.
- xxxi. **“Construction Completion Date”** means date of the completion of the Construction Period, which shall be at the expiry of a period of 24 (Twenty Four) months from the Compliance Date or such other date (with the consent of the Authority) by which the overall development of the Project is completed in accordance with the provisions of this Concession Agreement and when the Construction Completion Certificate is issued by Authority as per Article 14.1.
- xxxii. **“Cost”** means all expenditure properly incurred (or to be incurred) by the Concessionaire, whether on or off the Project Site, including overheads and similar charges, but does not include profit.
- xxxiii. **“Damages”** shall have the meaning set forth in Sub-article (n) of Article 1.2.
- xxxiv. **“Day”** means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 days.
- xxxv. **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding and payable to the Lender under the Financing Documents: -
- a. The principal amount of the debt provided by the Lender under the Financing Documents for financing the Project which is outstanding as on the Termination Date, excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of the Authority; and
  - b. All accrued interest, financing fee and charges payable on or in respect of the debt referred to in the para (a) above upto the date preceding the Termination Date but excluding any interest or charges that had fallen due one year prior to the

- Termination Date, and penal interest or charges payable under the Financing Documents to any Lender.
- xxxvi. **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified by the Authority or the Independent Engineer to the Concessionaire, and any modification, extension or replacement thereof from time to time in force.
- xxxvii. **“Design Approval Committee”** means the committee as constituted by Authority for approving the design/comprehensive concept plan of the Project, consisting of officials as stipulated in **Schedule IV** of the Concession Agreement.
- xxxviii. **“Dispute”** shall have the meaning set forth in Article 27.1.
- xxxix. **“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 27;
- xl. **“Easementary Rights”** means all easements, reservations, right of way, utilities and other similar purposes, or zoning or other restrictions as to the use of the real property, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Project or which customarily exist on properties which are similarly situated and are engaged in similar activities.
- xli. **“Encumbrances”** means 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Site, physical encumbrances or encroachments on the Project Site where applicable herein.
- xlii. **“Event of Default”** means the Concessionaire Event of Default and/or Authority Event of Default, as the case may be.
- xliii. **“Equity”** means the sum expressed in Indian Rupees representing the equity share capital of the Concessionaire and shall include the funds advanced by any Consortium Member or by any of the shareholders of the Concessionaire for meeting the equity component of the Total Project Cost. Provided, however, that for the purposes of computing Termination Payments under this Concession, Equity shall be reckoned as an amount that is arrived at after excluding from the equity share capital of the Concessionaire the sum by which the capital cost of the Project as stated by the Concessionaire for purposes of claiming Termination Payments exceeded the Total Project Cost.
- xliv. **“Escrow Account”** means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures, as the case may be shall be credited and debited, in accordance with the provisions of this Agreement, and includes the sub-accounts of such Escrow Account;
- xlvi. **“Escrow Agreement”** shall have the meaning set forth in Clause 24A;
- xlvi. **“Escrow Bank”** shall have the meaning set forth in Clause 24A;



- xlvi. **“Escrow Default”** shall have the meaning set forth in Schedule VIII;
- xlvi. **“Financial Closure”** means the date on which the Financing Documents with respect to the Financing Package for the Project have been executed and become effective and the Concessionaire has fulfilled all the conditions needed for draw down of Financing and the Concessionaire has immediate access to such Financing and which shall in any case be not later than 90 days from the Proposal Acceptance Date hereof, unless specifically extended.
- xlix. **“Financial Model”** means the financial model adopted by Lenders setting forth the capital and operating costs of the Project and revenues there from on the basis of which the financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein.
- l. **“Financial Year”** means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.
- li. **“Financing Documents”** means the documents executed by the Concessionaire in respect of financing of the Project to be provided by the Lenders by way of loans, guarantees, subscription to non convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents.
- lii. **“Financing Package”** or **“Financing”** means the financing package of the Project furnished by the Concessionaire indicating the Total Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Lenders and as approved by the Lenders for the purposes of funding the Project.
- liii. **“Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence specified in the Article 26.
- liv. **“Good Industry Practice”** means those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from a reasonably skilled, prudent and experienced operator engaged in construction and operation of projects akin to the Project. It would include good engineering practices in the design, engineering, construction and project management which would be expected to result in the performance of its obligation by the Concessionaire and in operation and maintenance of the Facilities in accordance with this Concession Agreement, Applicable Laws, and Clearances, reliability, safety, environment protection, economy and efficiency.
- lv. **“GoMP”** means the Government of the State of Madhya Pradesh, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the

- Government of Madhya Pradesh and its administrators, successors and assigns.
- lvi. **“GOI”** means the Government of India.
- lvii. **“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 24.
- lviii. **“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 24;
- lix. **“Independent Engineer”** means the engineer appointed under the provisions of Article 28.
- lx. **“Lender(s)”** shall mean the banks, financial institutions, international credit agencies that extend or agree to extend a credit facility to the Concessionaire in relation to the Project;
- lxi. **“Material Adverse Effect”** means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement, or (c) frustrates a material provisions of this Concession Agreement or any of the Project Agreements.
- lxii. **“Operation and Maintenance Period”** is the period commencing from the Commercial Operations Date and terminating at the Transfer Date.
- lxiii. **“Parties”** means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually.
- lxiv. **“Performance Standards”** means the standards for the operation and maintenance of the Ecotourism & Adventure Park, as set forth in **Schedule I** of the Concession Agreement.
- lxv. **“Performance Security”** means the Construction Performance Security and/ or Operation & Maintenance Performance Security as set out in **Schedule III(A) & III(B)** from a scheduled bank approved by the Authority.
- lxvi. **“Person”** means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name.
- lxvii. **“Project”** means, subject to the provisions of this Concession Agreement, (i) the development, financing, designing, construction, operation and maintenance of the Ecotourism & Adventure Park at the Project Site including all activities incidental thereto at the Project Site such as engineering, testing, commissioning etc; (ii) levy, collection, retention and appropriation of the Project Revenues etc; (iii) insurance of the Project Facilities for the purposes of providing the services on a continuous basis and (iv) transfer of the Ecotourism & Adventure Park to the Authority at the end of the Concession Period or on prior termination of the Concession Agreement on Concessionaire Event of Default or otherwise.
- lxviii. **“Project Agreements”** means, collectively, this Concession Agreement, the Financing Documents, hire purchase agreements, sub-license agreements/arrangements, construction agreements and operation & maintenance agreements, in each case

- as amended, supplemented or otherwise modified from time to time and does not include the Escrow Agreement and Substitution Agreement.
- lxix. **“Project Facilities”/“Facilities”** means all the amenities and facilities required as basic and support infrastructure for the Project for the optimal functioning thereof, including but not limited to sewage and sanitation system, water supply, electricity distribution and supply, paved roads and lanes, and specific equipment and facilities, situated on the Site, as described in **Schedule VII**.
- lxx. **“Project Implementation Schedule”** means the Concessionaire’s Project Implementation Proposal and its time frame as accepted by the Authority in accordance with Article 8.6.
- lxxi. **“Project Insurance”** means the insurance taken out by or on behalf of the Concessionaire pursuant to Article 25 of this Concession Agreement.
- lxxii. **“Project Revenues”** means all sources of revenues from the Project as defined in Clause 2.4.1.
- lxxiii. **“Project Site/Site”** means the land admeasuring 5.783 Hectares out of which developable area is 2.313 Hectares i.e. 23130 Sq. Mts., and rights in relation thereto, given by the Authority to the Concessionaire, as a licensee, on, under, in or through which the Facilities or any other construction relating thereto is situated, located, passes through, sits upon or overlies, or any part of the Works are to be executed, more particularly delineated in **Schedule VI** and depicted in the map annexed to such Schedule.
- lxxiv. **“Project Assets”** means all tangible and intangible assets relating to the Ecotourism & Adventure Park including, but not limited to, (a) rights over the Project Site in the form of licence, sub-licence, right-of-way or otherwise, (b) tangible assets such as civil works and equipments including foundations, all buildings, pavements, substructures and superstructures, bridges, movement and parking areas, all internal and external services, drainage facilities, sign boards, HVAC works, electrical works including sub-station, and telephone and communication equipment, rest areas and administrative office(s) at the Ecotourism & Adventure Park (c) Project Facilities created on the Site (d) All rights of the Concessionaire under the Project Agreements/Documents (e) financial assets, such as receivables, security deposits, cash and investments and (f) insurance proceeds and (g) Applicable Permits and authorizations relating to or in respect of the Project.
- lxxv. **“Proposal Acceptance Date”** means the date of the signing of this Concession Agreement.
- lxxvi. **RFQ Cum RFP** means the Request for Qualification cum Request for Proposal document issued by the Authority. The terms RFQ Cum RFP and "Request for Qualification cum Request for Proposal" are synonymous with "Tender Documents" and "Bidding Documents".
- lxxvii. **“Rs.” or “Rupees”** refers to the lawful currency of the Republic of India.
- lxxviii. **“Schedules”** mean the Schedules to this Concession Agreement.

- lxxix. **“Security Interest”** means any existing or future mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law.
- lxxx. **“Statutory Auditors”** means an Independent, recognized and reputable firm of the chartered accountants duly licensed to practice in India acting as the Independent statutory auditors of the Concessionaire under the provisions of Act including any statutory modification or re-enactment or replacement thereof, for the time being in force.
- lxxxi. **“Subcontractor”** means the construction contractor(s) and/or operation and maintenance contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of Works and/ or building/ services or part thereof, as the context may require, to whom the Concessionaire contracts or subcontracts the Works in full or part.
- lxxxii. **“Subordinated Debt”** means any borrowings by the Concessionaire subordinated to the financial assistance provided by the Lenders for meeting the Total Project Cost but does not include any interest thereon.
- lxxxiii. **“Substitute Entity”** means the entity defined in the Substitution Agreement.
- lxxxiv. **“Substitution Agreement”** means the agreement set out in **Schedule V**.
- lxxxv. **“Tax”** means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of withholding or deduction for or on account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating to it.
- lxxxvi. **“Technical Requirements”** means and includes the description of the scope, standards, design criteria and performance criteria, specifications, drawings and similar information related to the design, construction and implementation of the Project as set forth in the Schedules to this Concession Agreement and any alterations and modifications thereto.
- lxxxvii. **“Temporary Works”** means all temporary works of every kind (other than Concessionaire's Equipment) required for the construction, operation and maintenance of the Project, services, facilities and the remedying of any defects relating thereto.

- lxxxviii. **“Termination Date”** means the date on which this Concession Agreement terminates by efflux of time or by issuance of a Termination Notice.
- lxxxix. **“Termination Notice”** means the communication issued in accordance with this Concession Agreement by a Party to the other Party for terminating this Concession Agreement.
- xc. **“Termination Payment”** means the amount payable by the Concessioneing Authority to the Concessionaire upon the termination of this Concession Agreement and shall consist of payments relating to Debt Due, Subordinated Debt and Equity, as the case may be, and other such amounts as are expressly provided for under this Agreement. Provided, however, that for the purposes of determining Termination Payments to be made by the Concessioneing Authority under this Agreement, the capital cost of the Project shall at all times be reckoned as an amount not exceeding the Total Project Cost and the liability of the Concessioneing Authority to make such Termination Payments relating to Debt Due, Subordinated Debt and Equity shall be determined as if such capital cost was restricted to Total Project Cost.
- xc. **“Third Party”** means any Person, real or judicial, or entity other than the Parties to this Concession Agreement.
- xcii. **“Tests”** means the tests to be carried out as set forth in Article 13 to this Concession.
- xciii. **“Total Project Cost”** means the lowest of the following:
  - The actual capital cost of the Project upon completion of the Project and mandatory Project Facilities.
  - Total Project Cost as set forth in the Financing Documents.
  - a sum of Rs. 15.68 crore (Rupees Fifteen Crore Sixty Eight Lacs Only).
- xciv. **“Transfer Date”** means the day immediately following the last day of the Concession Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of the Concession Agreement.
- xcv. **“Vacant Possession”** means delivery to the Concessionaire of possession of the Project Site or any part thereof, free from all Encumbrances, and the grant of all Easementary Rights and all other rights appurtenant thereto, so that the Concessionaire enjoys complete, uninterrupted and quiet possession and control of the Project Site throughout the subsistence of this Concession Agreement.
- xcvi. **“Variation”** means a modification, improvement or change in the Works, services, and facilities etc to be carried out by the Concessionaire, such that the cost of implementing the modification, improvement or change can be recovered through a 30-day adjustment of the Concession Period.
- xcvii. **“Works”** means the design, construction, upgradation, completion, testing and commissioning, operation and maintenance and rectifying or/and remedying of defects of the buildings, services, facility as the context may require, and all the appurtenances thereof, any other

permanent, temporary or urgent works required under this Concession Agreement.

## 1.2 Principles of Interpretation

In this Concession Agreement, unless the context otherwise requires:

- a. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such for modification or reenactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. Reference to laws of Government of Madhya Pradesh, laws of India or Indian Laws or regulation having force of law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in State of Madhya Pradesh;
- c. The headings are for convenience and reference only and shall not be used in and shall not affect, the construction or interpretation of this Agreement;
- d. Terms and words beginning with capital letters shall have the meaning as defined in this Agreement including the Schedules;
- e. Words importing Person or Parties shall include firms and corporations and any organization having legal capacity to sue and be sued in its name.
- f. Words importing the singular shall include the plural and vice-versa where the Concession requires.
- g. Any reference to day shall mean a reference to a calendar day;
- h. Any reference to month shall mean a reference to a calendar month;
- i. The Schedules of this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- j. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- k. References to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- l. 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 hands of duly authorized representative of such party, as the case may be, in this behalf and not otherwise;
- 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 next business day.
- n. 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

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

All measurements and calculations shall be in metric system and calculations done in 2 decimals places, with the third digit of 5 or above rounded up and below 5 rounded down except in Fee calculation which shall be rounded off to nearest Rupee Hundred (100).

### **1.4 Ambiguities within Agreement**

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

(a) Between two Articles or more of this Agreement, the provisions of specific Article relevant to the issue under the consideration shall prevail over those in other Articles;

(b) Between the Articles and the Schedules, the Articles shall prevail, save and except as expressly provided in the Articles or the Schedules;

(c) Between the written description on the Drawings and the Specifications and

Standards, the latter shall prevail;

(d) Between the written description on the Drawing and the specific written dimension, the latter shall prevail; and

(e) Between any value written in numerals and that in words, the latter shall prevail.

### **1.5 Priority of Documents**

The documents forming this Concession Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Authority shall issue necessary clarification or instruction to the Concessionaire, and the priority of the documents shall be as follows:

i) This signed Concession Agreement (including its Schedules), along with any Addendums issued to the RFQ cum RFP document dated \_\_\_\_\_;

ii) Instructions to Bidders (ITB) {Section I of the RFQ cum RFP document dated \_\_\_\_\_}, enclosed/ attached with this signed Concession Agreement; and

iii) All other documents enclosed/ attached with this signed Concession Agreement.

### **1.6 General**

Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Concessions Authority and/or the agency or person appointed by the Concessions Authority shall be provided free of cost and in two copies, and if the Concessions Authority and/or the person appointed by the Concessions Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.

## ARTICLE 2: SCOPE OF THE WORK

### 2.1 Scope of the Work

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

- a. The Concessionaire shall Design, Build, Finance and Operate the Project on the Project land area of 5.783 Hectares earmarked for the purpose given on licence over the Concession Period of 30 years after which the Project along with the Project Land shall be transferred to the Concessioneing Authority. The total ground coverage allowed in the region is 40% and the height allowed for buildings is G+3. The Concessionaire shall construct following facilities and shall achieve the COD of the Project within 24 months from the Compliance Date.
  - i. Plan and design the Project at the Project Site and thereafter, get it approved by the Design Approval Committee, as per the laid down provisions of the Concession Agreement and Schedules hereof.
  - ii. Development of Ecotourism & Adventure Park on the Project Site, conforming to building bye-laws and regulations and as per the provisions of this Concession Agreement & Schedules hereof.
  - iii. Option to develop a commercial area, not exceeding an area of .....sqm, at the Ecotourism & Adventure Park as per details as laid down in this Agreement.
  - iv. Operation and Maintenance of the Project/ Ecotourism & Adventure Park in accordance with the provisions of this Concession Agreement and the Schedules hereof.
  - v. Demand and collect Project Revenues etc, from the sublicensees/ users/visitors, as per the laid down provisions of the Concession Agreement and the Schedules hereof.
  - vi. Performance and fulfillment 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.

In addition to the abovestated Scope of Work, the Concessionaire shall adhere to all the terms & conditions set forth in this Concession Agreement and the Schedules hereof.

### 2.2 Minimum Development Obligations (Essential Facilities):

- i. Suspension Bridges connecting the two islands
- ii. Infrastructure facilities like Toilet Facilities (for ladies, gents and handicaps), Parking Area, Drinking Water, Sit-outs, Gazeboes, Signage’s, solar lighting, landscaping and site development etc.
- iii. Staff Huts
- iv. Interpretation Centre, Library, Souvenir Shop
- v. Natural Trail, Cycling Tracks



- vi. Butterfly Park
- vii. Spa, Herbal Shop, Nursery
- viii. Cafeteria
- ix. Tree House/ Camp Site
- x. Children Play Area
- xi. Rope walking
- xii. Treasure Hunting
- xiii. Adventure sports activities like, Archery Ground, Paint Ball, Artificial Rock, Burma Bridge, Sky Zipping, Rivulet crossing.

2.2.1 The facility may be designed as per the requirement of the Project. The use of standards and specifications for use of material, construction technology and operations shall adhere to the national and international set of specifications and the best practices in the industry.

2.2.2 All basic necessity like drinking water, toilets, DG sets, Fire fighting facility, security should be provided.

**2.3 Optional component / facilities: The Concessionaire may construct following optional facilities:**

- a. Development of commercial space (which may include shops and or other establishments which may be sub licensed for a pre determined consideration) as permissible under the building bye-laws to achieve the economic viability of the Project.
- b. While undertaking development of the Project, the Concessionaire shall adhere to latest amended National Building Code of India, other relevant IS Codes and practices, Development Control Regulations, FAR Limits, statutory requirements, laws of land, the principles of Good Industry Practices and any other norms as applicable from time to time.
- c. The Concessionaire shall be responsible for all the clearances as may be required for the development and operations of the Project. The Project shall be ready for operation after taking all the clearance(s), within 24 months of the Compliance Date.

**2.4 Revenue Streams**

2.4.1 The Concessionaire will be able to recover its investment through various streams of revenue including but not limited to (collectively to be called as “**Project Revenues**”):

- a. Fee for using the any of the Essential Facilities provided in the Ecotourism & Adventure Park (User Fee);
- b. Parking fees from the vehicles parked inside the Ecotourism & Adventure Park;
- c. Advertising revenues from Project Site
- d. Sub license rentals from commercial spaces provided to various vendors

- e. Maintenance charges from the users of the commercial space(s)
- 2.4.2 The fees structure under the Project Revenues shall have to be administratively approved by the Concessioneing Authority. Any change in the fees structure shall be allowed only after the written permission from the Concessioneing Authority.
- 2.4.3 Children below the age of five years shall have to be given access to Essential Facilities free of charge.

## ARTICLE 3: CONCESSION

### 3.1 Grant of Concession

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of **30 years**, commencing from the Compliance Date, including the exclusive right, license, authority and authorization during the subsistence of this Agreement, including extension thereof, to plan, design, finance, engineer, construct, develop, equip, operate, maintain, modernize and manage the Project and enjoy its commercial benefits for the Concession Period.

3.1.2 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concessionaire undertakes the following in accordance with the provisions of this Concession Agreement, the Applicable Laws and the Applicable Permits:

- a. To develop and implement the Project as per the Scope of Work, more specifically mentioned in Article 2 of the Concession Agreement.
- b. To enjoy complete and uninterrupted access to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement and for a period that shall be co-terminus with the Concession Agreement.
- c. To have access and liberty to plan, design, construct, finance, maintain and operate the Project Facilities during the Concession Period in accordance with the provisions of this Concession Agreement & Schedules. Any construction or development made by the Concessionaire on the Project Site in respect of the Project shall be deemed to be the property of the Authority and the Concessionaire relinquishes all its rights in such property in favour of Authority.
- d. Exclusive right and authority, during the Concession Period, to carry out the specified activities in relation to the Ecotourism & Adventure Park.
- e. Sub license the use of the Project to vendors and thereupon, determine, demand, levy, collect, enforce, retain and appropriate charges therefore and to periodically revise the same in conformity with the market rates. Within the limitations of statutory provisions and decency of operations, the Concessionaire shall make all the

- efforts to maximize the earnings from the associated operations and to keep the Authority informed of actions taken and results thereof.
- f. Regulate the use access of the Ecotourism & Adventure Park by the Third Parties/ vendors and enforce the collection of charges/fee from delinquent vendors, as per the Applicable Laws.
  - g. Manage, operate and execute rights over all or any part of the Project Assets without any limitation or restriction other than those expressly set out in this Concession Agreement.
  - h. To fulfill its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, subcontractors, agents, advisors and consultants without in any way relieving the Concessionaire of its obligations as set out in this Agreement.
  - i. Arrange for all the clearances from the Competent Authorities for the development of Ecotourism & Adventure Park and the Authority shall in no way be liable for the same. Responsibility of taking all necessary approvals of construction, demolition and reconstruction lies with the Concessionaire. Nevertheless Authority without any binding obligation may provide any assistance upon written request from the Concessionaire.
  - j. Arrange statutory clearance from the Competent Authority/ies for removal of existing trees, if any, from the Project Site to the extent necessary for the Project or any of its components.
  - k. Exercise such other rights as the Authority may determine as being necessary or desirable for the purposes incidental and necessary for developing, financing, implementing, managing, operating, running & maintaining the Project.
  - l. Bear and pay all expenses, costs and charges incurred in the fulfillment of all the Concessionaire's obligations under this Agreement; and
  - m. Nothing contained herein, including the act of granting permission to develop the Project at the designated area shall vest or create any proprietary interest in the Project/Project Land or any part thereof including any permanent fixtures, fittings etc. installed in the Ecotourism & Adventure Park in favour of the Concessionaire or any person claiming through or under the Concessionaire. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the Project/Project Land in any manner. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

### **3.2 Actions in Support of the Concession**

- a. The Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms of this Concession Agreement.
- b. For the purpose of Financing the Project, the Concessionaire shall have the right to mortgage, hypothecate, transfer, assign or otherwise encumber to Lenders its rights and interests under or pursuant to this Agreement, including, without limitation, its rights in

and to (i) the Project Agreements and (ii) the cash flows generated from the Project Revenue and to create a security in such rights and interests in favour of the Lenders. However, it is also clarified that the Concessionaire shall not be entitled to mortgage any immovable asset, which is a part of the Project Assets and the Project Site unless specifically permitted by the Authority.

