

EXECUTIVE SUMMARY

ON

DEVELOPMENT OF TOURISM AT LIGHTHOUSES

AT

MUTTOM POINT LIGHTHOUSE, TAMIL NADU

LOCATION





SITE DESCRIPTION

Muttom is a coastal village located in Kanyakumari District, Tamil Nadu. It is situated at a distance of approximately 35 kms towards west of Kanyakumari town, approximately 16 kms towards south-west of Nagercoil Town and approximately 75 kms towards south of Thiruvananthapuram (in Kerala State).

Muttom is currently inhabited by approximately 200 families and majority of the local population are involved in fishing and other related activities. The economy of Muttom is primarily driven by Fishing and other related activities.

SITE CONNECTIVITY

KEY LOCATION	Approx. DISTANCE in KM
National Highway 7	20
Thiruvananthapuram International Airport	74
Nagercoil Railway Station	16
Kanyakumari Railway Station	32
Colachel Port	07
Kadalundi Bird sanctuary	50

SALIENT FEATURES IN RFP AND DCA

SL No.	PARTICULARS	CONTENTS
1.	Area to be handed over on licensing basis	Ref Appendix 1 of DCA
2.	Minimum Development Obligation (MDO)	Ref Appendix 1 of DCA
3	Concession period	30 years
4.	Project Cost	Rs 50.00 Cr
5.	Performance Bank Guarantee	Rs. 2.50 Cr
6.	Payment to Concessioneing Authority	Refer Article 9 of DCA
7.	Bid parameter	Highest % share of gross revenue generated per annum
8.	CRZ clearance	Obtained
9.	Approval of Town Planning Authority	Obtained
10.	Approval for augmented water supply	Separate bore well to be installed to meet the demand of tourism activity
11.	Approval for augmented power supply	Separate transformer to be installed to meet the demand of tourism activity
12.	Bid Security	Rs 50,00,000/- (Fifty Lakh)
13	Tender Fee	Rs.42,000/- (Forty Two Thousand Only)
14	Eligibility Criteria	Refer Clause 2.21 & 2.22 of RFP

15	Condition precedent	06 months from the date of execution of Concession Agreement
16	Scope of Work	Appendix 4 of DCA
17	Construction period	24 months from appointed date
18	Commercial Operation date	02 years from appointed date
19	Dispute Resolution	Refer Article 19 of DCA
20.	Operation and maintenance	Responsibility of the concessionaire
21.	Pre bid conference cum road show	29/11/2021 at 1500 hrs Link : https://meet.google.com/kfk-wepz-bvf

**Directorate General of
Lighthouses &
Lightships**

**Volume 1
Request for Proposal
(RFP) For**



**Development of Tourism Project on PPP basis
at Muttom Point Lighthouse , Tamilnadu**

November 2021

*(This document is meant for the exclusive purpose of submitting the Request for Proposal (RFP)
and shall not be transferred, reproduced or otherwise used for purposes other than that for which
it is specifically issued)*

DISCLAIMER

The information contained in the **“Bidding Documents”** (or **“Bid documents”**) for this project comprises of Volume 1 (the **“RFP”** or **“Request for Proposal”**) and Volume 2 (the **“Draft Concession Agreement”**) provided now or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of **Directorate General of Lighthouses & Lightships** (the **“Authority”**) (the **“Concessioneing Authority”**) (**“DGLL”**) or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in the Bidding Documents and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide the Bidders with information that may be useful to them in preparing and submitting their proposal pursuant to the Bidding Documents. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way by participating in this Bidding Process.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Successful Bidder or Operator, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

This RFP calls for a single stage – two cover submission consisting of ‘Submission 1: Technical bid’ and ‘Submission 2: Commercial bid’. The financial quote should not be indicated anywhere in the documents except in ‘Submission 2: Commercial bid’ in the prescribed format failing which the bidder shall be disqualified from the bidding process and there shall be no liability on the Authority whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