- c. The Authority undertakes not to terminate or repudiate this Agreement prior to the expiry of the Concession Period otherwise than in accordance with the provisions of this Agreement.
- d. The Authority shall provide assistance and recommendations to the Competent Authorities, including Gol, in support of the Concessionaire's applications for Clearances that may be needed from time to time for the implementation of the Project; *provided* that the Concessionaire has made the requisite applications and is in compliance with the necessary conditions for the grant of such Clearances.

### 3.3 Concession Period

3.3.1. The Concession Period for **“the Project”** shall commence from the Compliance Date and shall extend for a period of **30 (thirty)** years from such date (the **“Concession Period”**) during which the Concessionaire is authorized to implement the Project and to operate the Ecotourism & Adventure Park in accordance with the provisions hereof. For the avoidance of doubt, the Concession Period shall include the Construction Period.

3.3.2. It is hereby made clear that:

- (a) In the event of the Concession Period being extended by Authority beyond the said period in accordance with the provisions of this Concession Agreement, the Concession Period shall include the period/ aggregate period by which the Concession is so extended, and
- (b) In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination.

3.3.4 At the end of the Concession Period or sooner termination of this Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Site, Ecotourism & Adventure Park with all the fixtures and other assets permanently attached to the Ecotourism & Adventure Park shall revert to the Authority without any obligation of Authority to pay or adjust any consideration or other payment to the Concessionaire.

### 3.4 Construction Period

- a. The **“Construction Period”** shall be a period of **24 (twenty four)** months (starting from the Compliance Date) for the Project. However, it is being clarified here that the Concessionaire shall, within the Construction Period,
  - Complete the Project at the Project Site and make it fully operational in all respect;
  - If opts to construct a commercial area at the Ecotourism & Adventure Park, complete the structural framework and exteriors/ façade of the commercial area.

***The Concessionaire shall have the discretionary right to complete the internal finishing work of the commercial area as per the requirement/ demand; and***

- Obtain all the necessary applications at its cost and procure all necessary/ mandatory clearances/ permissions including Environmental Clearances that are required for commencing the construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such clearances are in full force and effect

b. In the event that Construction Completion Date is not achieved for any reason other than Force Majeure or reasons attributable to the Authority or any Competent Authority, the Concessionaire shall, subject to sub- article (d) below, pay to the Authority damages for delay beyond the Construction Completion Date to the extent of 0.05% of the Construction Performance Security per day for every day of delay or part thereof until Construction Completion Date is achieved. Provided that nothing contained in this sub-article (c) shall be deemed or construed to authorize any delay by the Concessionaire in achieving Construction Completion Date.

c. In the event that Construction Completion Date does not occur within 120 (one hundred and twenty) days from the Construction Completion Date, the Authority shall be entitled to invoke the Construction Performance Security and to terminate this Agreement for a Concessionaire Event of Default in accordance with the provisions of Article 22 hereof. Provided that instead of terminating this Agreement, the Authority may at its sole option extend the time for achieving Construction Completion on such terms and conditions as it deems fit in its sole discretion.

## **ARTICLE 4: CONDITIONS PRECEDENT**

Subject to the express terms to the contrary, limited aspects of the Construction Period (when commenced) and any legitimate rights arising in law, the rights and obligations under this Concession Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out in Articles 4.1 and 4.2 on or before the expiry of a period of 90 (ninety) days from the Proposal Acceptance Date. However, the Authority may at any time at its sole discretion and in writing, waive fully or partially any of the Conditions Precedent of the Concessionaire.

### **4.1 Conditions Precedent for Concessions Authority/Authority**

The Authority shall have:

- a. Handed over to the Concessionaire the Vacant Possession of the Project Site along with all Easementary Rights free from Encumbrances. It is however clarified that this Condition Precedent on the part of the Authority shall be fulfilled in the end, when all other Conditions Precedent of both the Parties have been met/fulfilled;

- b. Constituted a Design Approval Committee, the constitution and function of which is specified in **Schedule IV**, for the approval of the design of the Project, to be developed by the Concessionaire.
- c. Approved the design of the Ecotourism & Adventure Park, as approved by the Design Approval Committee and also, give comments on the design submitted by the Concessionaire, within a time period of 21 (twenty one) days from the date of submission of design by Concessionaire.
- d. Appointed the Independent Engineer in accordance with the terms hereof.
- e. Issue of Notification as regard to any Local Bye Laws required for Development and Implementation of the Project

#### **4.2 Conditions Precedent for Concessionaire**

The Concessionaire shall have:

- a. Submitted a detailed design including the architectural plans, elevation section, as per the applicable Local Building Byelaws, Norms etc, of the Project to the Authority for its approval from the Design Approval Committee, within a time period of 60 (sixty) days from the Proposal Acceptance Date.
- b. Incorporated the necessary suggestions/ amendments proposed by the Design Approval Committee/ Authority, within a period of 15 (fifteen) days from the date of receipt of such suggestions from the Design Approval Committee. However, it is clarified here that the Concessionaire shall not start the construction until and unless the Authority approves the detailed design of the Ecotourism & Adventure Park again after carrying out necessary amendments, which shall not be unduly delayed.
- c. Submitted a preliminary cost estimate of the Project to the Authority for its perusal.
- d. Provided an undertaking that all of the Representations and Warranties of the Concessionaire set forth in Article 17 are true and correct as on date of this Agreement and as on the Compliance Date and thereafter;
- e. executed and procured execution of the Escrow Agreement;
- f. Provided the Authority copies (certified as true copies by an authorized officer of the Concessionaire) of the constitutional documents of the Concessionaire;
- g. Provided the Authority copies (certified as true by the Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Agreement by the Concessionaire;
- h. Received from the Indian Legal Counsel of the Concessionaire a legal opinion with respect to the authority of the Concessionaire to enter into this Agreement and the Project Agreements and the Financing Documents and the enforceability of the provisions thereof
- i. Prepare in consultation with the Independent Engineer and submit a Project Implementation Schedule to the Concessionaire as specified in Article 8.6 (a).

Provided that upon request in writing by the Concessionaire, the Authority may, at its sole discretion and in writing, waive fully or partially any or all the Conditions Precedent set forth in this Article 4.2.

#### **4.3 Obligations to satisfy Condition Precedents**

- a. Each Party hereto shall use all reasonable endeavors at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 90 (ninety) days of Proposal Acceptance Date.
- b. Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a Certificate of Compliance with Conditions Precedent (the “Certificate of Compliance”).
- c. The later of the date of issue of Certificate of Compliance to the Concessionaire or the Authority shall be the Compliance Date, whereupon the obligations of the Parties under this Concession shall commence and whereon the Authority shall issue the Notice to Commence to the Concessionaire.
- d. Each party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

#### **4.4 Non-fulfillment of Conditions Precedent**

- a. In the event that any of the Conditions Precedents relating to the Concessionaire have not been fulfilled within 90 (ninety) days of the signing of this Agreement and also, the Authority has not waived them fully or partially, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it.
- b. In the event that the Concessionaire has fulfilled its Conditions Precedent and Authority has not procured fulfillment of any or all of the Condition Precedents set forth in Article 4.1 within the period specified in respect thereof, the Authority shall pay to the Concessionaire damages equivalent to an amount calculated at the rate of 0.05% (Point Zero Five per cent) of the Construction Performance Security for each day’s delay until the fulfillment of the Conditions Precedent, subject to a maximum of 30 (thirty) days. In the event when the maximum days as above has lapsed and the Authority has still not been able to procure fulfillment of any or all the Conditions Precedent set forth in Article 4.1 and the period for achievement of the same has not been mutually extended then the Authority shall be liable to return the Concessionaire the Construction Performance Security.
- c. In the event the Authority has terminated this Agreement under Article 4.4 (a) due to non fulfillment of Conditions Precedent by the

- Concessionaire, the Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, agents and employees and the Authority shall forfeit the Construction Performance Security of the Concessionaire.
- d. In the event that Vacant Possession of the Project Site has been delivered to the Concessionaire prior to the fulfillment in full of the Conditions Precedent, upon the termination of this Agreement the Project Site shall immediately revert to the Authority, free and clear from any Encumbrances, irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.
  - e. Instead of terminating this Agreement as provided in paragraph (a) above, the Authority may extend the time for fulfilling the Conditions Precedent by imposing a penalty equivalent to an amount calculated at the rate of 0.3% (Zero Point Three percent) of the Construction Performance Security for each day's delay until the fulfillment of the Conditions Precedent, subject to a maximum of 30 (thirty) days.

## ARTICLE 5: CONSIDERATION TO CONCESSIONING AUTHORITY

### 5.1 Annual Concession Fee (Annuity)

- a. In consideration of the rights, privileges and interests granted by the Authority to the Concessionaire in terms of this Agreement, the Concessionaire shall pay to the Authority an Annual Concession Fee (ACF) with effect from the Construction Completion Date.
- b. The Annual Concession Fee payable to the Authority shall be the amount quoted by the Successful Bidder/ Concessionaire in its Financial Proposal, dated [REDACTED]. The ACF amount will be subjected to an inflation adjustment factor of 10% after every three years for the initial fifteen (15) years (i.e., on 3<sup>rd</sup>, 6<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> anniversary of first annual concession fee payment date) and thereafter @ 15% after every three years for every three years for the remaining period ( i.e., on 15<sup>th</sup>, 18<sup>th</sup>, 21<sup>st</sup>, 24<sup>th</sup>, and 27<sup>th</sup> anniversary)
- c. The ACF shall be payable by the Concessionaire to the Authority in advance every year through the Escrow mechanism in the manner set forth in the Concession Agreement and more particularly in the Escrow Agreement. The first ACF shall be due and payable from the Construction Completion Date and accordingly, the Concessionaire shall deposit the Annual Concession Fee 7 (seven) days prior to the same date every year.  
*For Illustration, if the Construction Completion Date is 15th April, the Concessionaire shall have to deposit the ACF on or before 8th of April every year during the Concession Period.*
- d. In the event of delay up to four weeks in payment of ACF by the Concessionaire, the Concessionaire shall be required to pay the Authority interest at the rate of SBI medium term Prime Lending Rate plus 4% per annum. In the case of delay beyond such four weeks, it shall be a Concessionaire Event of Default.



## 5.2 Adjustment of the Annual Concession Fee

- a. The ACF shall not be adjusted for changes in the cost of labour, materials or other matters. The ACF/ Concession Period shall only be adjusted as expressly and explicitly stated in the Articles to this Concession Agreement, and there shall be no other implied adjustments for any other reasons whatsoever.
- b. Subject to Article 5.3, the Concessionaire shall pay all applicable Taxes, fees, duties, levies, as per the Applicable Laws.
- c. Any quantities, which may be set out in a Schedule to this Concession Agreement, are only for purposes of estimate and are not to be taken as the actual and correct quantities of the Works to be executed by the Concessionaire in fulfillment of its obligations under this Concession Agreement.
- d. Any reference to payment or cost payable by the Authority to the Concessionaire under this Concession Agreement, except with respect to Termination Payments, shall be treated as a reference to adjustment of the Concession Period only.

## 5.3 Change in Law

- a. Change in law means the occurrence of any of the following events after the Proposal Acceptance Date:
  - i) Enactment of any new Law.
  - ii) The repeal in whole or in part (unless re-enactment with the same effect) or modification of any existing Law.
  - iii) The commencement of any Law, which has not yet entered into effect.
  - iv) The change in interpretation or application of any Law by a Court of Record.
  - v) The imposition or requirement for a new statutory or regulatory approval or a modification in the terms and conditions on which a statutory or regulatory approval has already been obtained.
  - vi) A fresh imposition of a Tax or duty that was not in existence on the Proposal Acceptance Date. It is specially clarified that a change in the rate of a Tax or duty shall not be considered a change in law for the purpose of this Article if the Tax or duty itself was in existence on the Proposal Acceptance Date.
- b. If the Concessionaire suffers (or will suffer) delays or incurs (or will incur) additional costs, or loss in revenue resulting from such Change in Law, made after the Proposal Acceptance Date, the Concessionaire shall give notice to the Authority. After receipt of such notice Authority shall proceed in accordance with Article 7.3 to agree or determine any adjustment to the Concession Period to which the Concessionaire is entitled, and shall notify the Concessionaire accordingly. The Concession Period shall be adjusted taking into account any increase or decrease in the costs resulting from Changes in Law specifically in relation to the Project, made after the Proposal Acceptance Date.

- c. The guiding principle in the operation of this Article shall be so as to place the Concessionaire in subsequently the same legal, commercial and financial position as it was prior to such Change in Law.

#### 5.4 Performance Security

- a. The Concessionaire shall ensure that for the Concession Period, it will maintain Performance Security of the amount of Rs. 1, 50, 00, 000/- (Rupees One Crore Fifty Lacs only) as specified in the format as in Schedule III(A) and III(B), which shall remain valid at all times through the period specified.
- b. The Performance Security shall be from a scheduled bank or a financial institution approved by the Authority.
- c. Upon the occurrence of a Concessionaire Event of Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the Performance Security as damages. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days replenish, in case of partial appropriation, to its original level the Performance Security and in case of appropriation of entire Performance Security to provide a fresh Performance Security and the Concessionaire shall, within the time so granted replenish or furnish to the Authority a fresh Performance Security as aforesaid, failing which the Authority shall be entitled to terminate this Agreement.
- d. 50% of the Performance Security shall be released to the Concessionaire on achieving the Commercial Operation Date of the Project. The balance 50% of the Performance Security i.e. Rs. 75, 00, 000/- (Rupees Seventy Five Lacs only) in the form of bank guarantee shall remain in force and effect beyond the period of six months from the date of the expiry of the Concession Period (Operation & Maintenance/O&M Security). It shall be duly discharged and released to the Concessionaire after the period of six months from the date of the expiry of Concession Period and upon transfer of the Project facilities to the Authority.

## ARTICLE 6: PROJECT DEVELOPMENT AND OPERATIONS

### 6.1 Entry to the Project Site for Work

6.1.1 The Project shall be constructed upon the land earmarked by the Authority and henceforth, given the Vacant Possession to the Concessionaire, with licence rights in respect of the Project Site, for the period co-terminus to the Concession Period.

6.1.2 The Authority shall allow the Concessionaire unhindered access to the Project Site, free of all encumbrances on “*as is where is basis*” earmarked for the Project for undertaking the work relating to the Project immediately after the fulfillment of the Condition Precedents. In case such access to the Concessionaire gets delayed for force majeure reason or for reasons solely

attributable to Authority with no contributory factor on the part of the Concessionaire, the Compliance Date for the purpose of calculation of Concession Period shall be proportionately extended. Authority shall not be liable to pay any damages/ cost/ claims for such extension on any account whatsoever.

6.1.3 The Concessionaire is required to separately and independently perform due diligence, checks and verifications and the Authority is in no way responsible for the same.

6.1.4 The Concessionaire shall be permitted to enter the Project Site for the purpose of surveys, site and geotechnical investigations as required for planning and designing of the Project.

## **6.2 Use of the Project Site and Peaceful Possession**

6.2.1 The Concessionaire, subject to complying with the terms and conditions of this Agreement, shall have the right of use of the Project Site during the Concession Period in accordance with the terms of this Agreement and such right shall be limited for the purposes mentioned in Agreement. The Concessionaire shall not use the Project Site or the Ecotourism & Adventure Park for any other purpose not intended herein.

6.2.2 The Concessionaire shall confine its operations to the Project Site. The Concessionaire shall take all necessary precautions to keep labor, persons and equipment within such areas and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely the neighbouring/ Authority areas or otherwise cause any interference to the employees, representatives and agents of the Authority. Concessionaire shall take utmost care in ensuring that nothing is done at any time or caused or permitted to be done, which creates annoyance or disturbance to occupiers of any building etc (residential or otherwise) in the neighborhood or obstructs the passage in adjoining areas of the Project Site in any manner.

6.2.3 The Concessionaire is required to introduce and observe at all times, appropriate measures for safety, security and orderliness on the Project Site premises granted to the Concessionaire.

## **ARTICLE 7: OBLIGATIONS OF THE CONCESSIONING AUTHORITY**

### **7.1 General Obligations**

It shall be the Authority's obligation to ensure that the following are made available or executed by the Authority:

- a. Authority shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the development, operation and maintenance of the Ecotourism & Adventure Park except as may be provided in this Concession Agreement.
- b. All litigation involving the Project Site, prior to the date of issue of Notice to Commence and wherein the actions have been filed against the Authority, shall be contested solely by the Authority. The Concessionaire shall in no way be held responsible or liable as a reason therefor. The Authority shall indemnify the Concessionaire and

shall hold it free from any claim or consequent cost that may arise as a result of any such litigation obligations of Authority regarding Project Site.

- c. Any liability arising out of in providing the Project Site free of Encumbrances shall be borne solely by the Authority. The Authority shall indemnify the Concessionaire and shall hold it harmless from any claim or consequential cost that may arise as a result of any such transfer of the Project Site.

### **7.2 Obligations of Authority regarding Project Site**

- a. The Authority shall bear and be responsible for all costs, expense or charges incurred in making available the Project Site in accordance with Article 4.1, including any compensation required to be paid for acquisition of such Project Site. Further, the Authority shall hold Concessionaire harmless from all costs, expenses or charges incurred in relocating, rehabilitating or resettling Persons in connection with making available the Vacant Possession of the Project Site free from all Encumbrances to the Concessionaire.
- b. The Authority shall, upon written request of the Concessionaire, assist the Concessionaire in getting permissions and exemptions as may be required under laws relating to it and regulating land use as applicable in the State of Madhya Pradesh so as to facilitate the Concessionaire in enjoying Vacant Possession and holding the area of land comprising of the Project Site.
- c. The Authority shall ensure that from the date of the Notice to Commence and till the completion of the Concession Period, the Concessionaire has access to the Project Site for the purpose of carrying out the Concessionaire's obligations under this Concession Agreement.
- d. If the Concessionaire suffers delay or incurs Cost as a direct result of failure on the part of the Authority to perform its obligation under Article 7.2 (c), the Concessionaire shall give notice of the same to the Authority. Upon receipt of such notice Authority shall proceed to take remedial measures and make compensatory adjustments in the Concession Period in accordance with Articles 7.3 and 11.3.
- e. The Authority may grant to the Concessionaire right to advertise and set up and display hoardings, billboards and other information panels at the Project Site/ Ecotourism & Adventure Park or to grant license to such rights against payments, provided that such rights shall be exercised in accordance with the Applicable Laws and orders, decrees, direction of courts and regulations of Municipal Corporation;

### **7.3 Concessions Authority's Determination**

- a. When Authority is required to determine value, additional cost or any adjustment (increase or decrease) to the Concession Period, it shall consult with the Concessionaire in an endeavor to reach agreement within 30 (thirty) days of the receipt of notice wherein the Authority is required to determine such value, cost or adjustment to the

- Concession Period. The Authority's determination on value, cost and adjustment of the Concession Period shall be intimated to the Concessionaire within 30 (thirty) days of the date of receipt of the notice requesting any such adjustment.
- b. If the Concessionaire disputes Authority's determination of value, cost or adjustment to the Concession Period, the matter shall be referred to the Independent Engineer in accordance with the following provisions:
    - i. If the Concessionaire disagrees with the value, cost or adjustment determined by Authority it shall give notice in writing of its intention to Authority, as soon as may be reasonable and in any event within 7 (seven) days after receipt of notice of the value, cost or adjustment and thereafter within a further period of 7 (seven) days to notify the Independent Engineer of such dispute.
    - ii. The Independent Engineer upon receipt of a notice under this Article shall require the Authority to furnish to the Independent Engineer all the reasons, records and documents based upon which Authority had determined the value, cost or adjustment.
    - iii. The Concessionaire shall permit the Independent Engineer to inspect all records and shall supply him with copies thereof and with all such further information as and when the Independent Engineer shall so require.
  - c. In the event of a dispute arising in the period beyond the tenure of the Independent Engineer under Article 28, the duties of the Independent Engineer (in respect of operation of this Article) shall be carried out by an Expert appointed by the Maintenance Board.
  - d. Excepting Termination Payments or else as expressly provided for in this Concession Agreement, any payments to the Concessionaire by the Authority shall be made only through the mechanism of adjustment to the Concession Period.