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

Contents

Contents.....	4
1 INTRODUCTION	6
1.1 Background	6
1.2 Brief description of Bidding Process	8
1.3 Schedule of Bidding Process	9
1.4 Pre-Bid Conference	11
2 INSTRUCTIONS TO BIDDERS.....	12
2.1 General terms of Bidding	12
2.2 Change in composition of the Consortium	15
2.3 Change in Ownership	16
2.4 Cost of Bidding	17
2.5 Site visit and verification of information.....	17
2.6 Verification and Disqualification	18
2.7 Contents of the RFP	19
2.8 Clarifications	20
2.9 Amendment of RFP	20
2.10 Format and Signing of Bid	21
2.11 Uploading of Bids.....	21
2.12 Bid Due Date	24
2.13 Late Bids.....	25
2.14 Contents of the Bid.....	25
2.15 Modification / Substitution/ Withdrawal of Bids	25
2.16 Rejection of Bids	25
2.17 Validity of Bids	25
2.18 Confidentiality	26
2.19 Correspondence with the Bidder	26
2.20 Bid Security	26
2.21 Eligibility Criteria for Bidders.....	28
2.22 Technical Proposal	33
2.23 Payment to be made by Successful Bidder / Concessionaire	34
2.24 Other Provisions	35
3 EVALUATION OF BIDS	36
3.1 Opening and Evaluation of Bids	36
3.2 Tests of responsiveness	36
3.3 Selection of Bidder.....	37
3.4 Contacts during Bid Evaluation.....	39
3.5 Bid Parameter.....	40
4 FRAUD AND CORRUPT PRACTICES.....	41
4.1 Fraud and Corrupt Practices	41
5 PRE-BID CONFERENCE.....	43
5.1 Pre Bid Conference	43

6 MISCELLANEOUS	44
6.1 Miscellaneous.....	44
Appendix I.....	45
Annex I: Letter for Bid	45
Annex II: Details of Bidder	49
Annex III: Statement of Legal Capacity.....	51
APPENDIX II: Bank Guarantee for Bid Security	52
APPENDIX III: Power of Attorney for signing of Bid (Single Entity)	55
APPENDIX IV: Power of Attorney for Lead Member of Consortium	57
APPENDIX V: Joint Bidding Agreement (for Consortium)	59
APPENDIX VI: Anti-Collusion Certificate.....	64
Appendix VII	65
Annex-I: Format of Financial Capacity for purpose of evaluation.....	65
Annex II: Format of Technical Capacity for purpose of evaluation.....	67
Annex III: Details of the Eligible Project.....	69
Appendix VIII: Format of Commercial Proposal	75
APPENDIX IX : Guidelines of the Department of Disinvestment	76
APPENDIX X: INTEGRITY PACT	78
APPENDIX XI: Information for Security Clearance	93
APPENDIX XII – Instructions for Online Bid Submission.....	96

1 INTRODUCTION

1.1 Background

The Authority proposes to promote tourism at Lighthouses on Public Private Partnership (PPP) across select locations in the Country for which it envisages to develop allied tourism infrastructure components and upkeep the existing lighthouses precincts and its surrounding areas as a Tourist Destination integrated with the Maritime Landmark and Heritage Precinct. One such location identified by the Authority is the Muttom Point Lighthouse, located about 32 Km from Kanyakumari (off Eraniel – Muttom Road along the coast) in District Kanyakumari, Tamil Nadu.

The Authority has envisaged the Development of Tourism facilities alongside the Muttom Point Lighthouse, situated at located about 32 Km from Kanyakumari (off Eraniel – Muttom Road along the coast) in the State of Tamil Nadu in an extent admeasuring approximately 29.89 acres (including existing building / structures thereon) out of the total land extent of 39.98 acres with the Authority (hereinafter referred to as the “Project Site”).

Brief particulars of the Project are provided in the table below

Name of the Project	Concession Period	Estimated Project Cost
Development of Tourism Project on PPP basis at Muttom Point Lighthouse , Tamilnadu	30 years	Approx. Rs. 50.00 crore (Rupees Fifty crore Only)

The Concessionaire shall be entitled to generate revenue by means of collecting User Charges for the permitted tourist activities. The Concessionaire shall be responsible for fulfilling all the regulatory and statutory obligations applicable to the Project and its commercial operations.

1.1.1. The Concessioneing Authority intends to qualify and select suitable Bidder (the “**Bidder**”, which expression shall, unless repugnant to the context, include the Members of the Consortium) through an open competitive bidding process in accordance with the procedure set out in this RFP document.

- 1.1.2. The Selected Bidder, who is either a company (the “Single Entity”) or a group of Companies (the “Consortium”) incorporated under the Companies Act, 1956/2013 undertakes to incorporate a Special Purpose Vehicle (“SPV”/ “**Concessionaire**”) under the Companies Act, 2013, prior to execution of the concession agreement (“**Concession Agreement**”). The Concessionaire shall be responsible for the Development, Operation and Maintenance of the Project Site under and in accordance with the provisions of the Concession Agreement to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.
- 1.1.3. The Scope of works will broadly include Development, Operation, Maintenance and Transfer of the Project Site as defined in the Concession Agreement during the entire Concession Period, in accordance with the provisions of the Concession Agreement. The scope includes the Minimum Development Obligations and the other Project Facilities and Services to be provided and maintained for development of the Project Site as tourist destination. For detailed Scope of works, please refer to the Volume 2 - Draft Concession Agreement. The Concession Agreement sets forth the detailed terms and conditions for grant of the Concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “**Concession**”).
- 1.1.4. The Estimated Project Cost of the Project is Rs.50,00,00,000.00 (Rupees Fifty Crore only) is indicative. However, for the estimation of actual costs and technical and financial viability of the Project, the Bidder(s) may undertake a technical and financial feasibility study of their own. The cost and reliability of such study shall be the sole responsibility of the Bidder.
- 1.1.5. The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of the performance obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the Scope of works or the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on such account shall be entertained by the Authority.
- 1.1.6. The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority and the Draft Concession Agreement (collectively the “**Bidding Documents**”), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bid (the “**Bid Due Date**”).