## ARTICLE 8: OBLIGATIONS OF THE CONCESSIONAIRE

### 8.1 General Obligations

- a. The Concessionaire shall observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Concession, the following:
  - i. Take over the possession of the Project Site from the Authority, provided it is being delivered in accordance with the provisions of Article 4.1 and safeguard and use the Project Site solely for the purpose of discharging its obligations under this Concession Agreement;
  - ii. Obtain any and all permits, necessary approvals, clearances and sanctions from the Competent Authority, for building plans, infrastructure facilities including power, water supply, drainage & sewerage, fire fighting, telecommunications etc, as and when they may be required, for the Concessionaire and its employees to perform their obligations under this Concession Agreement;

- iii. Comply and observe at all times with all Applicable Permits, approvals and applicable laws, norms/ standards in the performance of its obligations under this Agreement including those being performed by any of its Contractors;
- iv. Submit, 2 (two) copies each (soft/ hard) of the detailed design, including Architectural Plans, Structural Drawings, all internal and estate services of the Project to the Authority;
- v. Make arrangements and procurement of firm commitment for financing the Project and achieve Financial Closure and deliver complete evidence to the Authority that Financial Closure has been accomplished, within a period of 90 days from the date of signing of this Concession Agreement. As and when these documents are approved by the Lenders, with or without modifications, true notarized copies of the Financing Package, Financing Documents & the Financial Model shall be furnished by the Concessionaire to the Authority forthwith. The soft copy of the Financing Package, Financing Documents & the Financial Model shall also be provided.
- vi. Carry out the Works strictly in accordance with the provisions of this Concession Agreement, the Technical Requirements, Performance Standards, the Project Implementation Schedule and the Schedules of this Concession Agreement, and all works not mentioned in this Concession Agreement but which may be inferred to be necessary for safe, reliable and efficient construction and operation of the Works;
- vii. Undertake to complete the construction within the specified Construction Period, provided that the Concessionaire shall not be in breach of this Article 8.1(a)(vii) if any non-fulfillment or the delay in fulfillment of its obligation are caused by (i) the occurrence of an event of Force Majeure or (ii) any other act or omission of the Authority in contravention of its obligations under this Concession;
- viii. Furnish the Authority with the “As Built Drawings” of the Project within 30 (thirty) days of the completion of the Construction of the Project;
- ix. Ensure that the commercial area has been constructed at the Project Site as per conceptual plans;
- x. Ensure that the Ecotourism & Adventure Park shall be used for the intended purpose only as agreed between the Parties.
- xi. Shall have the right to sub-licence the use of commercial area of the Project, during the subsistence of this Concession Agreement only with a clear stipulation that sub-licence granted shall terminate simultaneously with the termination of this Concession Agreement including any sooner determination of the Concession Period for any reason whatsoever. All contracts, agreements or arrangements with sub-licensees shall specifically stipulate this covenant of termination of the sub- licence rights and further that the sub- licensee shall not have any claim whatsoever against the Authority for any such termination. The Concessionaire shall prepare a draft standard format of the sublicense arrangement/ agreement which the Concessionaire will be required to sign with the sub- licensee for the use of the commercial area of the Project. The Concessionaire shall

furnish the draft of such agreement/ arrangement to Authority for its approval. The Authority shall be entitled to incorporate such clauses as Authority may consider appropriate to protect Authority's interest. The Concessionaire shall enter into sub-licence arrangements as per the standard format with the covenants stipulated by the Authority with Authority as the Confirming Party to the same and the Concessionaire shall not incorporate or bring change in any clause in the arrangement/agreement that would have adverse effect on the covenants incorporated by the Authority. In case of any deviation from the above mentioned standard draft of the agreement in any particular circumstances, which supersedes or adversely effects Authority's terms and covenants, the prior written consent of Authority shall be taken before entering into any such agreement with sub-licencees.

- xii. Ensure that the sub-licence agreement/arrangement shall be maximum for a period of 3 years at a time. Pursuant to the expiry of 3 years, the sub-licence agreement may be renewed.
- xiii. Shall ensure that the use of the Project Site is restricted to the Article 2 (Scope of Work).
- xiv. Carry out its obligations/duties with regard to the operation and maintenance of the Project in accordance with the Schedules to this Concession Agreement. The obligations shall include all work which is necessary to satisfy the Schedules, Technical Requirements and Performance Standards or is implied by this Concession Agreement, or arises from any obligation of the Concessionaire, and all duties not mentioned in this Concession Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project;
- xv. Operate and maintain the Project and all its components, including maintaining necessary records, for the periods stipulated herein after, as per the Technical Requirements and Performance Standards set out, and shall remedy any defects within the Concession Period. The Concessionaire shall provide all superintendence, labour, plant, materials, equipment, and all such other things for such operation (including fee collection) and maintenance (including remedying of defects).
- xvi. Be responsible from the date of issue of "Notice to Commence" for all liabilities arising out of construction, design, operation and maintenance of the Project.
- xvii. Take full responsibility for the adequacy, stability and safety of all Project Site operations, of all methods of construction, operation and maintenance of the Project, irrespective of any approval or consent by Authority.
- xviii. Submit to the Authority certified true copies of each of the Project Agreements and any further replacement, amendment or modifications within 7 (seven) days of their execution.
- xix. To be responsible for safety, soundness and durability of the Project, including other structures, services forming part thereof and their compliance with the local building byelaws.

- xx. To ensure that no structural damage is caused to the existing building(s) and other permanent structures at the Project Site as a result of Concessionaire's activities or any of its agents, contractors, tenants etc.
- xxi. Submit "Structural Safety Certificate" of the proposed Ecotourism & Adventure Park from competent structural engineer before the commencement of commercial activities. The Concessionaire shall ensure that the certificate is also counter certified/ signed by the Independent Engineer.
- xxii. To pay at its own cost all applicable existing and future taxes/ charges/ fees/ levies including the property tax, services tax, stamp duty, registration charges and any other legal documentation charges, if any, in respect of the said Ecotourism & Adventure Park, including Project Site, as leviable.
- xxiii. To duly supervise, monitor and control the activities of Contractors, subcontractors, their employees and agents under their respective Project Agreements as may be necessary.
- xxiv. To ensure harmony and good industrial relations amongst the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement.
- xxv. To obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice.
- xxvi. To take all reasonable precautions for the prevention of accidents on or about the Ecotourism & Adventure Park/Project Site and provide all reasonable assistance and emergency medical aid to accident victims.
- xxvii. Not to permit any contractor, sub-contractors or other person, claiming through or under the Concessionaire, to create or place any Encumbrances or security interest over all or any part of Project Site or the Project Assets or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly permitted in this Agreement.
- xxviii. To ensure that such Project Site remains free from all encumbrances, encroachments and trespass during the entire Concession Period.
- xxix. To provide all assistance to the Independent Engineer/ expert/ independent auditor/ arbitrator as it may require for the performance of their duties and services.
- xxx. At all times, to afford access to the Project Site to the authorized representatives of Authority, Lenders, other persons duly authorized by any Governmental Agency having jurisdiction over the Project, to inspect the Ecotourism & Adventure Park and to investigate any matter within their authority and upon reasonable notice.
- xxxi. To remain solely and primarily responsible to Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives and further on behalf of the sub- licencees, their employees and agents and any person acting under or for and on behalf of the Concessionaire or the sub-licencees, the sub-contractor as fully as if



- they were the acts or defaults of the Concessionaire, its agents or employees.
- xxxii. To remain liable for and to indemnify, protect, defend and hold harmless Authority, Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Concessionaire to discharge its obligations under this Article and to comply with the provisions of Applicable Laws and Applicable Permits.
- xxxiii. To acknowledge and recognize that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly.
- xxxiv. To remain at all times, responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- xxxv. The Concessionaire may undertake development of Project by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the scope of work as mentioned in this Agreement.
- xxxvi. The Concessionaire shall make timely and due payment of the ACF at all time during the Concession period.
- xxxvii. The Concessionaire shall timely furnish the Performance Security/O&M Security as per the terms of the Concession Agreement.
- xxxviii. The Concessionaire shall timely make good the shortfall in the Performance Security/O&M Security.

## 8.2 Minimum Equity requirements

a. The aggregate shareholding of the Consortium Members (in case of Consortium) or Associate/s (in case of Individual Bidder) in the issued and paid up equity share capital of the Concessionaire (*here the term "Concessionaire" connotes the special purpose company as formed by the Consortium Members or the individual Bidder*) shall be not less than:

- (i) 100% for a period of two years from the Commercial Operation Date of the Project or issuance of Construction Completion Certificate (i.e. the Lock in Period);
- (ii) 26% till the Transfer Date/issuance of Concession Agreement Completion Certificate.

b. It is pertinent to note here that in case of Consortium, the Lead Member of the Consortium and the Technical and O & M member shall maintain a minimum equity component of 26% each in the stipulated issued and paid up equity share capital of the Concessionaire as specified under Article 8.2(a)(i) at all time during the Lock in Period while the Lead Member shall continue to maintain the equity shareholding of 26% in the issued and paid up capital of the Concessionaire at all time till the Transfer Date/issuance of Concession Agreement Completion Certificate.

This holds for the single entity bidder also and hence no Bidder who has 100% equity in the Project can dilute it to a level below 100% at any time during the Lock in Period. Remaining stake can be diluted as per the provisions of Article 8.2(a)(ii).

c. At no stage shall any change in the Equity Components/ shareholding patterns be made by the Consortium Members or by any of the Associates without obtaining prior approval from the Authority. On an application made for the purpose, Authority may permit the change of Equity Components/ shareholding patterns, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority. However, no such change in the Equity Components/ shareholding pattern shall be permitted by Authority, which would make the Consortium Members or Associates or the Concessionaire non-compliant with Articles 8.2(a) and 8.2(b) above.

d. In case any such change in composition of Consortium has been agreed upon, the modified Consortium would be required to submit a revised Memorandum of Understanding to the Authority.

### **8.3 Information Regarding Project Site**

a. The Concessionaire reaffirms and assumes responsibility for all the data and designs, including survey, soil and water test, tourist data and projections and other data used in formulating its Bid/ Proposal.

b. The Concessionaire shall be deemed to have inspected and examined the Project Site before submitting the Proposal, as to:

i) The form and nature of the Project Site, including the Project Site levels conditions, adjoining water bodies, local habitats etc.;

ii) The extent and nature of the work and materials necessary for the execution and completion of the works and the remedying of any defects;

iii) The means of access to the Project Site and the accommodation required for labour camps, installation of equipment, etc;

iv) Availability of building materials, water, power etc;

v) The requirements of operation and maintenance;

vi) Any other existing condition, which has a bearing on the working conditions during construction, operation and maintenance periods.

c. The Concessionaire shall, by submitting its Proposal/ Bid, be deemed to have carried out such due diligence, inspection, etc and the Concessionaire assumes full responsibility for the data in its Bid/ Proposal and confirms that its designs reflect the representative nature of the data, applied with sound engineering judgment, consistent with Good Industry Practices. The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances, which may influence or affect the Proposal.

### **8.4 Sufficiency of Concession Period**

The Concessionaire shall be deemed to have satisfied itself as to the correctness and sufficiency of the Concession Period. Unless otherwise stated in this Concession Agreement, the Concession Period shall cover all

its obligations under this Concession Agreement and all things necessary for the execution and completion of the Works and the remedying of any defects during the construction and also the subsequent Operation and Maintenance Period of this Concession Agreement.

#### **8.5 Concessionaire's Representative.**

a. The Concessionaire's Representative shall be the person named under Article 34.11 (Notifications). If at some point of time the Concessionaire is unable to provide the services of the person named as the Concessionaire's Representative, then it shall notify the Authority its reasons for this and thereafter, provide a substitute person who can be the Concessionaire's Representative.

b. The person named as the Concessionaire's Representative under this Concession Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project. Prior to appointment of the Concessionaire's Representative, the Concessionaire shall also submit the curriculum vitae of the person it proposes to appoint, detailing in particular the relevant project experience and then obtain the written consent of the Authority to the appointment of the Concessionaire's Representative.

c. The Concessionaire's Representative shall be exclusively employed or engaged by the Concessionaire to give his whole time to directing the preparation of the Construction Documents, the execution of the Works, and operation and maintenance of the Project. Except as otherwise stated in this Concession Agreement, the Concessionaire's Representative shall receive on behalf of the Concessionaire all notices, instructions, consents, approvals, certificates, determinations and other communications under this Concession Agreement. Whenever the Concessionaire's Representative is to remain absent from the Project Site for a continuous period in excess of 14 (fourteen) days, a suitable replacement Person shall be appointed with the Authority's consent.

d. The Concessionaire's Representative may delegate, while retaining his prime responsibilities, any of his powers, functions and authorities to any competent Person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Authority has received prior notice signed by the Concessionaire's Representative, specifying the powers, functions and authorities being delegated or revoked. Concessionaire's Representative shall notify to the Authority the names, duties and scope of authority of such Persons. Any instructions given to any of them shall be deemed to have been given to the Concessionaire's Representative. Any such delegation shall not relieve the Concessionaire's Representative of its obligation and duties under this Agreement.

#### **8.6 Work Programmes**

a. The Concessionaire shall prepare in consultation with the Independent Engineer and submit a Project Implementation Schedule to the Authority before the Compliance Date. The programme shall include the following:

- i) The order in which the Concessionaire proposes to carry out the Works, internal and external services (including each stage of design, procurement, manufacture, delivery to Project Site, construction, erection, testing and commissioning).
  - ii) All major events and activities in the production of Construction Documents.
  - iii) The particulars for the pre-construction reviews and for any other submissions, approvals and consents specified in this Concession Agreement.
- b. Any alternation/ revision by the Concessionaire in the Project Implementation Schedule shall be made in accordance with Article 12.5.
  - c. If the progress of the Works does not conform to the Project Implementation Schedule, the Independent Engineer may instruct the Concessionaire to revise the Project Implementation Schedule, showing the modifications necessary to achieve completion as per Project Implementation Schedule. The Independent Engineer shall record the reasons for such revision of Project Implementation Schedule.
  - d. The Concessionaire shall, whenever required by the Authority, provide in writing, for information, a general description of the arrangements and methods, which the Concessionaire proposes to adopt for the execution of the Works.
  - e. The Project Implementation Schedule shall be developed using PERT (Programme Evaluation and Review Techniques) charts showing critical activities and milestones for completion of all works and services within the stipulated time period and submitted to Independent Engineer and the Authority.

### **8.7 Total Quality Management**

- a. During the Construction Period, the Concessionaire shall adhere to the Performance Standards and Technical Requirements as mentioned in the Schedules to this Concession Agreement. Concessionaire shall maintain adherence to such Performance Standards and Technical Requirements throughout the Operation and Maintenance Period of the Project.
- b. The Concessionaire shall institute a quality assurance system that shall be followed during the Concession Period. The quality assurance system shall involve testing of materials, equipments and services to ensure compliance of laid down Performance Standards and Technical Requirements, the upkeep of suitable records, charts, samples, photographs, etc, as approved by Authority. Compliance with the quality assurance system shall not relieve the Concessionaire of its duties, obligations or responsibilities under this Agreement. The Authority reserves the right to inspect periodically or at random, the materials, works, records and documents, and to take measurements and tests. The Concessionaire shall offer full co-operation to such checks and inspections.
- c. During the Construction Period, details of all periodic tests, procedures and compliance documents shall be submitted to Independent Engineer for his information before each design and execution stage is commenced. When any document is issued to Independent Engineer, it shall be accompanied by the signed quality assurance statements for such document in a format approved by Independent Engineer. The Independent Engineer

shall be entitled to audit any aspect of the system and recommend corrective action to be taken, if any.

### **8.8 Progress Reports**

a. The Concessionaire shall prepare Monthly Reports on the progress of construction. Concessionaire shall submit one copy of the Monthly Report to the Authority and one copy of the same to the Independent Engineer. The first report shall cover the period up to the end of the calendar month in which the Compliance Date occurred. Reports shall be submitted monthly thereafter, each within 7 (seven) days of the last day of the period to which it relates. Reporting shall continue until the Concessionaire has completed all the Works and the Construction Completion Certificate is issued. Each report shall include:-

- i) An executive summary;
- ii) For the construction of each main item of the Project, the extent of progress as quantity and percent, the actual or expected dates of commencement, anticipated completion date of the activity, Concessionaire's inspections and tests;
- iii) Copies of quality assurance documents, test results and certificates of materials;
- iv) Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public in general;
- v) Comparisons of actual and planned progress, with details of any aspects which may jeopardize the completion of construction in accordance with this Concession Agreement, and the measures being (or to be) adopted to overcome such aspects; and
- vi) Details of unresolved disputes and claims, if any.

### **8.9 Coordination**

a. The Concessionaire shall be responsible for the co-ordination and proper execution of the Works and services, including co-ordination of any other Persons or Subcontractors to the extent specified in this Concession Agreement. The Concessionaire shall, upon reasonable request by the Authority, cooperate in the co-ordination of the works with the work of any other persons to whose systems the Facilities are to be connected, provided that such co-operation shall not unreasonably interfere with the carrying out of the works. The Concessionaire shall afford all reasonable opportunities for carrying out their work to:

- i) The workmen of the Authority;
- ii) Any other persons employed by the Authority and their workmen; and
- iii) The workmen of any legally constituted public authorities that may be employed in the execution on or near the Project Site of any work not included in this Concession Agreement, which the Authority may require.

### **8.10 Subcontracting**

The Concessionaire is entitled to subcontract tasks relating to its obligations and responsibilities under this Concession Agreement, including but not limited to tasks relating to construction, installation of services, maintenance and operation of the Ecotourism & Adventure Park, the

Concessionaire shall be sole and primary person responsible to the Authority for the observance of all the provisions of this Concession Agreement. The Concessionaire shall be responsible for the acts or defaults of any of its subcontractors, its agents or employees, as if they were the acts or defaults of the Concessionaire, its agents or employees. Any subcontracting shall not relieve the Concessionaire of its obligations and liabilities under this Concession Agreement.

#### **8.11 Plant and Equipment**

- a. The Concessionaire shall provide all machinery, plant and equipment necessary to complete the Works. All its Equipment shall, when brought on to the Project Site, be deemed to be exclusively intended for the execution of the works.
- b. The Concessionaire shall maintain an adequate inventory of consumable and spare parts, and undertake periodic and preventive maintenance as required for the relevant equipments. The Concessionaire shall ensure continuous work flow as required under the program. Breakdown of machinery or equipment shall not be a valid reason for any delay, extension in the Concession Period or addition of cost, towards the Project.

#### **8.12 Access for Supervision**

- a. The Concessionaire shall, at all reasonable times and on reasonable notice, afford access to the Project Site following grant of Vacant Possession thereof to the representatives of or Persons duly authorized by the Competent Authority concerned with safety, security or environmental protection to inspect the Project Site and the facilities thereon and to investigate any other matter within its authority and the Concessionaire shall further afford such Persons reasonable access to the Ecotourism & Adventure Park necessary to carry out their respective duties and functions.
- b. The Persons obtaining access to the Project Site shall conduct their operations at their own risk, cost and expenses and in such manner so as to cause minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose of the Person gaining such access.

#### **8.13 Materials of Construction**

- a. All materials used in construction shall conform to the Technical Requirements & Performance Standards mentioned in **Schedules I**. However, the Concessionaire shall have freedom to choose best quality building materials of the standard desired for a state of the art Ecotourism & Adventure Park.
- b. The Concessionaire shall at its own cost and responsibility arrange for construction materials such as bricks, cement, steel, aggregates, soil, bituminous and asphaltic materials, and any other materials and fixtures used in the works, as well as ancillary materials such as shuttering and scaffolding, bearings, joint filers and similar materials.

#### **8.14 Supply of Power, Water and Other Consumables**

a. The Concessionaire shall be solely responsible, at its own cost, for the total supply of electricity, water, fuel, consumables and any other services required for the purposes of the Works, in the Project, for the Concession Period.

b. The Authority shall if requested by the Concessionaire use all reasonable endeavors to assist the Concessionaire in obtaining the supply of such services, provided that the Concessionaire shall reimburse the Authority for the cost of providing the same and further provide that no such supply or assistance, or failure to do, by the Authority shall relieve the Concessionaire of its obligations under paragraph (a). The Authority shall notify the cost to the Concessionaire. The Concessionaire shall, at its risk and cost, provide any apparatus necessary for such determination and for its use of these services.

### **8.15 Safety**

Within 1 month from the Proposal Acceptance Date, the Concessionaire shall provide to the Authority details of its safety plans and procedures for the Works, buildings, services and construction. The Concessionaire shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. Unless otherwise stated in this Concession Agreement, the Concessionaire shall, from the commencement of work on the Project Site until the expiration of this Concession Agreement or upon termination of this Agreement, provide fencing, lighting, guarding and watching of the works and facilities. The Concessionaire shall be responsible in the operation of machinery and equipment, use of explosives and any other work and to take all precautions to ensure safety of the staff, laborers and public.

### **8.16 Environmental Measures**

a. The Concessionaire shall take all reasonable steps to protect the environment (both on and off the Project Site) and to limit damage and nuisance to people and property resulting from construction operations.

b. The Concessionaire shall ensure that surface discharges and effluent from the Project Site during the Concession Period shall not exceed the permissible limits as prescribed by law.

c. The Concessionaire shall be liable for and shall indemnify, protect, defend and hold harmless the Authority, its officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Concessionaire to discharge its obligations under this Article and to comply with the provisions of health, safety and environmental laws as applicable.

### **8.17 Hazardous Materials**

The Concessionaire shall be responsible for the removal of hazardous materials from the Project Site, and the works, in accordance with applicable Indian laws and directives and any other materials generated or released by the Concessionaire during its construction activities, which are toxic or similarly hazardous to the health or safety of persons.

### **8.18 Treasures/Fossils**

In the event of discovery by the Concessionaire or its employees during the progress of the work of any treasure, fossils, minerals or any articles of value or interest, the Concessionaire shall give immediate intimation of such treasure or things to the Authority and the same shall be a property of the Authority.

### **8.19 Project Site Clearance**

a. During the execution of the Works, the Concessionaire shall keep the Project Site free from all unnecessary obstruction and shall store its Equipment or surplus materials in a manner that causes least inconvenience or dispose of such Equipment or surplus materials. The Concessionaire shall clear away and remove from the Project Site any wreckage, rubbish or Temporary Works no longer required.

b. Within 30 (thirty) days of issue of the Construction Completion Certificate, the Concessionaire shall clear away and remove, from the Project Site, all Concessionaire's Equipment, surplus materials, wreckage, rubbish, other debris and Temporary Works. The Concessionaire shall leave such areas and works in a clean and safe condition to the satisfaction of Authority. Except that the Concessionaire shall be entitled to retain on any part of the Project Site, until the expiry of the Concession Period, such Concessionaire's Equipment, materials and Temporary Works as required by it for the purpose of fulfilling its obligations under this Concession Agreement in respect of operation and maintenance of the Project.

c. Within 30 (thirty) days of the expiry of the Concession Period, the Concessionaire shall clear away and remove, from the Project Site all the Concessionaire's Equipment, surplus material, wreckage, rubbish, other debris and Temporary Works. The Concessionaire shall leave the Project Site in a clean, functional and safe condition to the satisfaction of Authority. Provided that if the Concessionaire fails to remove, at the end of the 30 day period, any remaining Concessionaire's Equipment, surplus material, wreckage, rubbish and Temporary Works, the Authority may sell or otherwise dispose of such items at risk and cost of Concessionaire. The Authority shall be entitled to retain, from the proceeds of such a sale, or from any other amounts due to the Concessionaire, a sum sufficient to meet the costs incurred in connection with such sale or disposal. If the amounts due to the Concessionaire are insufficient to meet the Authority's costs, the outstanding balance shall be recoverable from the Concessionaire by the Authority.

### **8.20 Project Site Security**

The Concessionaire shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all Plant and Machinery, Materials, Concessionaire's Equipment and other things required for the completion of the Works, services and operation and maintenance of the Ecotourism & Adventure Park.

Unless otherwise stated in this Concession Agreement:



- i) The Concessionaire shall be responsible for keeping unauthorized persons off the Project Site and prevent encroachment on the Project Site during the Construction Period.
- ii) Authorized persons during the Construction Period shall be limited to the employees of the Concessionaire, employees of its Subcontractors and employees and persons authorized by the Concessions Authority.

### **8.21 Limitations**

- a. The Concessionaire shall not be authorized to incur any expenditure on behalf of the Authority, or to enter into any commitment as agent of the Authority, unless specifically and explicitly authorized by the Authority under the terms of this Concession Agreement.
- b. The Concessionaire shall not amend, terminate, modify or supplement any agreement on behalf of or in the name of the Authority.

### **8.22: Mutual Obligations of Parties**

Each Party shall:

- a. Comply with and perform its respective obligations under this Concession and shall work and cooperate in good faith with the other Party with respect to all the obligations and rights hereunder of the other Party.
- b. Agree to novation and modification of the Concession Agreement upon appointment of the Substitute Entity by Lender in accordance with the Substitution Agreement that will be executed between the Lenders, the Concessionaire and the Authority.
- c. Carry out their respective obligations during the Construction Period and Operation & Maintenance Period.
- d. The Parties understand that the title to and ownership of the Project Site shall at all times vest in the Authority and shall not under any circumstance whatsoever pass over or be deemed to pass over to the Concessionaire or Persons or any other Third Party claiming by, under or through the Concessionaire. The Project Assets, buildings, Works, services, utilities created by the Concessionaire shall be owned by the Concessionaire during the Concession Period and shall be transferred to the Authority upon the expiry or prior termination of the Concession Agreement.
- e. The Parties understand that the Concession granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Concession, upon the termination of this Concession Agreement for any reason whatsoever.

## **ARTICLE 9: DRAWINGS AND SPECIFICATIONS**

### **9.1 Design Obligations**

- a. The Concessionaire shall have the complete responsibility at its own cost to plan and design the Project, subject to approval of detailed design of the Concept Plan and drawings as per Building Bye Laws by the Design Approval Committee. The selection or appointment of Architect, Consulting Engineer if any, Structural Engineers for internal and estate services and other specialists and constructing agencies etc. shall be the permitted domain of

the Concessionaire. Nevertheless, the Concessionaire undertakes to submit to the Authority the names of Architects, Consulting Engineers etc and other specialists as and when required by the Authority and Independent Engineer.

b. The Concessionaire holds itself, its designers and design Sub-consultants, specialists as having the requisite experience and capability necessary for the preparation of the detailed structural design and planning and design of services. The Concessionaire undertakes that the designers/ engineers/ specialist shall be available to attend discussions with the Authority, the Independent Engineer or with members of the Maintenance Board at all reasonable times during the Concession Period.

c. The Concessionaire shall submit a “**Structural Safety Certificate**” of the proposed Ecotourism & Adventure Park from competent structural engineer before commencement of the Commercial Operations. However, the certificate shall also be counter certified/ signed by the Independent Engineer.

## 9.2 Construction Documents

a. The Concessionaire shall prepare Construction Documents in sufficient detail to satisfy all regulatory approvals, to provide suppliers and construction contractor and subcontractors sufficient instruction to execute the Works, and to describe the operation of the completed Works. The Independent Engineer and the Authority shall have the right to review and inspect the Construction Documents.

b. Each of the Construction Documents shall, when considered ready for use, be submitted to the Independent Engineer and the Authority for preconstruction review. In this Article, “**Review Period**”, means the period required by Independent Engineer and the Authority, which unless otherwise stated shall not exceed 21 (twenty one) days, calculated from the date on which the Independent Engineer receives the Construction Documents and the Concessionaire's notice that it is considered ready, both for a pre-construction review in accordance with this Article, and for use. If the Independent Engineer, within such Review Period, notifies the Concessionaire that a Construction Document fails (to the extent stated) to comply with some Technical Requirements, it shall henceforth be rectified, resubmitted and reviewed in accordance with this Article, at the Concessionaire's cost.

c. For each part of the Works, and except to the extent that the prior consent of Independent Engineer shall have been obtained:

(i) Construction shall not commence prior to the expiry of Review Period for the Construction Documents, which are relevant to the design, and construction of such part;

(ii) Construction of Works, providing installation and laying of services shall be in accordance with such Construction Documents; and

(iii) If the Concessionaire wishes to modify any design or document, which has previously been submitted for such pre-construction review, the Concessionaire shall immediately notify Independent Engineer and shall subsequently submit revised documents to the Independent Engineer for pre-construction review.

d. If Independent Engineer instructs that further Construction Documents are necessary for carrying out the Works, the Concessionaire shall, upon receiving Independent Engineer's instructions, prepare such Construction Documents.

e. Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the Construction Documents and the Works that have been implemented following the defective Construction Documents shall be rectified by the Concessionaire at its own cost.

f. No comment made by Independent Engineer in relation to or any failure to comment on the Construction Documents within the Review Period shall constitute approval of such documents.

g. Review of the Construction Documents by Independent Engineer shall neither relieve the Concessionaire of its obligations, responsibilities and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner whatsoever.

### **9.3 Design Warranty**

The Concessionaire warrants to the Authority that the Works, services, facilities, infrastructure will be designed, constructed, tested and commissioned as per Performance Standards and that it will otherwise perform its obligations under this Concession Agreement:-

i) Using all due skill, care and diligence expected of a Concessionaire in executing a work of this nature and magnitude;

ii) In a proper workmanlike and careful manner with properly equipped facilities and non-hazardous materials and in accordance with Good Industry Practices;

iii) So that the Works when completed shall be in accordance with Performance Standards and all relevant requirements of this Concession Agreement unless agreed otherwise in writing by the Authority;

iv) So that the Works when completed shall be capable of being used, operated and maintained in accordance with the requirements of the Project and Good Industry Practices;

v) So that the Works when completed shall comply with the provisions of any Applicable Laws in effect during the Concession Period; and

vi) There shall be no design defects in the structure and serviceability of the Project for the duration of the Concession Period.

### **9.4 Technical Requirements/ Performance Standards**

a. The structural design of buildings, design of internal and estate services/ utilities/ infrastructure, the Construction Documents, the execution, the completed Works and services, the operation and maintenance shall comply with technical standards and specifications, building bye laws, construction and environmental regulations, regulations applicable to the Project or its components, Good Industry Practices and the minimum Performance Standards specified in the Schedules and the Technical Requirements or as defined by law. References in this Concession Agreement to Technical Requirements, building bye laws, construction and environmental regulations, regulations applicable to the Project or its components and Good Industry Practices shall be understood to be references to the edition

applicable on the Proposal Acceptance Date, unless stated otherwise. If substantially changed or new applicable Technical Requirements or regulations come into force after the Proposal Acceptance Date, the Concessionaire shall submit amended proposals for compliance with such new standards/ requirements to the Independent Engineer. In the event that the Independent Engineer determines that such proposals are found necessary, expedient and warranted, it shall treat this as a Variation, and then intimate the Authority within 42 (forty two) days of receipt of the amended proposals to initiate a Variation in accordance with Article 18.

b. The Concessionaire shall be liable for and shall indemnify, protect and hold harmless at all times, the Authority, the Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the Concessionaire's failure to comply with the applicable laws in relation to execution of Works and construction, operation and maintenance of the Ecotourism & Adventure Park.

### **9.5 Test Certificates and Samples**

The Concessionaire shall submit the following samples and relevant information to Independent Engineer and Authority before its use in the Construction or Maintenance of the Project:-

- i) Manufacturer's standard samples of Materials;
- ii) Samples (if any) specified in the Authority's and Independent Engineer's requirements;
- iii) Samples (if any) specified by the Concessionaire, to be of best quality;
- iv) Additional samples instructed by the Authority or the Independent Engineer;
- v) Each sample shall be labeled as to origin, make and manufacturer and its intended use; and
- vi) Test certificate or samples for building materials such as cement, steel, bituminous materials, or any other materials proposed to be used.

### **9.6 Execution Drawings**

The Concessionaire shall prepare and keep up-to-date, a complete set of "Execution" records of the execution of each section of the Works, showing the exact locations, sizes and details of the Works, internal and estate services/ utilities/ infrastructure as executed with cross references to all relevant requirements and data sheets. These records shall be kept on the Project Site and shall be used exclusively for the purposes of this Article. The Concessionaire shall prepare and submit to the Authority and the Independent Engineer one copy each of the Execution drawings for inspection. The Concessionaire shall obtain the consent of Independent Engineer as to their size, the referencing system, and other pertinent details. However, it shall neither relieve the Concessionaire of its obligations and liabilities under this Agreement nor shall the Independent Engineer or the Authority be liable for the same, in any manner whatsoever.

### **9.7 Final Drawings**

- a. The Concessionaire shall submit to the Authority and the Independent Engineer one detailed and legible copy each of “Final” records and drawings of the execution of each section of the Works, showing the exact final locations, sizes and details of the Work as executed and completed with cross references to all relevant requirements and data sheets.
- b. The Concessionaire shall ensure that the Authority has the right to use and protect the design from infringement and to further enforce such right against any person, in accordance with the terms of this Concession Agreement.
- c. This Article shall also be applicable if any new Works, strengthening, rehabilitation of any part of the Ecotourism & Adventure Park are carried out during the Operation and Maintenance Period. The Concessionaire shall keep one set of Final Drawings at Project Site for the entire Concession Period.

### **9.8 Patents/ Copy Right**

If the Concessionaire desires to use any designated device, materials or any process covered by letters of “Patents” or “Copyrights”, the right for such use shall be secured by the Concessionaire by suitable legal arrangements and agreements with the Patents’ owner. A copy of the agreement shall be filed with the Authority.

### **9.9 Levies**

Except where otherwise stated in this Concession Agreement, the Concessionaire shall pay all tonnage, levies, cess, royalties, rent and other payments or compensation, if any, for Plant and Machinery or other materials required for the Works.

## **ARTICLE 10: LABOUR**

The Concessionaire shall be solely responsible for the liability, cost and responsibility for all the laws relating to labour employed by Concessionaire and for their conditions under this Article.

### **10.1 Engagement**

The Concessionaire shall make its own arrangements for the engagement of all its staff and labour, local or otherwise and for their payment, housing, feeding and transport.

### **10.2 Information on Labour and Equipment**

The Concessionaire shall furnish, if required by the Authority or the Independent Engineer, a detailed return in such form and at such intervals as may be prescribed, showing the details of the labour, plant and equipment deployed on the Project Site by the Concessionaire.

### **10.3 Labour Laws**

The Concessionaire shall ensure that all labour laws, rules and regulations will be followed and the Concessionaire shall be the primary employer of labour employed by it for the Project. The Authority or any of its officers, employees, representative shall in no way be responsible for any of the

obligations, whether statutory or otherwise, towards any of the employees hired by the Concessionaire in relation with the Project.

## **ARTICLE 11: MATERIALS AND WORKMANSHIP**

### **11.1 Execution**

All Works shall be executed in the manner set out in this Concession Agreement. Where the manner of execution is not set out in this Concession Agreement, the Works shall be executed under the instructions of the Independent Engineer during the Construction Period and the Authority during the Operation and Maintenance Period, in a proper, workmanlike and careful manner and as per Good Industry Practice, with properly equipped facilities and non-hazardous materials.

### **11.2 Inspection**

- a. The Authority and Independent Engineer shall be entitled, during fabrication, construction or preparation at any places where Works are being carried out, to inspect, examine and test the materials and workmanship, and to check the progress thereof of all Works under this Concession Agreement. The Concessionaire shall give the Authority and Independent Engineer full opportunity to inspect, examine, measure and test any Works on Project Site or wherever being carried out.
- b. The Concessionaire shall give due notice to Authority and Independent Engineer whenever such Work is ready. The Independent Engineer and the Authority shall then respond to the Concessionaire with its intention to either carry out the inspection, examination, measurement or testing within 14 (fourteen) days, or notify that it is considered unnecessary. If the Concessionaire fails to give such notice, it shall, when required by the Independent Engineer, uncover such work and thereafter reinstate and make good at Concessionaire's own cost.
- c. If the Independent Engineer or the Authority fails to respond to the Concessionaire's notice within 14 (fourteen) days of receiving the notice, it shall be deemed to imply that they do not consider it necessary to inspect the Works mentioned in the notice.

### **11.3 Testing during Construction Period**

- a. If the Authority or the Independent Engineer requires Tests at any time during the Construction Period, the Concessionaire shall provide all documents and other information necessary for testing and other such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as are necessary to carry out such tests efficiently. The Concessionaire shall provide engineering support and technical know-how as the Authority or the Independent Engineer shall reasonably request for the purpose of the Tests.
- b. The Concessionaire shall provide sufficient and suitably qualified and experienced staff to carry out such Tests. The Independent Engineer and the Authority shall attend all such Tests.

c. If Independent Engineer and Authority do not attend at the time and place agreed the Concessionaire may proceed with the Tests, unless the Independent Engineer or Authority instructs the Concessionaire otherwise. In such a situation, such Tests shall be deemed to have been made in the presence of the Authority and the Independent Engineer.

d. The Concessionaire shall promptly forward to the Independent Engineer and the Authority duly certified reports of the Tests. If the Independent Engineer has not attended the Tests, he shall accept the readings as accurate. When the specified Tests have been passed, Independent Engineer shall endorse the Concessionaire's Test certificate, or issue a confirmation to it to that effect and intimate Authority forthwith.

e. The Authority is entitled to insist for the Concessionaire to carry out any Tests of any type, as it deems fit. If such Tests are not in accordance with general Good Industry Practices, then the Authority may carry out the tests and the Cost of which shall be borne by the Concessionaire.

#### **11.4 Rejection**

a. If, as a result of inspection, examination or testing under Article 11.3, the Independent Engineer decides that any plant, materials, design or workmanship is defective or otherwise not in accordance with this Concession Agreement, the Independent Engineer may reject such plant, materials, design or workmanship and shall notify the Concessionaire within 7 days recording clearly his reasons thereof.

b. The Concessionaire shall then, within the time permitted by the Independent Engineer, make good the defect and ensure that the rejected item or work complies with this Concession Agreement. If Independent Engineer requires such plant, materials, design or workmanship to be re-tested, all such Tests shall be repeated under Articles 13.3 at the cost of the Concessionaire.

#### **11.5 Ownership**

Each item of Plant and Machinery and the Materials shall be the property of Concessionaire till the expiry of the Concession Period or upon the premature termination of this Concession Agreement. The Concessionaire shall assume full responsibility for the Plant and Machinery, Materials and Works at the Project Site.

## **ARTICLE 12: COMMENCEMENT TIME AND DELAYS**

### **12.1 Commencement**

a. The rights and obligations of the Parties under this Concession Agreement shall commence from the Proposal Acceptance Date. Any Works of whatever nature, which the Concessionaire elects to carry out prior to the Proposal Acceptance Date including investigations, surveys, design, etc shall be entirely at the risk and Cost of the Concessionaire.

b. The Concessionaire shall not be permitted to commence work on any part of the Project Site prior to the issuance of the "Notice to Commence" under Article 4 of this Concession Agreement.

c. Any delay on the part of the Authority (unless such delay is contributed by the Concessionaire) in the completion of the Conditions Precedent shall be deemed to be a delay in commencement of the Project.

### **12.2 Time for Completion**

The development of the Ecotourism & Adventure Park shall be in accordance with the “**Time for Completion of Construction**”, provided that this period, as stated, may be extended in accordance with Articles 12.4 and 12.5.

### **12.3 Delays Caused by Competent Authorities**

If the following conditions apply:-

- (i) The Concessionaire has diligently followed the procedures laid down by the Competent Authorities and under Applicable Laws, and
- (ii) The Competent Authorities delay, impede or prevent the Concessionaire from complying with the Time of Completion of Construction or any revision thereof;

then any such delay will be considered as a cause of delay giving an entitlement to extension of time under Article 12.4.

### **12.4 Extension of Time**

a. The Concessionaire may apply for an extension of the Time for Completion of Construction if it is or will be delayed either before or after the Time for Completion of Construction, by any of the following causes:-

- i) A Variation;
- ii) A Force Majeure event;
- iii) A cause of delay giving an explicit and express entitlement to extension of time under any Articles in this Concession Agreement, unless the Concessionaire has not complied with such Article;
- iv) Any delay, impediment or prevention by the Authority;
- v) Any delay caused by Competent Authorities under Article 12.3 above. *Provided* that the Concessionaire shall at all times use its best endeavors to minimize any delay in the performance of its obligations under this Concession Agreement, whatever may be the cause of such delay.

b. If the Concessionaire intends to apply for an extension of the Time for Completion of Construction, the Concessionaire shall give notice to Independent Engineer and Authority of such intention as soon as possible and in any case within 28 (twenty eight) days of the start of the event giving rise to any such delay, together with any other notice required by this Concession Agreement and relevant to such cause. Any such notice shall state the extent of the actual and anticipated delay and its anticipated effect on the Time for Completion of Construction, and shall specify the steps the Concessionaire proposes to take to minimize such delay. The Concessionaire shall keep such records as may be necessary to substantiate any application, either on the relevant Project Site or at another location acceptable to Independent Engineer and Authority, and such other records as may reasonably be requested by Authority and Independent Engineer. The Concessionaire shall provide and permit Authority and the Independent Engineer to inspect all such records.

c. Within 28 (twenty-eight) days of the first day of such delay (or such other period as may be agreed by Authority), the Concessionaire shall submit full



supporting details of its application. Except that, if the Concessionaire cannot submit all relevant details within such period because the cause of delay continued for a period exceeding 7 (seven) days, the Concessionaire shall submit interim details at intervals of not more than 28 (twenty-eight) days (from the first day of such delay) and full and final supporting details of its application within 21 (twenty-one) days of the last day of delay.

d. Provided that the Concessionaire has complied with this Article, the Authority shall proceed in accordance with Article 7.3 to determine either prospectively or retrospectively such adjustment as may be due, taking into account all relevant circumstances. Authority shall notify the Concessionaire accordingly. When determining each extension of time, Authority shall review its previous determinations and may revise, but shall not decrease, the extension, and provided that the extension of time is not a consequence of any negligence, default or breach of Concession Agreement by the Concessionaire or those for whom it is responsible.

e. The Concessionaire shall not be entitled to an extension of the Time for Completion of Construction, to the extent that the delay in respect of which the extension of time is requested is attributable to any negligence, default or breach of this Concession Agreement by the Concessionaire or those for whom it is responsible, as determined by the Independent Engineer.

### **12.5 Progress**

a. If at any time, the Concessionaire's actual progress falls behind the Project Implementation Schedule referred to in Article 8.6, or it becomes apparent that it will so fall behind, the Concessionaire shall submit to Authority and Independent Engineer a revised Project Implementation Schedule taking into account the prevailing circumstances. The Concessionaire shall, at the same time, notify Authority and Independent Engineer of the steps being taken to expedite progress so as to achieve completion within the Time for Completion of Construction as specified under Article 12.2.

b. If the revision of the Project Implementation Schedule is necessitated due to any default, negligence or oversight of the Concessionaire, the Concessionaire shall be responsible, to take all further steps for the rectification and revision of the programme and the underlying Works at its cost.

c. Notwithstanding anything to the contrary in this Article, a revision in the Project Implementation Schedule that results in the extension of the Time for Completion of Construction will become effective only after it has been approved in writing by the Authority.

### **12.6 Delay in Completion**

a. If the Concessionaire delays Completion of Construction beyond the Time for Completion of Construction and if in the opinion of the Independent Engineer, such delay is caused by any negligence, default, or failure of the Concessionaire, no extension of Time for Completion of Construction shall be given by the Authority. In such a case the duration of the Concession Period shall also not be adjusted and the Concessionaire shall be solely responsible for the corresponding reduction of the period for which the

Ecotourism & Adventure Park is used and any reduction in revenue as a consequence thereof.

b. In case the Concessionaire fails to complete the Works within the Time for Completion of Construction, the Authority shall issue a notice to the Concessionaire to complete the construction within such reasonable time as will be specified in the notice and shall also be asked to pay damages, as specified in Article 3.4. If the Concessionaire fails to complete construction of the Works within the time specified in the notice the Authority may proceed to terminate the Concession Agreement in accordance with Articles 22 and 23.

## ARTICLE 13: COMPLETION TESTS

### 13.1 Notice to Test

a. As soon as construction of the Works is, in the opinion of the Concessionaire, substantially complete, the Concessionaire shall so notify the Authority and the Independent Engineer that the Concessionaire is ready to conduct Tests to demonstrate that the Works have been completed in accordance with the specifications and standards and provisions of this Concession Agreement.

### 13.2 Tests on Completion

a. Before commencement of the Tests, the Concessionaire shall ensure that it has provided the Authority with all required documents under Articles 8.6, 8.7 and 8.8. The provisions of Article 11.3 shall be applicable *mutatis mutandis* to the carrying out of the Tests under this Article. The Concessionaire shall give to Authority and the Independent Engineer not less than 28 (twenty eight) days ' notice of its intent to carry out the Tests. Unless otherwise agreed, such Tests shall be carried out within 14 (fourteen) days after this date, or on such day or days as the Independent Engineer shall instruct.

b. The Tests shall include checking of construction records, documents and drawings, trial runs, checks of profiles and levels, or any other Tests that may be reasonably necessary to confirm that the Works meet the Technical Requirements/ standards. The Independent Engineer after consultation with the Authority, shall draw up a detailed list of Tests, along with the acceptable standards to be carried out by the Concessionaire and shall furnish the same to the Concessionaire within 14 (fourteen) days of the receipt of the Concessionaire's intention to carry out the Tests.

c. The Independent Engineer and the Authority shall monitor the results of the Tests to determine the compliance of the Project with the standards and Technical Requirements. The Concessionaire shall provide the Independent Engineer and the Authority with the copies of all Test data and Test results.

d. The results of the Tests on Completion shall be compiled and evaluated by the Independent Engineer. Upon the Independent Engineer determining the Tests to be successful, the Independent Engineer shall issue the Construction Completion Certificate in accordance with Article 14.1.

- e. The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion (“**Provisional Certificate**”), subject to the express approval of the Authority, if the Tests are successful and all parts of Project can be legally, safely and reliably opened for commercial operation and the commercial operations of the Ecotourism & Adventure Park may commence though certain minor and finishing works or things forming part thereof, which in the opinion of the Independent Engineer do not, in any manner whatsoever affect the safety of the Works, Ecotourism & Adventure Park or, in any material respect, the commercial operations thereof, are not yet complete. In such an event, such Provisional Certificate shall have appended thereto a list of outstanding Works items to be completed along with the duration for the completion of each activity (Check List), signed jointly by the Independent Engineer and the Concessionaire. All Check List items shall be completed by the Concessionaire within 120 (One Hundred Twenty) days of the date of issue of such Provisional Certificate. Upon completion of all Check List items to the satisfaction of the Independent Engineer, the Independent Engineer shall issue the Completion Certificate to the Concessionaire. In the event of the Concessionaire’s failure to complete the Check List items within the said period of 120 days, the Authority may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. The Concessionaire shall reimburse to the Authority on demand the entire costs incurred by the Authority in completing the Check List items within a period of Seven (7) days from the estimate of such costs being furnished to the Concessionaire by the Authority. In case of failure by the Concessionaire to reimburse this amount, the Authority shall be within its rights to curtail the Concession Period proportionate to the amount liable to be paid by the Concessionaire. Upon completion of all the Check List items to the satisfaction of the Independent Engineer, the Independent Engineer shall issue the Construction Completion Certificate in accordance with Article 14.1.
- f. If the Independent Engineer certifies that it is unable to issue the Completion Certificate or Provisional Certificate because of events or circumstances which excuse the performance of the Concessionaire’s obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.
- g. The Concessionaire shall bear all the expenses relating to Tests under this Agreement.

### **13.3 Re Testing**

If the Independent Engineer or the Authority is not satisfied with the results of any Tests, it shall within 7 (seven) days thereof notify the Concessionaire of such conclusion stating the reasons for such dissatisfaction. In such an event Article 11.4 shall apply and the Authority or the Independent Engineer may require such failed Tests and the Tests on Completion of any related work, to be repeated under the same terms and conditions.

### **13.4 Failure to Pass Tests**

a. If the Works or parts thereof, fail to pass the Tests on completion repeated under Article 13.3, the Independent Engineer shall be entitled to:

- i) Order further repetition of Tests on completion under Article 13.3, in which case the Concessionaire shall be obliged to carry out such adjustments, repairs, replacements and/or modifications as may be required to ensure that the Works or part achieve the requirements; or
- ii) Reject the Works or part (as the case may be), if the Construction Completion Certificate or the Provisional Certificate could not be issued within 90 (Ninety) days from the date the Concessionaire had notified the Independent Engineer about the actual date of the first Test pursuant hereto for reasons attributable to the Concessionaire, in which event, the Authority shall have the same remedies against the Concessionaire as are provided under Article 22.1.

## **ARTICLE 14: COMPLETION OF CONSTRUCTION**

### **14.1 Construction Completion Certificate**

a. The construction work in this Concession Agreement shall not be considered to be completed until the Construction Completion Certificate has been signed by the Independent Engineer and delivered to the Authority and the Concessionaire, stating that the Concessionaire has completed its construction obligations under the Concession Agreement to the Independent Engineer's satisfaction.

b. The Construction Completion Certificate shall be given by the Independent Engineer within 28 (twenty-eight) days after:

- (i) The Concessionaire has provided all the Construction Documents (including completion drawings) for the Works;
- (ii) The Concessionaire has remedied any defects in the Works;
- (i) The Concessionaire has completed and tested all the Works, as specified by the Independent Engineer;
- (ii) The Works as an integrated structure is in conformity with the Technical Requirements; and
- (iii) The Concessionaire has submitted "Structural Safety Certificate".

c. The Independent Engineer would be required to issue the "Construction Completion Certificate" after the construction of the Ecotourism & Adventure Park has been completed in all respect and is ready to use. However, the required documents as stated in Article 14.1 (b) shall be submitted by the Concessionaire and also, comply with all the obligations, wherein mentioned in the Concession Agreement, required to be met before and after the issuance of the Construction Completion Certificate.

### **14.2 Construction Completion Certificate not a Cessation of Liability**

The issuance of the Construction Completion Certificate under this Article shall not in any way but it shall be a milestone for reckoning the commencement of Commercial Operations and permit the Concessionaire to commence Commercial Operations of the Ecotourism & Adventure Park:

- i) Reduce or alter the liabilities of the Concessionaire;
- ii) Constitute a waiver of unfulfilled obligations;

- iii) Bar remedy and rectification of defects;
- iv) Constitute an acceptance of the Works; and

### 14.3 Rectification

If the Concessionaire is obliged to carry out adjustments, repairs, replacements or modifications after completion of construction to maintain the Works etc the Authority shall permit the Concessionaire to carry out all such adjustments, repairs, replacements or modifications as may be necessary. If the adjustment, repair, replacement or modification cannot be made without stopping the operations of the Ecotourism & Adventure Park, then such request shall only be granted if the Concessionaire's request is reasonable under all the circumstances, having regard to the Concessionaire's obligations to keep the Ecotourism & Adventure Park operation open during all permitted hours of the day.

## ARTICLE 15: OPERATIONS AND MAINTENANCE PERIOD

### 15.1 Commencement and Duration

The Operation and Maintenance Period of the Project shall commence from the date of issue of Construction Completion Certificate (**Commercial Operations Date/COD**) and in its absence, from the date of Provisional Certificate issued in terms of Article 13.2(e) above and terminate at the Transfer Date.

### 15.2 Obligations of the Concessionaire during Operations and Maintenance Period

a. During the Operations and Maintenance Period (“**Operations and Maintenance Phase**”), the Concessionaire shall be responsible for performing all the obligations and complying with the Performance Standards laid down in **Schedule I** of this Concession Agreement.

b. In the event of failure to perform the obligations or comply with the Performance Standards laid down in **Schedule I**, the Concessionaire shall be liable to a penalty which shall not exceed the Operation & Maintenance Performance Security and for the enforcement of which the Performance Security may be used. The amount of penalty payable by the Concessionaire for a default under this provision shall be determined by the Maintenance Board.

c. The Concessionaire recognizes and acknowledges the fact that the Project is intended to provide a public facility, and the Concessionaire shall have no right to prevent, impede or obstruct any bona fide visitor from using the Ecotourism & Adventure Park, save and except for regulating such usage under the terms of this Concession Agreement. Under exceptional circumstances, if the Concessionaire apprehends any detriment to the Ecotourism & Adventure Park it shall seek instructions from the Authority, whose decision in this regard shall be final.

### 15.3 Scope of Work during Operations and Maintenance Period

In addition to what is provided elsewhere in this Concession Agreement, the Concessionaire shall have the following obligations and responsibilities during the Operations and Maintenance Period:-

- a. The Concessionaire shall be responsible, at its own cost, for all the maintenance and repairs of the Ecotourism & Adventure Park and all its components, including roads, buildings, structures, all services and allied works. The Concessionaire shall also carry out rectification of any defects in the design or construction of any component of the Works.
- b. The Concessionaire shall, put appropriate danger sign boards in English, Hindi and the local language, notices and barriers as necessary in order to avoid any accidents and/or emergencies on the Project Site.
- c. The Concessionaire shall deploy adequate trained staff to manage complete operations of the Ecotourism & Adventure Park as per Performance Standards detailed in Schedules to this Agreement. The Concessionaire shall bear the entire responsibility and liability for operation of the Project.
- d. The Concessionaire shall be entitled to levy, demand, collect, retain and appropriate the Project Revenues as per the terms of this Concession Agreement.
- d. The Concessionaire shall at its cost, carry out such periodic inspections, as well as assist Authority or its nominee to carry out any (reasonable) random or periodic inspections or checks of any part or component of the Works, the cost of any Test shall be borne by the Concessionaire.
- e. The Concessionaire shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there shall be minimal disruption of the operations of the Ecotourism & Adventure Park.
- f. The Concessionaire shall ensure general upkeep of the Project Area in accordance with the development envisaged.

#### 15.4 Reporting

- a. The Concessionaire shall in consultation with the Independent Engineer prepare and evolve, not later than 28 days prior to the Scheduled Construction Completion Date, a draft Operation and Maintenance Manual (“O&M Manual”) providing the detailed plan for regular and preventive maintenance of the Ecotourism & Adventure Park. The Concessionaire shall at its cost, provide within 21 (twenty-one) days of its finalization, submit the draft of the O&M Manual to the Authority and Independent Engineer for its review. The O&M Manual will become final only after it has received the final approval of the Authority. Within a period of 30 (thirty) days from the date of receipt of the O&M Manual, the Authority shall revert to the Concessionaire with its comments and suggestions (if any) on the O&M Manual, which shall be implemented and the O&M Manual shall be re-submitted for approval of the Authority.
- b. Not later than 28 (twenty-eight) days prior to the start of each Financial Year, the Concessionaire shall provide to the Authority its proposed programme for maintenance (“Maintenance Programme”) for the said Financial Year.

c. The Concessionaire shall undertake inspection of the Ecotourism & Adventure Park, at least once every month, to determine its condition including its compliance with the standards as set out in the Schedules to this Concession Agreement and the O&M Manual. On the basis of this inspection and the activities carried out during the month, the Concessionaire shall, at its cost, prepare and submit to the Authority and Independent Engineer, 2 (two) copies of the “**Monthly Project Report**” for any calendar month within 7 (seven) days of the next calendar month. The “Monthly Project Report” shall include the following:

- i) The contract value of the works executed during the month;
- ii) Any cost variations occurring due to Change in Law;
- iii) Any other variation which may have become due in accordance with this Concession Agreement;
- iv) Any claims of the Concessionaire;
- v) A list of items requiring repair or maintenance and a maintenance plan for the next calendar month.

d. The Concessionaire shall also provide the Authority with such reports, which are required to comply with the instructions of Competent Authority or the standing procedures for any clearance, etc. The Concessionaire shall also submit to the Authority the following:

- (i) Upon obtaining knowledge thereof, any of;
  - (a) Litigation, claims, disputes or actions, threatened or pending concerning the Project;
  - (b) Refusal to grant, renew or extend, or any action threatened or pending that might affect any Clearance;
  - (c) All penalties or notices of violation issued by any Competent Authority.
- ii) Information concerning new or significant aspects of the Project, including any material complaint about the Facilities from any person;
- iii) If the Authority, acting reasonably, requests a report or document about any information regarding the Facilities, the Concessionaire shall prepare a draft of such document within any reasonable time limit prescribed.

f. The Authority may from time to time specify any changes in the formats or periodicity for any reports.

g. The Concessionaire shall be liable for and shall indemnify, protect, defend and hold harmless, the Authority, the Authority's officers, employees and agents from any liability, costs, expenses, settlements and judgments arising out of any failure to prepare and submit reports in accordance with the requirements of law, directive or clearance.

### **15.5 Books and Records**

The Concessionaire shall, at its cost:-

- i) Prepare and maintain, in a format approved by the Authority, and on generally accepted Indian accounting principles, proper, accurate and complete books, records and accounts of all transactions related to the Project.
- ii) Provide to the Authority or persons notified by it, access to such records and accounts;

- iii) Deliver to the Authority annual audited accounts of the Concessionaire for the Project within 180 (one hundred and eighty) days of close of each Financial Year.
- iv) Retain and store on the Project Site for a period of ten years all records relating to the Project, which shall be the property of the Authority.
- v) Provide support to the Authority to meet all the data requirements of all competent authorities.

#### **15.6 Cost of Remedying Defects**

- a. If any defect appears or damage occurs to the Project or any part thereof, the Authority shall promptly notify the Concessionaire in writing and the Concessionaire shall execute all work of amendment, reconstruction and remedying defects, imperfections or other faults or damages, as may be instructed by the Authority.
- b. If in the reasoned decision of the Authority, the defects are due to:-
  - (a) The design of the Works,
    - i. Plant and Machinery, Materials or workmanship not being in accordance with this Concession Agreement; or
    - ii. Failure by the Concessionaire to comply with any of its other obligations,All works shall be executed by the Concessionaire at its own cost.
- c. If such necessity is due to any other cause, Authority shall notify the Concessionaire accordingly and seek agreement to an adjustment and Article 18 shall apply to such work. In the event that Concessionaire requires an extension of time to carry out the rectification of such defects the provisions of Article 12.4 shall apply.

#### **15.7 Subsequent Tests**

If the remedying of any defect or damage is such that it may affect the efficiency or performance of the Works, the Authority may require the Concessionaire to carry out at the Concessionaire's cost such Tests as necessary. The requirement for such Tests shall be notified within 28 (twenty-eight) days after the defect or damage is remedied.

#### **15.8 Failure to Remedy Defects**

- a. If the Concessionaire fails to remedy any defect or damage within a reasonable time, the Authority may fix a date on or by which to remedy the defect or damage, and give the Concessionaire reasonable notice of such date. If the Concessionaire fails to remedy the defect or damage by such date, the Authority may (at its sole discretion):-
  - i) Carry out the work itself or by others, in a reasonable manner and at the Concessionaire's cost, but the Concessionaire shall have no responsibility for such work. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 60 (sixty) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account including recovery from the Performance Guarantees; or
  - ii) If the defect or damage is such that the Authority has been deprived of substantially the whole of the benefit of the Works, it may terminate this



Concession Agreement but without relieving the Concessionaire of liability for breach of this Concession Agreement.

### **15.9 Accidents**

a. In the event of an accident, the Concessionaire shall, by most expeditious means, inform the concerned Civil and Police Authorities and also the Authority. The Concessionaire's responsibilities with regard to the operation of the Project shall in no way be diminished by informing the above officials, as it shall be required to take expeditious action for the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Concessionaire shall preserve the Project Site of such accident intact, until completion of all legal formalities. The Concessionaire shall then arrange for the expeditious removal of the wreckage or debris and for cleaning the Project Site. If any portion of the Ecotourism & Adventure Park suffers any damage, the Concessionaire shall, with the consent of Authority, arrange for the repair and rectification thereof.

b. The Concessionaire shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices). Except when the cause of the accident is attributed to any act or negligence of the Authority, any expenditure in connection with an accident shall be compensated to the Concessionaire in accordance with Article 7.3.

c. Any communication to the news media made by the Concessionaire shall provide only enough information to satisfy public concern and the Concessionaire shall neither make any admissions nor accept any liability in any such communications.

## **ARTICLE 16: CONCESSION AGREEMENT COMPLETION CERTIFICATE**

### **16.1 Concession Agreement Completion Certificate**

(a) Within 90 (ninety) days of the end of the Concession Period, Authority shall issue the "Concession Agreement Completion Certificate", which concludes the Concessionaire's liability under this Concession Agreement. This certificate shall be issued after the Concessionaire submits to Authority, a request for issue of such certificate. The form shall be as approved by Authority, and shall include a detailed condition survey of the Ecotourism & Adventure Park.

(b) Within 15 days of the expiry of the Concession Period, the Concessionaire shall prepare a detailed inventory of all movable and immovable properties forming part of the Ecotourism & Adventure Park and submit the same to the Authority.

(c) The remaining Performance Security furnished by the Concessionaire shall be released only after the issuance of the Concession Agreement Completion Certificate.

## ARTICLE 17: REPRESENTATIONS AND WARRANTIES

### 17.1 Representations and Warranties of the Concessions Authority

The Authority represents and warrants to the Concessionaire that:

- (i) The Authority has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;
- (ii) The Authority has taken all necessary actions to authorize the execution, delivery and performance of this Concession Agreement;
- (iii) This Concession Agreement constitutes a legal, valid and binding obligation enforceable against the Authority in accordance with the terms hereof;
- (iv) The Authority is subject to civil and commercial laws of India with respect to this Concession and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Concession Agreement;
- (v) The Authority has good and valid right to the Project Site, and has power and authority to grant a license in respect thereto to the Concessionaire;
- (vi) The Concessionaire shall have complete, lawful and uninterrupted Vacant Possession of the Project Site in accordance with this Concession Agreement;
- (vii) There is no litigation, claim, demand or any proceeding pending before any authority in respect of the Authority's title to or possession of the land constituting the Project Site;
- (viii) All information provided by the Authority in the Bid Documents in connection with the Project is to the best of its knowledge and true and accurate in all material respects; and
- (ix) The Authority has the financial standing and capacity to perform its obligations under the Concession Agreement.

### 17.2 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- ii) It has full power and authority to execute, deliver and perform its obligations under this Concession and to carry out the transactions contemplated hereby;
- iii) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Concession Agreement;
- iv) It has the financial standing and capacity to undertake the Project;
- v) This Concession constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- vi) It is subject to civil and commercial laws of India with respect to this Concession and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- vii) All the information furnished in the Concessionaire's Proposal is, and shall be, true and correct as on the Proposal Acceptance Date and the Balance Sheet and Profit and Loss Account of the Concessionaire for each of

the Financial Years after the Proposal Acceptance Date furnished to the Authority shall give true and fair view of the affairs of the Concessionaire;  
viii) It shall furnish a copy of the audited accounts of the Concessionaire within 180 (one hundred and eighty) days of the close of each Financial Year after the Proposal Acceptance Date and any material change subsequent to the date of such accounts shall be notified to the Authority by the Concessionaire within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;

ix) The execution, delivery and performance of this Concession Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, 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;

x) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Concession or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Concession Agreement;

xi) The Concessionaire 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 Competent Authority which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Concession Agreement;

xii) The Concessionaire has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Concession Agreement;

xiii) The aggregate equity share holding of the Consortium Members and their Associates (in case of a Consortium) or equity share holding of the Associates (in case of individual bidder) in the issued and paid up equity share capital of the Concessionaire are and shall remain in accordance with the requirements stipulated in Article 8.2;

xiv) Each Consortium Member was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Concessionaire entering into this Concession and has agreed to and unconditionally accepted the terms and conditions set forth in this Concession Agreement;

xv) All rights and interests of the Concessionaire in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims, and encumbrances without any further act or deed on the part of the Concessionaire or the Authority and that none of Project Assets

including materials, supplies or equipments forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Concession Agreement;

xvi) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority, or to any Competent Authority in relation to clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

xvii) The Concessionaire warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of commission or otherwise for securing the Concession or entering into of this Concession Agreement or for influencing or attempting to influence any officer or employee of the Authority.

### **17.3 Obligation to Notify Change**

In the event that any of the representations or warranties made/ given by the Concessionaire ceases to be true or stands changed, it shall promptly notify Authority of the same.

## **ARTICLE 18: VARIATIONS**

### **18.1 Initiated by the Concessions Authority**

a. Variations may be initiated by the Authority at any time during the Concession Period, either by instruction or by a request for the Concessionaire to submit a proposal. The Concessionaire shall not make any alteration or modification of the Works, unless and until Authority instructs or approves a Variation. If the Construction Documents, Works or Operation and Maintenance Procedures are not in accordance with this Concession Agreement, the rectification, repair or remedy thereof shall not constitute a Variation.

b. If Authority requests a proposal, prior to instructing a Variation, the Concessionaire shall submit as soon as practicable:

i) A description of the proposed design or work to be performed and a programme for its execution.

ii) The Concessionaire's proposal for any necessary modifications to the Project Implementation Schedule according to Article 8.6 and,

iii) The Concessionaire's proposal for adjustment to the Concession Period, Time for Completion of Construction and/ or modifications to this Concession Agreement.

c. Authority shall, as soon as practicable after receipt of such proposals, respond with approval, rejection or comments. If Authority instructs or approves a Variation, it shall proceed in accordance with Article 7.3 to agree or determine adjustments to the Concession Period.

### **18.2 Initiated by Concessionaire**

a. The Concessionaire may, at any time during the Concession Period, initiate a Variation, by submitting to Authority a written proposal which in

the Concessionaire's opinion will reduce the cost of construction, maintaining or operating the Works, or improve the efficiency or value to the Authority of the completed Works, or otherwise be of benefit to the Authority or to rectify a divergence between any law or directive and the Technical Requirements. Any such proposal shall be prepared at the cost of the Concessionaire and shall include the items listed in Article 18.1 b.

b. Authority shall, as soon as practicable after receipts of such proposals respond with approval, rejection or comments. If Authority approves a Variation, it shall proceed in accordance with Article 7.3 to agree or determine adjustments of the Concession Period.

## **ARTICLE 19: FINANCIAL CLOSE**

### **19.1 Financial Close**

19.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve the Financial Close within 90 (Ninety) days from the Proposal Acceptance Date and in the event of delay, it 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 0.1% (zero point one per cent) of the Construction 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 90 days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Article 4 or due to Force Majeure.

19.1.2 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 Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director or authorized representative 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 Lenders.

### **19.2 Termination due to failure to achieve Financial Close**

19.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Article 26, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Article 19.1.1, 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 concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual Agreement of the Parties. For the avoidance of doubt, it is agreed that in the event that the Parties hereto have, by mutual consent, determined the Financial Close, the provisions of this Article 19.2.1 shall not apply.

19.2.2 Upon termination under Article 19.2.1, the Authority shall be entitled to encash the Construction Performance Security and appropriate the Proceeds thereof as Damages.

## ARTICLE 20: ACCOUNTS AND AUDIT

Concessionaire after due consultation with the Authority and Lenders shall appoint a firm of chartered accountants out of a mutually agreed list of 10 (ten) Independent and reputable firms of Chartered Accountants in India/ Madhya Pradesh as the Statutory Auditor to audit the accounts of the Concessionaire for the Project on a yearly basis. All fees and expenses of the Statutory Auditors will be borne by Concessionaire. The Parties agree that the Statutory Auditor so appointed shall have the status of an expert whose reports and decisions shall be final and binding on the Parties, save in the case of manifest error or fraud. The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Concession Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall extend full co-operation to the Statutory Auditor. All contracts, books, records, documents and vouchers relating to the construction, operation and maintenance of the Ecotourism & Adventure Park shall be open to inspection by such Statutory Auditor, who may make such copies thereof or extracts there from as it may deem appropriate. Any information secured as a consequence of such examination shall be kept confidential by all concerned. The Concessionaire may terminate the appointment of its statutory auditor after a notice of 45 (forty five) days to the Authority, subject to the replacement of statutory auditor being appointed from the panel of Chartered Accounts.

## ARTICLE 21: SUSPENSION

### 21.1 Suspension

a. Authority may at any time instruct the Concessionaire in writing to suspend progress of part or all of the Works, duly recording detailed reasons for ordering such Suspension. During Suspension, the Concessionaire shall:

- i) Protect, store and secure such part or the Works against any deterioration loss or damage;
- ii) Place no further sub-contracts for Plant and Machinery, Materials, works or services in relation to such part or the Works; and
- iii) Use all reasonable endeavors to suspend, on favorable terms available to the Concessionaire, all subcontracts and agreements for hire to the extent affected by the suspension and otherwise to minimize the Cost associated with the suspension, provided that unless instructed otherwise by Authority, the Concessionaire shall during suspension period maintain its staff and Concessionaire's Equipment on or near the relevant Project Site, ready to proceed with the Works in accordance with or upon the receipt of permission or instruction to do so.

### **21.2 Consequences of Suspension**

- a. If the Concessionaire suffers delay or incurs Cost in following Authority's instructions under Article 21.1a, in order to resume the Works, the Concessionaire shall give notice to the Authority. After receipt of such notice, Authority shall proceed in accordance with Article 7.3 to agree or determine any extension of Construction Period and Concession Period to which the Concessionaire is entitled under Article 12.4.
- b. The Concessionaire shall not be entitled to any extension of time, or in Concession Period, if the suspension is due to a cause attributable to the Concessionaire.
- c. During the period of suspension, the Authority shall, on behalf of the Concessionaire, collect all fees and revenues including sub-license fee under and in accordance with this Concession Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 26A.

### **21.3 Suspension for over 30 (thirty) days**

Subject to Article 21, if Suspension under Article 21.1a has continued for more than 30 (thirty) days, and the Suspension is not due to a cause attributable to the Concessionaire, the Concessionaire may by notice to Authority require permission to proceed within 30 (thirty) days. If permission is not granted within that time, and if such suspension affects substantially the whole of the Works, the Concessionaire may proceed to terminate the Concession.

### **21.4 Resumption after Suspension**

After receipt of permission or of an instruction to proceed, the Concessionaire shall, after notice to the Authority, and together with the Independent Engineer, examine the Works and the Plant and Machinery and Materials affected by the Suspension. The Concessionaire shall make good any deterioration or defect in or loss of the Works of Plant and Machinery or materials, which has occurred during the period of Suspension. The Concessionaire shall then resume work with reasonable expediency.

## **ARTICLE 22: TERMINATION FOR DEFAULT**

### **22.1 Concessionaire Event of Default**

Each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure and if not cured within the "Cure Period" which shall be 60 (sixty) days from the date of notice of default (the "Default Notice") from the Authority, shall be considered for the purpose of this Agreement as Event of Default of the Concessionaire ("Concessionaire Events of Default"):

- i) The Concessionaire is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Authority or the Project.
- ii) The Concessionaire is in breach of any representation or warranty made under this Agreement or it repudiates this Concession Agreement.
- iii) The Concessionaire fails to meet the progressive milestones set forth in the Project Implementation Schedule or amendments thereto as provided for in this Concession Agreement.
- iv) The Concessionaire abandons the Project or any of its material obligations as provided under this Agreement.
- v) The Concessionaire not issuing, renewing, replacing or providing the Performance Security in accordance with the terms of this Agreement
- vi) The Concessionaire fails to pay Annual Concession Fee, as applicable.
- vii) The Concessionaire does not comply with its Minimum Equity Requirements under Article 8.2.
- viii) The Concessionaire fails to undertake the Minimum Development Obligations as mentioned in this Agreement;
- ix) The Concessionaire fails to achieve Financial Close within the stipulated time period of 90 days from the Proposal Acceptance Date, unless expressly extended by the Authority.
- x) A Lender recalls its loan under the Financing Documents on the ground that the Concessionaire has defaulted on its obligations to the Lender under the Financing Documents.
- xi) The Concessionaire creates any Encumbrances, charges or lien in respect of Project/Project Site or any part thereof in favour of any Person, save and except as otherwise expressly permitted in this Concession Agreement.
- xii) Any transfer pursuant to law of either (a) the rights and/or obligations of the Concessionaire under this Concession Agreements and/ or (b) all or material part of the assets or undertaking of the Concessionaire; except (i) to the extent permitted by this Concession Agreement or (ii) where any such transfer, in the reasonable opinion of the Authority, does not affect the ability of the Concessionaire to perform its obligations under this Concession Agreement.
- xiii) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
- xiv) The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;
- xvi) The Concessionaire fails to comply with the provisions laid down in Article 8.1(xi) to 8.1(xviii).
- xv) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by court, *except* if such petition is for the purpose of amalgamation or reconstruction, provided that as part of such amalgamation and reconstruction, the 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 Project Agreements, and provided that:



- (a) The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under this Agreement and Project Agreements;
  - (b) The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Agreement and Project Agreements and has a credit worthiness at least as that good as that of the Concessionaire as on the Compliance Date and
  - (c) All the Project Agreements remain in full force and effect.
- xvi) The Concessionaire assigns this Concession Agreement or any of its rights or obligations under the Concession Agreement, where such assignment is not in accordance with the terms and conditions of the Concession Agreement.
- xvii) An Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 60 (sixty) days.

## 22.2 Termination Procedure

Without prejudice to any other right or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Event of Default, the Authority shall be entitled to terminate this Agreement by following the procedure set forth hereinafter:

- a. The Authority shall be entitled to issue a Termination Notice to the Concessionaire. The Termination Notice shall grant the Concessionaire 30 (thirty) days (the "Termination Period") to make a representation and if during the Termination Period the Concessionaire takes suitable steps to remedy the default/ situation, the Authority shall be entitled to withdraw the Termination Notice.
- b. If the Termination Notice is not withdrawn within the Termination Period, the Authority shall send a copy of the Termination Notice to the Lender, thereby granting the Lender a 30 (thirty) day "Suspension Period" in accordance with the terms of the Substitution Agreement. During the Suspension Period, the Lender may exercise its Step-In Rights in accordance the Substitution Agreement such that the Lender may nominate an 'Additional Obligor'. In the Step-In Period, the Lender may procure that the default stated in the Termination Notice is cured, and upon the curing of the default, the Authority shall withdraw its Termination Notice and grant permission to the Concessionaire to resume its work under the Concession Agreement.
- c. The Suspension Period may be extended up to a maximum of 180 (One hundred and eighty) days at the request of the Lender.
- d. During the Suspension Period the Lender may request the Authority to replace the Concessionaire with a "Substitute" named by the Lender, who shall be a Person capable of discharging the roles and responsibilities of the Concessionaire under the Concession Agreement. Upon receipt of such a request the rights and obligations of the Concessionaire under the Concession Agreement shall be assigned to the Substitute, who shall step into the shoes of the Concessionaire from the date of the assignment.
- e. If, upon receipt of a copy of the Termination Notice, the Lender fails to exercise its rights under this Article 22.2 and procures that either:-

(i) The Concessionaire Event of Default is cured within the Suspension Period, or (ii) The Concession is assigned under Article 22.2 (d) to a Substitute Entity capable of discharging the roles and responsibilities of the Concessionaire, the Authority shall be entitled to terminate this Concession Agreement with no liability of the Concessionaire or the Lender, save and except as provided in Article 23 hereof.

### 22.3 Concessions Authority Event of Default

Each of the following events or circumstances, to the extent not caused by a default of the Concessionaire or Force Majeure, and if not cured within the Cure Period, which shall be 60 (sixty) days (unless provided otherwise in this Concession Agreement), from the date of notice of default (the “Default Notice”) from the Concessionaire, shall be considered for the purpose of this Agreement as events of default of the Concessions Authority (“Concessions Authority Event of Default”):

- a. Any defect in the title, ownership and possession of the Concessions Authority with respect to the Project Site;
- b. GoMP or any Competent Authority have by an act of commission or omission created circumstance that has a Material Adverse Effect on the Concessionaire, and the Concessions Authority has failed to compensate the Concessionaire for the same through an adjustment to the Concession Period.
- c. The Concessions Authority is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Concessionaire or the Project and this breach is not cured within a cure period of 90 days from the date of Default Notice.
- d. The Concessions Authority is in breach of any representation or warranty made under this Agreement, or it repudiates this Concession Agreement.

### 22.4 Termination Procedure

Without prejudice to any right or remedy, which the Concessionaire may have under this Agreement, upon occurrence of a Concessions Authority Event of Default, the Concessionaire shall be entitled to issue a Termination Notice to the Concessions Authority. The Termination Notice shall grant the Concessions Authority a further period of 30 (thirty) days (the “Termination Period”) to make a representation, and if, during the Termination Period the Concessions Authority takes suitable steps to remedy the situation, the Concessionaire shall be entitled to withdraw the Termination Notice. If the Termination Notice is not withdrawn within the Termination Period, this Concession Agreement will automatically terminate on the expiry of the Termination Period.

## ARTICLE 23: CONSEQUENCES OF TERMINATION

### 23.1 No Termination Payment in case of Termination by the Concessioneing Authority

Upon Termination by the Concessioneing Authority as described above, the Concessioneaire hereby acknowledges that no Termination payment shall be due or payable by the Authority. In addition to this, the Concessioneing Authority shall forfeit the entire amount of the Performance Security. Concessioneaire acknowledges that within 10 days of termination, the Concessioneaire shall vacate the Project Site. Concessioneaire acknowledges that once the Agreement is terminated the land allocated shall be returned back to the Authority. In such case, the licence in respect of the Project Land will stand cancelled ipso facto and Project Land is returned to the Authority automatically. The entire construction made by the Concessioneaire till that date on the Project Site as part of the scope of work shall get transferred to the Authority without any consideration.

### 23.2 Other rights and obligations upon Termination

a. Upon Termination of this Agreement, the Authority shall:-

(i) Take possession and control of the Ecotourism & Adventure Park forthwith;

(ii) Take possession and control of all Plant and Machinery, Materials, stores, implements, construction and equipment on or about the Project Site;

(iii) Restrain the Concessioneaire and any person claiming through the Concessioneaire from entering upon the Project Site or any part of the Ecotourism & Adventure Park;

(iv) Require the Concessioneaire to comply with the provisions relating to Article 33 and

(v) Succeed upon election by the Authority, without necessity of any further action by the Concessioneaire, to the interests of the Concessioneaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Third Party contractors under the Project Agreements 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 Concessioneaire. For the avoidance of doubt, it is hereby agreed and the Concessioneaire hereby acknowledges that all sums claimed by such contractors as being due and owing for Works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessioneaire and such Contractors, and the Authority shall not in any manner be liable for such sums.

b. Upon Termination of this Agreement it shall be the responsibility of the Concessioneaire to:-

(i) Hand over the Project Site, Works and Facility to the Authority in accordance to Article 33.

(ii) Provide all relevant data, design and drawings, records and information access to all reasonable requests from the Authority in connection with taking over the Project Site/ Ecotourism & Adventure Park.

- (iii) Cease all further Works, except for such essential Works as may be necessary and as instructed by Authority, for the purpose of making safe, protecting or continuing operations on the Project.
- (iv) Hand over all the Construction Documents, Plant and Machinery and Materials to the Authority.
- (v) Remove all Concessionaire's Equipment, which is on the Project Site, and repatriate all its staff and labour from the Project Site, except for such essential equipment, staff and labour as may be necessary and as instructed by Authority, for the purpose of making safe, protecting or continuing operations on the Project, and
- (vi) Co-operate with the Authority and the Substitute Entity nominated by the Lenders and comply with all reasonable requests thereof, including the execution of any documents and other actions, provided the Authority bears any reasonable Costs incurred by the Concessionaire relating thereto.

### **23.3 Termination Payment in case of Termination by Concessionaire**

- a. Upon Termination by the Concessionaire on account of the Concessions Authority Event of Default, the Concessionaire shall be entitled to receive from the Concessions Authority by the way of Termination Payment a sum equal to the lowest of the following (i) or (ii):
  - i. 100% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Concessionaire less Intangible Assets. It is specially clarified here that the cost of project assets would not include the cost of original project facility which was provided to the Concessionaire.
  - ii. 100% of debt due less pending insurance claims

In addition to this, the Performance Security shall be released by the Concessions Authority.

- b. All payments due to the Concessionaire as calculated under Article 23.3a shall be made within 30 (thirty) days of termination of the Concession Agreement.

## **ARTICLE 24: LIABILITY AND INDEMNITY**

### **24.1 General indemnity**

The Concessionaire will indemnify, defend, save and hold harmless the Concessions Authority and its officers, employees, agents and consultants against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related Agreement, except to the extent that

any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Concessions Authority indemnified persons.

#### **24.2 Liability of Concessions Authority**

The Concessions Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of;

(a) defect in title and/or the rights of the Concessions Authority in the Project Land given on Concession to the Concessionaire

(b) breach by the Concessions 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, employees or agents, the same shall be the liability of the Concessionaire.

#### **24.3 Indemnity by the Concessionaire**

Without limiting the generality of Clause 14.2, the Concessionaire shall fully indemnify, hold harmless and defend the Concessions Authority 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.

(d) Breach by the Concessionaire of any of the obligations under this Agreement.

#### **24.4 Limitation of Liabilities**

Notwithstanding anything to the contrary contained in this Article 24, 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.

#### **24.5. Survival on Termination**

The provisions of this Article 24 shall survive Termination.

### **ARTICLE 24A. ESCROW ACCOUNT**

## Escrow Account

24A.1 The Concessionaire shall, prior to the Compliance Date, open and establish an Escrow Account with a Bank (the “Escrow Bank”) in accordance with this Agreement read with the Escrow Agreement.

24A.2 The nature and scope of the Escrow Account are fully described in the agreement (the “Escrow Agreement”) to be entered into amongst the Concessionaire, the Concessions Authority, the Escrow Bank and the Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule-VIII.

### 24A.3 Deposits into Escrow Account

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

- (a) all funds constituting the Financial Package;
- (b) all fees and other revenues from or in respect of the Project including all annual sub-license fees received from sub-licensees under the sub-license agreements and the proceeds of insurance claims; and
- (c) Termination Payments, if any, by the Concessions Authority, after deduction of any outstanding Annual Concession Fee:

### 24A.3 Withdrawals during Concession Period

24A.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out there from in the month when due:

- (a) all taxes due and payable by the Concessionaire;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Documents;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Documents;
- (d) O&M Expenses and other costs and expenses incurred by the Concessions Authority in accordance with the provisions of this Agreement, and certified by the Concessions Authority as due and payable to it;
- (e) Annual Concession Fee due and payable to the Concessions Authority;
- (f) Monthly proportionate provision of debt service due in an Accounting Year;

- (g) Debt service in respect of Subordinated Debt;
- (h) Any reserve requirements set forth in the Financing Documents; and
- (i) Balance, if any, in accordance with the instructions of the Concessionaire.

24A.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 24A.3.1, except with the prior written approval of the Concessions Authority.

#### 24A.4 Withdrawals upon Termination

24A.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) all taxes due and payable by the Concessionaire;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Annual Concession Fee;
- (d) all payments and damages certified by the Concessions Authority as due and payable to it by the Concessionaire;
- (e) retention and payments relating to the cost for defects and deficiencies set forth in Article 15.6;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M expenses;
- (i) any other payments required to be made under this Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

24A.4.2 The provisions of this Article 24A and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 24A.4.1 have been discharged.

## ARTICLE 25: INSURANCE REQUIREMENTS

### 25.1 Insurance during the Construction Period

For the Construction Period, the Concessionaire shall effect and maintain, or cause to be effected and maintained, at its own expense, insurance policies as may be required to be maintained by the Lenders, under Applicable Laws and/ or such insurances that are necessary or desirable in accordance with Good Industry Practice.

### 25.2 Insurance during O&M Period

Not later than 3 months prior to the anticipated Completion of the Construction of Project, the Concessionaire shall obtain and maintain, at its own expense, insurance policies as may be required to be maintained by the

Lenders, under Applicable Laws and such insurances that are necessary or desirable to cover the Operations and Maintenance Period.

### **25.3 Evidence of Insurance Cover**

All Insurance obtained in accordance with this Article shall be maintained with insurer(s). Within 30 (thirty) days of obtaining any Insurance Cover, the Concessionaire shall furnish to the Authority, certified copies of certificate of Insurance and certified copies of the premia payment receipts in respect of such Insurances. Concessionaire shall, from time to time, furnish the evidence to the Authority that all premiums have been paid and that the relevant policies remain in existence. Such Insurance may not be cancelled or materially changed without 30 (thirty) days' prior written notice to the Authority.

### **25.4 Remedy or Failure to Insure**

If the Concessionaire fails to effect and keep in force any of the Insurances required under this Concession Agreement or fails to provide satisfactory evidence, policies and receipts in accordance with this Article, the Authority may, without prejudice to any other right or remedy, effect Insurance for the coverage relevant to such default and pay the premiums due. Such payments shall be recoverable from the Concessionaire by the Authority and may be deducted by the Authority from any monies due, or to become due, to the Concessionaire or from the Performance Security.

### **25.5 Waiver of Subrogation**

All policies of Insurance required to be maintained by Concessionaire shall provide for waivers of subrogation (or the equivalent thereof) in favour of the Authority and its respective officers and employees, and in favour of such other Persons as may be reasonably required by the Authority.

### **25.6 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 employees, successors, permitted assignees, insurers and underwriters, which the Concessionaire may otherwise have acquired 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 Concession Agreement (other than Third Party liability Insurance Policies) or because of deductible Article or due to inadequacy of the limits of any such policies of insurance.

### **25.7 Application of Insurance Proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 24A, 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 Documents.



## ARTICLE 26: FORCE MAJEURE

### 26.1 Force Majeure Event

In this Concession Agreement, "Force Majeure" means an event occurrence in India of any or all of the Non-Political Force Majeure Event, Indirect Political Force Majeure Event and Political Force Majeure Event described in Articles 26.2, 26.3 and 26.4 respectively hereinafter which prevents the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Concession Agreement and which act or event:-

- (i) Is beyond the reasonable control of and not arising out of the fault or negligence of the Affected Party or the failure of such Party to perform its obligations hereunder;
- (ii) The Affected Party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and care and
- (iii) Has a Materially Adverse Effect on the Project

### 26.2 Non Political Force Majeure Events

For the purposes of Article 26.1, Non-Political Force Majeure Events shall mean one or more of the following acts or events:

- i) Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, extreme adverse weather or environmental conditions, lightning, earthquakes, heavy rains, cyclones, tempest, whirlwind, landslides, storms, floods, volcanic eruptions or fire (to the extent originating from a source external to the Project Site or not designed for in construction Works);
- ii) Radioactive contamination or ionising radiation;
- iii) 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 exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 26.3;
- iv) 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;
- v) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for the reason other than failure of the Concessionaire to comply with any Applicable Law or Clearances or on account of breach thereof, or of any contract, or enforcement of this Concession Agreement or exercise of any of its rights under this Concession Agreement by the Authority; or
- vi) Any other event or circumstance of a nature analogous to the foregoing, to the extent that insurance is available at a reasonable cost to cover the occurrence of any of the natural events. The Concessionaire will ensure that it has insured itself against such risks.

### **26.3 Indirect Political Force Majeure Event**

For the purposes of Article 26.1, Indirect Political Force Majeure Events shall mean one or more of the following acts or events by or on account of the Authority, GoMP, Gol or any other Competent Authority:

- i. An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, blockade, embargo, rebellion, riot, religious strife, bombs or civil commotion, sabotage, terrorism which prevents collection of User Charges by the Concessionaire for a period exceeding a continuous period of 7 (seven) days in an Accounting Year;
- ii. Industry wide or state wide or India wide strikes or industrial action which prevents collection of User Charges by the Concessionaire for a period exceeding a continuous period of 7(seven) days in an Accounting Year; or
- iii. Any public agitation which prevents collection of User Charges by the Concessionaire for a period exceeding a continuous of 7 (seven) days in an Accounting Year.

### **26.4 Political Force Majeure Event**

For the purposes of Article 26.1, Political Force Majeure Events shall mean one or more of the following acts or events by or on account of the Authority, GoMP, Gol or any other Competent Authority:

- i) Expropriation or compulsory confiscation, by any Competent Authority of any Project Assets or rights of the Concessionaire or of the Contractors; or
- ii) Any unlawful or unauthorized or without jurisdiction, revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements (other than a consent, the obtaining of which is a condition precedent) 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 the grant, maintenance or renewal of such consents or permits.

### **26.5 Exceptions Applicable to the Concessionaire**

The Concessionaire shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Concession Agreement other than the circumstances resulting from an event of Force Majeure:-

- (a) Delay in performance by the Concessionaire, Subcontractor(s), sub-licencees, agents and employees of the Concessionaire; or
- (b) Breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Ecotourism & Adventure Park.

### **26.6 Exceptions Applicable to the Concessioning Authority**

The Authority shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the

performance or excuse the non-performance of its obligations under this Concession Agreement:

- a) the expropriation, confiscation, nationalization or requisition of the Project, Project Assets or the Ecotourism & Adventure Park by GoMP or the Authority;
- b) the imposition of any blockade, embargo, import restrictions, rationing or allocation by the Authority or any Competent Authority; or
- c) any delay or difficulty in handing over Vacant Possession of the Project Site as a result of any intervention or directive of GoMP or Authority or any Competent Authority.

#### **26.7 Effect of Force Majeure before the issue of Notice to Commence**

Upon occurrence of any Force Majeure Event prior to the issuance of the Notice to Commence, the following shall apply:

- i) There shall be no Termination except as provided in Article 26.10.
- ii) The Compliance Date shall be extended by the period of which such Force Majeure event shall subsist and
- iii) The Parties shall bear their respective costs arising out of such Force Majeure Event.

#### **26.8 Effect of Force Majeure after Compliance Date**

Upon occurrence of any Force Majeure Event after the Compliance Date, the following shall apply:

- i) There shall be no Termination of this Concession Agreement except as provided in Article 26.10.
- ii) Where the Force Majeure Event occurs before the issue of Construction Completion Certificate or Provisional Certificate, the dates set forth in the Project Implementation Schedule and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- iii) Where the Force Majeure Event occurs after the issuance of Construction Completion Certificate or Provisional Certificate, the Concessionaire shall make all reasonable efforts to collect Project Revenues, but if he is unable to collect Project Revenues during the subsistence of such Force Majeure Event, the Concession Period shall be extended by the period for which collection of Project Revenues remains suspended on account thereof and
- iv) All costs arising out of or concerning such Force Majeure Event shall be borne in accordance with provisions of Article 26.9.

#### **26.9 Allocation of costs during the subsistence 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.

#### **26.10 Termination Notice**

If the Force Majeure Event subsists for a period of 270 (two hundred seventy) days or more within a continuous period of 365 (three hundred

sixty five) days, either Party may in its sole discretion terminate this Concession Agreement by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever.

#### **26.11 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 as under Article 27, provided however that the burden of proof as to the occurrence or existence of such Force Majeure event shall be upon Party claiming relief and/or excuse on account of such Force Majeure Event.

#### **26.12 Liability for other losses, damages etc.**

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

#### **26.13 Duty to Report**

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- i) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew or ought reasonably to have known of its occurrence and the probable Material Adverse Affect that the Force Majeure Event is likely to have occurred on the performance of its obligations under this Concession Agreement.
- ii) Any notice pursuant to this Article 26.13 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 26 with evidence in support thereof;
  - (b) The estimated duration and effect or probable effects which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Concession Agreement;
  - (c) The measure which the Affected Party is taking or proposes to take to alleviate the impact of such Force Majeure Event; and
  - (d) Any other information relevant to the Affected Party's Claim.
- iii) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Article 26.13, and such other information as the other Party may reasonably request the Affected Party to provide.

#### **26.14 Excuse from performance of obligations**

If the Affected Party is wholly or partially unable to perform its obligations under this Concession Agreement because of Force Majeure Event, it shall

be excused from the performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event provided that:

- i) The suspension of performance shall be no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- ii) 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
- iii) When the Affected Party is able to resume performance of its obligations under this Concession, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

## ARTICLE 27: DISPUTE RESOLUTION

### 27.1 Dispute Resolution

Any dispute, difference or controversy of whatever nature regarding the validity, interpretation, implementation or the rights and obligations arising out of, or in relation to, or howsoever arising under or in relation to this Concession Agreement between the Parties, and so notified by either Party to the other Party (the “**Dispute**”) shall be subject to the dispute resolution procedure set out in this Article 27. It is specially clarified here that in case of any ambiguity regarding the Works, the practices existing at the time of submission of the proposal as per Good Industry Practice would prevail.

### 27.2 Direct discussion between Parties

The Parties agree that any Dispute that may arise between them shall be first submitted for direct discussion between the Parties. For this purpose, the notice of Dispute (the “**Notice of Dispute**”) sent by one Party to the other Party under Article 27.1 shall be considered an invitation for direct discussion, and it should specify a reasonable time and venue for the conducting of negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the Dispute and the amount claimed. In the direct discussion proceedings, each Party shall be represented by their representatives/officials or employees with sufficient knowledge and authority over the subject matter of the Dispute in order for the discussion to be meaningful. At the discussion proceedings, the Party that has given the Notice of Dispute shall present an offer of a settlement, which may form the starting point of discussions between the two Parties during the discussion proceedings.

### 27.3 Arbitration or Adjudication

- a. In the event that the Parties are unable to resolve the Dispute through Direct Discussion under Article 27.2, the Parties shall submit the Dispute for arbitration in accordance with the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted by the “Secretary, Law, GoMP” as the Sole Arbitrator (“**the Sole Arbitrator**”).
- b. The arbitration proceedings shall be conducted in the English language and in Bhopal only.

c. The cost incurred on the process of arbitration including *inter alia* the fees of the arbitral tribunal and the cost of the proceedings shall be borne by the Parties in equal proportions. Each Party shall bear its own legal fees incurred as a result of any Dispute under this Article 27.

#### **27.4 Performance during Dispute**

Performance of this Concession Agreement shall continue during the settlement of any Dispute under this Article 27. The provisions for dispute settlement shall be binding upon the successors, assigns and any trustee or receiver of either the Authority or the Concessionaire.

### **ARTICLE 28: INDEPENDENT ENGINEER**

#### **28.1 Appointment**

a. The Independent Engineer shall either be a panel of engineers nominated by GoMP supported by independent quality control & monitoring experts or a reputed firm of engineers having adequate experience in similar projects, who shall monitor the Project for the purposes of determining and ensuring compliance with Technical Requirements, the Performance Standards and Costs of the Ecotourism & Adventure Park.

b. The procedure for the selection and appointment of the Independent Engineer shall be finalized by the Authority in consultation with the Concessionaire.

c. The cost for the Independent Engineer will be shared equally between the Authority & the Concessionaire. The Concessionaire shall submit its share of payment to the Authority and thereafter, the entire payment for the Independent Engineer shall be made by the Authority.

d. The Authority shall ensure that the Person appointed as Independent Engineer signs a deed of adherence to this Concession Agreement, thereby binding itself *mutatis mutandis* to the terms of this Concession Agreement.

#### **28.2 Inspection**

a. During the Construction Period, the Independent Engineer shall, at all reasonable times and upon reasonable notice, have access to the Project Site for the purpose of discharging its duties under this Concession Agreement.

b. The Independent Engineer shall undertake inspections of the Project Site, regularly and at such times as it deems appropriate, to determine the progress in the construction of the Ecotourism & Adventure Park and the extent of compliance with Technical Requirements/ Performance Standards stipulated for the construction of Ecotourism & Adventure Park and notify the Authority and the Concessionaire of any deviations there from within 7 (seven) days of such inspections.

#### **28.3 Certificates**

The Independent Engineer shall decide upon, issue and sign all certificates required at various stages in this Concession Agreement in accordance with the provisions of this Concession Agreement.

#### **28.4 Cost of Construction**

The Independent Engineer shall undertake to determine the cost incurred by the Concessionaire on the Completion of the Construction of Ecotourism & Adventure Park and also, at any other stage of the Project, if desired by any of the Parties.

#### **28.5 Role as Expert**

a. The Independent Engineer shall function in the capacity of an expert (and not as an Arbitrator). If the Authority disputes the Concessionaire's statement in connection with, or arising out of, this Concession Agreement or the execution of the Works, including any dispute as to any opinion, instruction, determination, certification or valuation of Authority, Authority shall refer such matter to the Independent Engineer. The Parties have agreed that the findings of the Independent Engineer under this Article shall be final and binding upon the Parties for all matters relating to:

- i) Measurements;
- ii) Technical Requirements and the interpretation thereof;
- iii) Performance Standards and interpretation thereof and
- iv) Drawings and their interpretation.

#### **28.6 Tenure**

The tenure of the Independent Engineer, under this Concession Agreement, shall be from the Compliance Date to the date of issue of the Construction Completion Certificate.

### **ARTICLE 29 : MAINTENANCE BOARD**

#### **29.1 Appointment**

a. On the Commercial Operations Date, the Authority shall appoint a Maintenance Board. The Maintenance Board shall consist of representatives of the following and any other member duly nominated by the Authority:

- (i) Two representatives of Authority,
- (iii) Two representatives of Concessionaire

b. The representative of the Authority shall act as the Chairman of the Maintenance Board and one of the representatives of the Authority shall be the Convenor. Wherever possible, the Maintenance Board shall act by consensus. If consensus is not reached, it shall take vote, and if there is a tie in such vote, the representative of the Authority shall have the casting vote.

#### **29.2 Powers and Duties**

a. The Maintenance Board shall have the powers and duties set out in this Concession Agreement or any other powers required for the proper development, operation and maintenance of the Project, including, (without limitation):

- i) Compliance to the O & M Manual
- ii) Review the Concessionaire's periodic reports;

- iii) Review and verify the implementation of Variations;
  - iv) Approve any improvements or modifications (that are not Variations) proposed by any of the members of the Maintenance Board;
  - v) Review Performance Security requirements;
  - vi) Any other matter which it deems necessary for the development, operation or maintenance of the Project Site/ Ecotourism & Adventure Park;
  - vii) Impose penalties on the Concessionaire as stipulated in Article 15.2 (b).
- b. The Maintenance Board shall have the power to appoint Expert or Specialist Person in any area required, for a review of the operation, maintenance and planning of the Project. Such persons shall act as an "Expert", whose expert professional opinion, once confirmed by the Maintenance Board, shall be binding on the Parties and the Maintenance Board.
- c. The Maintenance Board shall, either through in-house capability or by appointing any Expert/ Specialist, carry out structural safety audit after every 10 (ten) years, through out the Concession Period.
- d. Without limitation to the generality of the foregoing Articles, the Maintenance Board shall have the power to appoint a valuer as an Expert to undertake and determine the cost of repairs required as well as for the valuation of any other Works.
- e. The Concessionaire and the Authority shall extend full co-operation to the Maintenance Board and to any Expert appointed by the Maintenance Board. All the expenses of the Maintenance Board shall be borne equally between the Parties.
- f. The Maintenance Board shall meet at least once every quarter of the calendar year at such time & venue as may be indicated by the Convenor and notified to all the members of the Maintenance Board at least 14 (fourteen) days before the date of the meeting.

## ARTICLE 30: FINANCING AND LENDER'S RIGHTS

- a. The Authority hereby agrees that it shall enter into a Substitution Agreement as given **Schedule V** with the Lender and the Concessionaire thereby shall grant the Lender certain rights in the event of 'Termination by the Authority' as set out in Article 22.1. The Authority further confirms to the Concessionaire that it can represent to the Lenders that the Authority has agreed to be bound by the terms and conditions specified therein.

## ARTICLE 31: TAXATION AND CONFIDENTIALITY

### 31.1 Local Taxation

- a. The Concession Agreement shall include all charges towards import license, customs duties, import duties, business taxes, etc., that may be levied in accordance with the Applicable Laws as on the Proposal Acceptance Date in India on the Concessionaire's Equipment, Plant and Machinery and Materials (whether permanent, temporary or consumable)



acquired for the purpose of this Concession Agreement and on the services to be performed under this Concession Agreement. Nothing in this Concession Agreement shall relieve the Concessionaire from its responsibility to pay any tax that may be levied in India on profits made by it in respect of this Concession Agreement.

b. Under the provisions of the Indian Income Tax Act, the Authority is required to deduct tax at source at the rates prevailing in case any payments are envisaged under this Concession Agreement.

### **31.2 Income Taxes on Staff**

The Concessionaire's staff, Person and labour will be liable to pay personal income taxes in India in respect of their salaries and wages as chargeable under the laws and regulations for the time being in force and the Concessionaire shall make such deductions in respect of such taxes as required by law.

### **31.3 Confidentiality**

Neither of the Parties shall, at any time, before the expiry or termination of this Concession Agreement, without the consent of the other Party, divulge or suffer or permit its officers, employees, or agents to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them to properly carry out their duties), any information relating to the negotiations concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party or any proprietary information of the other Party.

### **31.4 Exceptions to Confidentiality**

The restrictions imposed by Article 31.3 shall not apply to the disclosure of any information:

- i) which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtained with no more than reasonable diligence from sources other than the Parties;
- ii) which is required by law to be disclosed to any Person who is authorized by law to receive the same;
- iii) which is required to be disclosed by the regulations of any recognized exchange upon which the share capital of the Party making the disclosure is or is proposed to be from time to time listed or dealt in;
- iv) to a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a Party;
- v) to any consultants, banks, financiers or advisers to the disclosing Party or
- vi) in accordance with this Concession Agreement.

### **31.5 Public Announcements**

No public announcement or statement regarding the signing of this Concession Agreement shall be issued or made unless, prior thereto, both Parties have been furnished with a copy thereof and have approved the same, provided such approval shall not be unreasonably withheld or delayed.

## ARTICLE 32: USER CHARGES

### 32.1 Levy and Appropriation of User Charges/Fees/Project Revenues

(a) On and from the COD, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate fee as per the market driven rates for the facilities provided by the Concessionaire in accordance with the provisions of this Agreement.

(b) The Authority expressly recognizes that the right of the Concessionaire or its Subcontractors to levy, demand, collect, retain, and to appropriate fee/charges in accordance (i) with the terms of this Concession Agreement and (ii) to exercise all rights and remedies available under Law and under this Concession Agreement for the recovery of such fee/charges.

## ARTICLE 33: TRANSFER OF ECOTOURISM & ADVENTURE PARK/ PROJECT

(a) On the Transfer Date, the Concessionaire shall transfer and assign to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Compliance Date of all the Concessionaire's right, title and interest in and to the Works/ Project Assets and the Ecotourism & Adventure Park / Project/Project Land. The Concessionaire shall also deliver to the Authority or its nominated agency on such date such operating manuals, plans, design drawings, reports, accounts and other information as may reasonably be required by the Authority or its nominated agency to enable it to continue the operation of the Ecotourism & Adventure Park either directly or by its nominated agency. The personnel of the Concessionaire shall continue to be the employees of the Concessionaire and the transfer of the Project Assets and the Ecotourism & Adventure Park shall not in any manner affect their status as employees of the Concessionaire and they shall have no claim to any type of employment or compensation from the Authority or its nominated agency.

(b) The Concessionaire shall to the extent possible assign to the Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies. The Concessionaire shall ensure that any rights, which are to be so assigned, are capable of assignment and the counterpart to the Concessionaire has approved such assignment under the terms and conditions of the relevant contract.

(c) The Concessionaire shall, to the extent possible at the time of transfer, assign to the Authority or its nominated agency all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by the Concessionaire and subsisting at the time of transfer except any contracts with employees.

(d) The transfer of Ecotourism & Adventure Park shall be treated as a transfer on a going concern basis. The transfer of immovable property comprising the Project shall be deemed to be a termination of all sub-license agreement/arrangements in relation to the Project Site and the Ecotourism & Adventure Park and the title to all such immovable property shall automatically revert to the Authority or its nominated agency. The movable property comprising Project Assets shall be deemed to be

transferred to the Authority or its nominated agency by constructive delivery and possession.

(e) At the time of transfer, the Ecotourism & Adventure Park shall be in such condition as is reasonable under all the circumstances taking into account their age, the design, materials used and maintenance carried out.

(f) Six months prior to the Transfer Date, the Authority shall be entitled to appoint any consulting engineer to assess the condition of the Ecotourism & Adventure Park. Such consulting engineer shall be entitled to have free access to the Project Site to inspect the Ecotourism & Adventure Park, provided that such inspection is reasonable and is carried out with minimum disruption to normal operation of the Ecotourism & Adventure Park.

(g) Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Ecotourism & Adventure Park, unless such loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Concession Agreement.

(h) The Concessionaire shall provide fair and just compensation to its employees as required under the Laws or under this Concession Agreement, and shall indemnify the Authority against any claims from any such employees for their loss of office, redundancy, loss of employment or otherwise. The Authority shall accept absolutely no liability on account of any matter pertaining to the Concessionaire's employees, staff, labour etc.

(i) The Authority shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses, incurred in connection with the Transfer of the Project Site/ Ecotourism & Adventure Park to it by the Concessionaire.

(j) On the Transfer Date, all the sub-license agreements/arrangements shall be terminated. The Concessionaire shall hand over the Project Site/ Ecotourism & Adventure Park and Project Assets to the Authority or its nominated agency at zero cost and the Concessionaire, its Subcontractors, agents, employees and sublicensees shall vacate the Project Site/ Ecotourism & Adventure Park and Project Assets.

(k) From the Transfer Date, the obligations and the rights of the Concessionaire under this Concession Agreement shall terminate vis-à-vis the Authority and the Authority or its nominated agency shall take over the Ecotourism & Adventure Park and the Project Assets and their operation and maintenance and any other rights or obligations arising out of this Concession Agreement which either expressly or implicitly survive termination of this Concession Agreement; provided, however, that the Concessionaire may continue with any other business operations arising other than in connection with this Concession Agreement and provided further that the Concessionaire shall no longer act in its capacity as Concessionaire in relation or pursuant to this Concession Agreement.

(l) On completion of the transfer by the Concessionaire to the Authority of all rights, titles and interests in the Project Site, Project Assets and Ecotourism & Adventure Park, the Authority shall issue a 'Concession Agreement Completion Certificate' to the Concessionaire. The Concession Agreement Completion Certificate will have the effect of constituting evidence of transfer of all rights, titles and interests in the Project Site/

Ecotourism & Adventure Park / Project Assets by the Concessionaire and their vesting in the Authority hereto.

(m) After taking over the Project/Ecotourism & Adventure Park from the Concessionaire, the Authority may auction the Project as running concern for its operation and maintenance through an open and competitive bidding process by giving the Concessionaire a first right of refusal on such terms and conditions as specified by the Authority and which are mutually agreed between the Parties.

## **ARTICLE 34: MISCELLANEOUS PROVISIONS**

### **34.1 Governing Law and Jurisdiction**

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

### **34.2 Waiver**

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

### **34.3 Exclusion of implied warranties**

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

### **34.4 Severability**

If for any reason whatsoever any provision of this Concession Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other legal and valid 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 upon one or more provisions, which may be substituted for such invalid, unenforceable

or illegal provisions, as nearly as is practicable. Provided, failure to agree upon any such provisions shall not be a subject matter to dispute resolution under this Concession or otherwise.

#### **34.5 Entire Agreement**

This Concession Agreement and the Schedules together constitute a complete and exclusive statement of the terms and conditions 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.

#### **34.6 Custody of Documents**

The Construction Documents shall be in the custody and care of the Concessionaire. Unless stated otherwise in this Concession Agreement, the Concessionaire shall provide two copies for the use of the Authority.

#### **34.7 Copyright**

The Concessionaire, as beneficial owner, hereby transfers to the Authority copyright and registered design and all other intellectual property rights subsisting in or accruing to the Concessionaire, in relation to the Construction Documents made or to be made by or on behalf of the Concessionaire, during the Concession Period for which such copyright subsists in such works. The Authority hereby grants to the Concessionaire non-exclusive royalty-free licence to use such documents and drawings solely for the purpose of complying with its obligations under this Concession Agreement.

#### **34.8 Use of the Concessions Authority's Documents**

Copyright in the Technical Requirements and other documents issued by the Authority to the Concessionaire shall (as between the Parties) remain the property of the Authority. The Concessionaire may, at its cost, copy, use and communicate any such documents for the purposes of this Concession Agreement. They shall not, without the Authority's consent, be used, copied or communicated to a Third Party by the Concessionaire, except as necessary for the purposes of this Concession Agreement.

#### **34.9 Compliance with Laws and Directives**

a. The Concessionaire shall, in all matters arising in the performance of this Concession Agreement, comply with, give all notices under, and pay all taxes, levies and other similar charges required by the provisions of any Central or State law or directive or any regulation of any legally constituted public authority having jurisdiction over the Works. The Concessionaire shall obtain all permits, licences or approvals required for any part of the Works in reasonable time, taking into account the delivery time for the Plant and Machinery and Materials and required for completion of the Works. The Authority and the Concessionaire shall comply with all the laws as applicable.

b. In the performance of this Concession Agreement, the Concessionaire shall ascertain and comply with all relevant laws and directives. The Authority will provide such reasonable assistance as may be requested by the Concessionaire in ascertaining the nature and extent of such relevant Indian laws and directives.

c. The Concessionaire shall indemnify the Authority, the Authority's officers, employees and agents against all governmental penalties and fines payable to a Competent Authority, together with any reasonable legal expenses incurred in connection therewith, to the extent arising out of any failure of the Concessionaire, any Subcontractor or their respective agents or employees to comply with any law or directive applicable to the construction, start-up, operation and maintenance activities conducted at the Project Site, during the performance of the Works.

d. If the Concessionaire or the Authority finds any divergence between any law or directive and the Technical Requirements, it shall give to the other Party a written notice specifying the divergence and proceed in accordance with Article 14.

#### **34.10 Joint and Several Liability**

If the Concessionaire is a consortium of two or more Persons, all such Persons shall be jointly and severally liable to the Authority for the fulfillment of the terms of this Concession Agreement. Such Persons shall designate one of them to act as "Lead Member" with authority to bind the consortium and each of its members. The composition or the constitution of the consortium shall not be altered without prior approval of the Authority and as per the specific provisions in this regard provided in this Concession Agreement.

#### **34.11 Notifications**

a. Wherever provision is made for the giving or issuance of any notice, instruction, consent, approval, certificate or determination by any Person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, typewritten or printed communication, including the agreed systems of electronic transmission.

b. All certificates, notices or written orders between the Parties shall either be delivered by hand against written acknowledgement of receipt, or be sent by registered acknowledgement due pre-paid post or courier or one of the agreed systems of electronic transmission. In the event of any dispute, unless such acknowledgement of receipt is provided, the communication shall be treated as not given.

c. In the case of the Concessionaire, all communication shall be marked for the attention of the person and to the address provided below, or to such other person or address as may be intimated to the Authority by the Concessionaire from time to time.

Name of Concessionaire's Representative :  
Address for communication :

d. In the case of the Authority, all communication shall be addressed to the \_\_\_\_\_.

### 34.12 Language

The language of this Concession Agreement is the English language. All correspondence, drawings, designs, design data, Tests reports, certificates, specifications and information shall be in the English language. All other written and printed matter required for construction, operation and maintenance shall be executed in the English language. Instructions and notices to the public and staff and all other signs and information notices shall be in English and Hindi.

### 34.13 Counterparts

This Concession may be executed in 2 (two) counterparts, each of which when executed and delivered shall constitute an original of this Concession Agreement.

IN WITNESS whereof the Parties have executed and delivered this Concession Agreement as of the date first above written.

### SIGNED SEALED AND DELIVERED

For and on behalf of

The Authority by:

\_\_\_\_\_ (Signature)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Designation)

### SIGNED SEALED AND DELIVERED

For and on behalf of

Concessionaire by:

\_\_\_\_\_ (Signature)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Designation)

In the presence of

1. \_\_\_\_\_ (Signature)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Designation)

2. \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)  
\_\_\_\_\_ (Designation)

## SCHEDULE- I

### SCOPE OF WORK, TECHNICAL REQUIREMENTS & PERFORMANCE STANDARDS

#### 1. Broad Scope of Work

The scope of work includes but not limited to

- i. Taking over of the site on “as is where is “ basis and Plan, Design, Finance and establish the facility, including Construction, Marketing, provision of relevant assets, equipment, faculty,



- Clearances/approvals, ancillary services and amenities related to the Ecotourism & Adventure Park conforming to Building Bye-Laws and regulations and as per terms of the Agreement and Schedules hereof.
- ii. Site clearance and cordoning off the site; providing and deputing of Security including Dismantling of existing structures, removal of debris (shall be property of Concessionaire) etc.
  - iii. Construction of Ecotourism & Adventure Park as per the design approved by the Design Approval Committee and in conformity to the standards set forth in this schedule including, providing installation of all internal and external services.
  - iv. Meet the requirements laid down by the Competent Authorities.
  - v. Provide rest room, public conveniences etc.
  - vi. Entry and exits for the Ecotourism & Adventure Park shall be provided and developed considering proper overall traffic circulation within and on roads the Project Site.
  - vii. Performance and fulfillment of all obligations of the Concessionaire in accordance with the provisions of the Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under the Agreement.
  - viii. All the open spaces in and around the Ecotourism & Adventure Park shall be landscaped.

## **2. SPECIFICATIONS FOR DESIGN, ENGINEERING AND CONSTRUCTION**

### **2.1 MINIMUM BUILDING SPECIFICATIONS**

- i. Adequate surface drainage arrangement shall be made so that surface water does not enter into the Ecotourism & Adventure Park.
- ii. The construction of building shall be governed by the building rules provided in the Madhya Pradesh Town and Country Planning Rules, 19... and local building bye laws of Rewa. On the points where such rules are silent and stipulate no conditions or norms, National Building Code of India published by the Bureau of Indian Standards shall be followed.

### **2.2 MINIMUM CONSTRUCTION SPECIFICATIONS: AS APPLICABLE**

- i. Only quality concrete shall be used.
- ii. The construction of building shall be governed by the building rules provided in the Madhya Pradesh Town and Country Planning Rules, 19... and local building bye laws of Rewa. On the points where such rules are silent and stipulate no conditions or norms, National Building Code of India published by the Bureau of Indian Standards shall be followed. All construction shall be strictly as per the provisions made in IS Specifications and standards, CPWD/PWD specifications etc.

### **2.3 MINIMUM AMENITIES REQUIREMENT**

- i. Concessionaire shall make provision for separate public convenience for men and women and drinking water fountains in the facility at

appropriate location easily accessible to users including disable persons.

- ii. The Concessionaire shall make a provision of administrative office for his use during Concession Period.

## **2.4 LIGHTING**

Lighting shall be designed to provide adequate vision, comfort and safety. It shall be designed to provide for uniform lighting throughout the facility with no dark patches or pockets.

## **2.5 UTILITES**

- i. Standby DG Set of adequate capacity shall be provided to meet the emergency load requirements or for backup during power outages along with the secondary backup for the minimum operation.
- ii. Adequate underground/overhead water storage shall be provided to cater for a day requirement of domestic flushing and firefighting purpose.
- iii. The Concessionaire shall ensure the provision of proper fire safety measure conforming to the provisions of National Building Code to the satisfaction of the Chief Fire Officer, Rewa/competent authority.

## **2.6 PRE COMMISSIONING PHASE**

- i. During the design, construction & erection phase, the Concessionaire shall prepare the detailed engineering including detailed design, drawings, and architectural plan and obtain requisite approvals from Competent Authorities.
- ii. Overall designs, material specifications and workmanship shall be the Concessionaire's responsibility.

## **3. PERFORMACNE SPECIFICATIONS FOR OPERATION, MAINTENACNE AND MANAGEMENT PHASE.**

The Concessionaire shall be committed to continuous improvement and shall implement systems to facilitate this objective.

### **3.1 OPERATION AND MAINTENANCE MANUAL**

- i. The Concessionaire shall in consultation with "Authority" and/or Independent Engineer evolve an Operation and Maintenance Manual.
- ii. The Concessionaire shall maintain the Project Facility in good and usable condition through out the Concession Period or any extension thereof through regular and preventive maintenance of the Project Facility.
- iii. The Operation and Maintenance Manual shall include all the activities required for regular and periodic maintenance of the facility during the Operations Period, so that facility is maintained in a manner that at all times it complies with the specifications and standards and at the time of divestment of rights and interest by the Concessionaire in terms of the Concession Agreement in sound, durable and functional condition.

### **3.2 EQUIPMENT MAINTENANCE**

Concessionaire shall undertake planned and reactive maintenance of equipments to ensure that equipment is safe, accurate and working to optimum performance and to achieve maximum availability and continuity of services by maintaining standards set by equipment manufacturer.

### **3.3 STAFFING AND PERSONNEL TRAINING**

- i. Concessionaire shall make provision of adequate staff required for construction, operation, maintenance and management of facility as prescribed in the staffing plan.
- ii. Concessionaire shall ensure that all staff engaged in the delivery of the Services is all times properly adequately notified, trained, and instructed and information records are maintained accordingly.
- iii. Concessionaire shall ensure that all staff are properly and presentably dressed in appropriate uniforms and work wears and wear identification badges at all times while working in the facility.

### **3.4 SECURITY**

- i. Concessionaire shall take all reasonable precautions to minimize theft, injury to visitors or their property within confines of the Ecotourism & Adventure Park.
- ii. Concessionaire shall make a provision of adequate security to prevent any theft and provide a 24-hour surveillance system which continuously monitors and controls entry into and exit from the facility. A closed circuit television (CCTV) network may be provided for security and surveillance as well as for central monitoring purposes.

### **3.5 PREPAREDNESS AND PREVENTION**

- i. The preparedness and prevention standards are intended to minimize and prevent emergency situations at the Ecotourism & Adventure Park. Concessionaire shall ensure that facility is operated and maintained in a manner that minimizes the possibility of a fire, explosion, and theft. Concessionaire shall provide and maintain requisite equipment including fire fighting and adequate water supply, internal communication system and alarms and provisions for contacting local authorities.
- ii. Concessionaire shall prepare and maintain emergency preparedness plan for facility and train all the personnel working in the facility in order to respond appropriately in such situation and carry out these plans in the event of an actual emergency.

## **SCHEDULE- II DEVELOPMENT CONTROL NORMS**

### *Applicable Development Controls*

The total ground coverage allowed in the region is 40% and the height allowed for buildings is G+3.

**SCHEDULE IIIA**  
**FORMAT OF CONSTRUCTION PERFORMANCE SECURITY**  
**PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE**

Bank Guarantee No.: Dated:

\_\_\_\_\_  
**Issuer of Bank Guarantee:**

\_\_\_\_\_ (Name of the Bank)

\_\_\_\_\_  
(hereinafter referred to as the “Bank”)

**Beneficiary of Bank Guarantee:**

MPEDB, Rewa

**Nature of Bank Guarantee:**

Unconditional and irrevocable Bank Guarantee.



### Context of Bank Guarantee

Performance during Construction Period in respect of Concession Agreement (hereinafter referred to as the “Agreement”) to be executed between Madhya Pradesh Ecotourism Development Board, Rewa (“hereinafter referred to as the “MPEDB”) and \_\_\_\_\_ (hereinafter referred to as the “Concessionaire”) for the Development of Ecotourism & Adventure Park (hereinafter referred to as the “Project”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. “Performance Security” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and MPEDB and is not dependent upon execution or performance of any Agreement between MPEDB and \_\_\_\_\_ (name of the Concessionaire).

### Operative part of the Bank Guarantee:

1. At the request of the Concessionaire, we \_\_\_\_\_, \_\_\_\_\_ (name and address of the bank), hereinafter referred to as the “Bank”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to MPEDB i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs. \_\_\_\_ (Rupees \_\_\_\_ Only), such sum being payable by us to MPEDB immediately upon receipt of first written demand from MPEDB.
2. We unconditionally and irrevocably undertake to pay to MPEDB on an immediate basis, upon receipt of first written demand from MPEDB and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for MPEDB to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. \_\_\_\_ (Rupees \_\_\_\_ Only).
3. We hereby waive the necessity of MPEDB demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with MPEDB that MPEDB shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to it by Concessionaire, which are recoverable by MPEDB by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of MPEDB.
6. We unconditionally and irrevocably undertake to pay to MPEDB, any amount so demanded not exceeding Rs. \_\_\_\_ (Rupees \_\_\_\_ Only)

notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to MPEDB, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.

7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until \_\_\_\_\_

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. \_\_\_\_ (Rupees \_\_\_\_ Only).

2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. \_\_\_\_\_ to \_\_\_\_\_.

3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if MPEDB serves upon us a written claim or demand on or before \_\_\_\_\_.

\_\_\_\_\_  
Authorized Signatory, for Bank

### SCHEDULE-III B

#### FORMAT OF OPERATION & MAINTENANCE PERFORMANCE SECURITY PERFORMANCE BANK GUARANTEE OF CONCESSIONAIRE

Bank Guarantee No.: Dated: \_\_\_\_\_

**Issuer of Bank Guarantee:**

\_\_\_\_\_(Name of the Bank)

\_\_\_\_\_

(hereinafter referred to as the "Bank")

**Beneficiary of Bank Guarantee:**

MPEDB, Rewa

**Nature of Bank Guarantee:**

Unconditional and irrevocable Bank Guarantee.

**Context of Bank Guarantee**

Performance during Operation & Maintenance Period in respect of Concession Agreement dated..... (hereinafter referred to as the "Agreement") between the Madhya Pradesh Ecotourism Development Board, Rewa ("hereinafter referred to as "MPEDB")

and \_\_\_\_\_ (hereinafter referred to as the “Concessionaire”) for the Development of Ecotourism & Adventure Park (hereinafter referred to as the “Project”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. “Performance Security” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and MPEDB and is not dependent upon execution or performance of any Agreement between MPEDB and \_\_\_\_\_ (name of the Concessionaire).

#### **Operative part of the Bank Guarantee:**

1. At the request of the Concessionaire, we \_\_\_\_\_, \_\_\_\_\_ (name and address of the bank), hereinafter referred to as the “Bank”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to MPEDB i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs. \_\_\_\_ (Rupees \_\_\_\_ Only), such sum being payable by us to MPEDB immediately upon receipt of first written demand from MPEDB.
2. We unconditionally and irrevocably undertake to pay to MPEDB on an immediate basis, upon receipt of first written demand from MPEDB and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for MPEDB to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. \_\_\_\_ (Rupees \_\_\_\_ Only).
3. We hereby waive the necessity of MPEDB demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with MPEDB that MPEDB shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to it by Concessionaire, which are recoverable by MPEDB by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of MPEDB.
6. We unconditionally and irrevocably undertake to pay to MPEDB, any amount so demanded not exceeding Rs. \_\_\_\_ (Rupees \_\_\_\_ Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being



absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to MPEDB, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.

7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until \_\_\_\_\_. Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. \_\_\_\_ (Rupees \_\_\_\_ Only).

2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. \_\_\_\_\_ to \_\_\_\_\_.

3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if MPEDB serves upon us a written claim or demand on or before \_\_\_\_\_.

\_\_\_\_\_  
Authorized Signatory  
For Bank

#### **SCHEDULE- IV DESIGN APPROVAL COMMITTEE**

For the approval of the design of the “*Ecotourism & Adventure Park*”, the Authority shall constitute a Committee with following members:

1. Chief Town Planner, Madhya Pradesh or his representative.
3. Chief Architect, Madhya Pradesh or his representative.
4. Representative of MPEDB
5. Any other members as nominated by MPEDB

The members of the Committee shall be responsible for approving the design submitted by the Concessionaire and give suggestions, if there, for improving the design of the Ecotourism & Adventure Park.

## SCHEDULE- V SUBSTITUTION AGREEMENT

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

1. Madhya Pradesh Ecotourism Development Board, Rewa, having its office at \_\_\_\_\_ (hereinafter referred to as the Authority which expression shall, unless the context otherwise requires, include its successors and assigns); and

2. [\*\*\*\*\*Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at \*\*\*\*, (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes); and

3. \*\*\*\*[NAME AND PARTICULARS of Lenders’ Representative] and having its registered office at \*\*\*\*, acting for and on behalf of the 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”) on design, build, finance, operate and transfer basis (DBFOT) the development of Ecotourism & Adventure Park in the City of Rewa, Madhya Pradesh (Project), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) 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 Company in accordance with the provisions of this Agreement and the Concession Agreement.

(D) In order to enable implementation of the Project including its planning, designing, engineering financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED 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 Company**” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of 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 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 assigns 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 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 Company 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 Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the 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 issuance 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 Company 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 in accordance with the provisions of the Concession Agreement, 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.

### **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 Company 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.

### **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 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 Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill 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 Company 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 Company 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 Company 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 Concessions Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Concessions Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

### **3.5 Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company 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 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 Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company'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 22 and 23 of the Concession Agreement.

### **5.2 Termination when no Nominated Company is selected**

In the event that no Nominated Company 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.

### **5.3 Realization of Debt Due**

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

## **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, or is outstanding to the 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 fulfill 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 Concessioneing 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 fulfill 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 Concessioning Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of 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 venue of arbitration shall be Bhopal 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 at Madhya Pradesh 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. The address for service of each Party and its facsimile number 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 5.00 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. 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 were 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.**

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
CONCESSIONAIRE

[\*\*\*] by:  
(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
AUTHORITY by the Authority's Representative:  
(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax)

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
LENDERS by the Lenders' Representative:  
(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax)

In the presence of:  
1.  
2.

## SCHEDULE- VI PROJECT SITE DESCRIPTION

The Site of 5.783 hectares earmarked for the Ecotourism & Adventure Park project is located in the heart of the Municipal Corporation Area of the city of Rewa, on the Bansagar Reservoir-fed scenic perennial Beehar River and on the NH-7, the major Varanasi/Allahabad-Khajuraho/Bandhavgarh tourist route. The Municipal Corporation land directly opens into the highway and right next to a road-bridge constructed across the river. The proposed project is to be located on a land admeasuring 5.783 hectares consisting of two islands in Beehar River, of areas 2.639 hectares and 1.007 hectares respectively, and municipal land located in village Nipania measuring 1.546 hectares. The Municipal Corporation land can be used to connect the islands to the main land and can act as a launching pad for housing basic amenities.

### Land Details:

- a. Bigger Island:** Total 2.639 ha., comprising Survey Nos.158/01 (1.554 ha.), 158/02 (0.405 ha.),159 (0.174 ha.), 160 (0.506 ha.), Village Nipania (within Municipal Corporation Limits), Tehsil Huzur, District Rewa, Status of land: Non-forest land acquired by and in possession of the Forest Department.
- b. Smaller Island:** Total 1.007 ha., comprising Survey No. 156 (1.007 Ha.), City Rewa, Tehsil Huzur, District Rewa, Status of land: Non-forest land acquired by and in possession of the Forest Department.

TOTAL AREA OF BOTH THE ISLANDS = 3.646 ha.

- c. Land on eastern bank (old RTO office compound):** Total 1.546 ha., comprising Survey Nos.: 101 (1.546 Ha.), City Rewa, Tehsil Huzur, District Rewa, Status of land: Non-forest land of the ownership of Municipal Corporation, Rewa.

TOTAL AREA OF THE PROJECT = 2.639 + 1.007+ 1.546 = 5.20 ha.

S. No.	Plot No.	Area	Location

## SCHEDULE- VII PROJECT FACILITIES

1. **Project Facilities** The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement.
  
2. **Mandatory Project Facilities** The Concessionaire shall construct the Mandatory Project Facilities required to adequately and efficiently support the Mandatory Project and shall include but not be limited to adequate:
  - a. water supply and distribution;
  - b. electricity supply and distribution with generator sets;
  - c. sewage and sanitation facilities with zero waste management system;
  - d. changing rooms (separate for ladies and gents);
  - e. toilets (separate for ladies and gents);
  - f. tree plantation and green areas;
  - g. refreshment facilities;
  - h. public access telephones;
  - i. parking facilities;
  - j. guides
  - k. and such other facilities as may be necessary and required to establish and operate and the Project in accordance with the Specifications and Standards.

## SCHEDULE- VIII

### ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the \*\*\* day of \*\*\* 20\*\*.

AMONGST

1. [\*\*\*\* LIMITED], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at \*\*\*\* (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2.\*[name and particulars of Lenders“ Representative] and having its registered office at \*\*\* acting for and on behalf of the 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);

3.\*[name and particulars of the Escrow Bank] and having its registered office at \*\*\*\*(hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4. Madhya Pradesh Ecotourism Development Board having its office at A’ Wing, Urja Bhawan, Link Road No.-2, Bhopal- 4620003 Bhopal, Madhya Pradesh acting through its Chief Executive Officer (hereinafter referred to as the **Authority**, which expression shall, unless the context otherwise requires, include its administrators, successors and assigns).

WHEREAS:

The Concessions Authority has entered into a Concession Agreement dated \*\*\* with the Concessionaire (the “Concession Agreement”) to develop an Ecotourism & Adventure Park through Private Participation on Design, Build, Finance, Operate and Transfer (DBFOT) basis (“the Project”) in the City of Rewa, Madhya Pradesh; a copy of the said Concession Agreement

is annexed hereto and marked as Annex-A to form part of this Agreement

(B) Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.

(C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

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

“Concession Agreement” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Concessioning Authority or the Lenders“ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

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

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

“Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts

and paid out therefrom on the Payment Date(s).

## 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 Lenders.

1.2.2 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.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this 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 ESCROW ACCOUNT

### 2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Concessions Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Concessions Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Concessions Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

### 2.2 Acceptance By Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Lenders or the Concessions Authority with the Escrow Bank. In



performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Concessions Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

### 2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Compliance Date, the Concessionaire shall open and establish the Escrow Account with the \*\*\*\* (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Indian Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions or procedures, this Agreement shall prevail.

### 2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

### 2.5 Rights of the parties

The rights of the Concessions Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Concessions Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

### 2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the

Nominated Company.

### **3 DEPOSITS INTO ESCROW ACCOUNT**

#### **3.1 Deposits by the Concessionaire**

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

(a) all monies received in relation to the Project from any source, including the Lenders, lenders of Subordinated Debt and the Concessions Authority;

(b) all funds received by the Concessionaire from its share-holders, in any manner or form;

(c) all fees levied and collected by the Concessionaire including all annual sub-license fees collected from sub-licensees under the sub-license agreements. ;

(d) any other revenues from or in respect of the Project; and

(e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

#### **3.2 Deposits by the Concessions Authority**

The Concessions Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

(a) any monies disbursed by the Concessions Authority to the Concessionaire;;

(b) Termination Payments:

Provided that the Concessions Authority shall be entitled to appropriate from the aforesaid amounts, any Annual Concession Fee due and payable to it by the Concessionaire, and the balance shall be deposited into the Escrow Account.

#### **3.3 Deposits by Lenders**

The Lenders' Representative agrees, confirms and undertakes that the Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project;

#### **3.4 Interest on deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

#### 4 WITHDRAWALS FROM ESCROW ACCOUNT

##### 4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, that the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Documents;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Documents;
- (d) O&M Expenses incurred by the Concessioneing Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) Annual Concession Fee due and payable to the Concessioneing Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and damages certified by the Concessioneing Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (h) debt service payments in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Documents; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 Not later than 60 (sixty) days prior to the commencement of each

Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

#### 4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Annual Concession Fee;
- (d) all payments and damages certified by the Concessioneing Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 15.6 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

#### 4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

#### 4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized 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 Documents.

#### 4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Concessioning Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 21 of the Concession Agreement. Any instructions given by the Concessioning Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Concessioning Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

### 5 OBLIGATIONS OF THE ESCROW BANK

#### 5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

#### 5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

#### 5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;

(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and

(d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

#### 5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

#### 5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

## 6 ESCROW DEFAULT

### 6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Concessioning Authority or the Lenders' Representative:

(a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;

(b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

(c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period

of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

## **7 TERMINATION OF ESCROW AGREEMENT**

### **7.1 Duration of the Escrow Agreement**

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Lenders or any of its obligations to the Concessioning Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

### **7.2 Substitution of Escrow Bank**

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Concessioning Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

### **7.3 Closure of Escrow Account**

The Escrow Bank shall, at the request of the Concessionaire and the Lender's Representative, made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Documents including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

## **8 SUPPLEMENTARY ESCROW AGREEMENT**

### **8.1 Supplementary Escrow Agreement**

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Lenders and lenders of Subordinated Debt, investment of surplus

funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

## 9 INDEMNITY

### 9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Concessioneing Authority, Escrow Bank and the Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense 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.

9.1.2 The Concessioneing 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 Concessioneing Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionair'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 Concessioneing Authority, its officers, servants and agents.

9.1.3 The Escrow Bank 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 Escrow Bank 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 Escrow Bank, its officers, servants and agents.

### 9.2 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 9.1 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, which approval shall not 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.

## 10 DISPUTE RESOLUTION

### 10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Bhopal (Madhya Pradesh) and the language of arbitration shall be English.

## 11 MISCELLANEOUS PROVISIONS

### 11.1 Governing law and jurisdiction

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

### 11.2 Waiver of sovereign immunity

The Concessions 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 Concessions 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 judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

### 11.3 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.

### 11.4 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.

### 11.5 Waiver

11.5.1 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 authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any 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 any 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.

### 11.6 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.

## 11.7 Survival

### 11.7.1 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.

11.7.2 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.

### 11.8 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 10.1 of this Agreement or otherwise.

### 11.9 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.

### 11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number 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 a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile 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.

11.11 Language

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

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised 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.

11.13 Original Document

This Agreement may be executed in four 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.

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

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
LENDERS by the  
Lenders' Representative:

(Signature)

(Signature)

(Name)  
(Designation)  
(Address)  
(Fax No.)

(Name)  
(Designation)  
(Address)  
(Fax No.)

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

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
CONCESSIONING  
AUTHORITY OF [\*\*\*\*] by:

(Signature)

(Signature)



(Name)  
(Designation)  
(Address)  
(Fax No.)

(Name)  
(Designation)  
(Address)  
(Fax No.)

In the presence of:

1.

2.