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single-stage bidding process (referred to as the “**Bidding Process**”) for selection of the Bidder for award of the Project. It shall comprise of two submissions, ‘**Submission 1: Technical Bid**’ and ‘**Submission 2: Commercial Bid**’. Eligibility and qualification of the Bidder will be first examined based on the details submitted under Submission 1: Technical Bid, with respect to minimum eligibility and qualifications criteria prescribed in this RFP. The Bidders who’s ‘Submission 1’ is responsive to eligibility and qualifications requirements as per this RFP shall be declared as Pre-qualified Bidders (“**Pre-qualified Bidders**”) and shall be invited for making presentation and their technical proposal shall be evaluated by technical evaluation committee. The Commercial Bid under the ‘Submission 2’ shall be opened of only those Qualified Bidders (“**Qualified Bidders**”) who gets minimum 70 (seventy) marks as technical score as per this RFP. Submission 2: Commercial Proposals will entail the **Revenue Share** to be quoted by bidders.

The Government of India has issued guidelines (see Appendix-IX) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify a Bidder in accordance with the previously mentioned guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

- 1.2.2 The Bidders would be required to furnish all the information specified in this RFP. The Bid shall be valid for a period of not less than 120 (One Hundred Twenty) days from the Bid Due Date.
- 1.2.3 The Bidding Documents include the Draft Concession Agreement (“DCA”) for the Project. The aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.4 Bidder will be required to deposit, along with its Bid, a bid security of Rs.50,00,000/- (Rupees Fifty Lakhs only) (the “**Bid Security**”), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Guarantee under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of Demand Draft or a bank guarantee issued by Scheduled Bank as acceptable to the Authority.
- 1.2.5 During the Bid Stage, Bidders are invited to examine the Project in detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project. As part of the Bidding Documents, the Authority will provide a draft Concession Agreement and other information pertaining/ relevant to the Project available with it.

- 1.2.6 The Bids are invited for the Project on the basis of the **highest Revenue Share in terms of Percentage of Gross Revenue (“Revenue Share”)** to the Authority for award of concession, over and above Annual Concession Fee of Rs.1/ (One only) accordance with the provisions of Concession Agreement. The Project shall be awarded to the Qualified Bidder quoting the highest Revenue Share. (**“Highest Bidder”**).
- 1.2.7 Generally, the Highest Bidder shall be the preferred Bidder, subject to the provisions of Clause 2.19. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Section 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the remaining Bidders or annul the Bidding Process.
- 1.2.8 The Concessionaire shall, in consideration of its investment and services be entitled to levy and collect User Charges in accordance with the provisions of Concession Agreement.
- 1.2.9 Details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.
- 1.2.10 Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/ courier/ special messenger and by e-mail noida-dgll@nic.in by the specified date. The envelopes/ communications shall clearly bear the following identification/ title:

“Queries/ Request for Additional Information: RFP for Development of Tourism Project on PPP basis at Muttom Point Lighthouse , Tamilnadu.

1.3 Schedule of Bidding Process

The Authority shall endeavor to adhere to the following schedule:

S. No.	Event Description	Date
1.	Issue of RFP with Draft Concession Agreements	16/11/2021
2.	Last date for receiving queries	26/11/2021
3.	Pre Bid Meeting cum Road Show through Video Conferencing	29/11/2021 at 1500 hrs
4.	Bid Submission Start Date	17/11/2021
5.	Bid Due Date	13/12/2021 upto 1500 hrs
6.	Validity of Bids	120 days
7.	Opening of Submission 1: Technical Bid	16/12/2021
8.	Issuance of list of Pre-qualified Bidders & Invitation for Presentation	To be notified later
9.	Issuance of list of Qualified Bidders eligible	To be notified later

REQUEST FOR PROPOSAL FOR DEVELOPMENT OF TOURISM PROJECTS ON PPP BASIS AT
MUTTOM POINT LIGHTHOUSE, TAMILNADU

	for opening of Commercial Bid	
10	Opening of Submission 2: Commercial Bid	To be notified later

1.4 Pre-Bid Conference

The date, time and venue of the Pre-Bid Conference cum Road Show shall be held on 29/11/2021 at 1500 hrs through video Conferencing.

The link for video conference cum road show as below:

<https://meet.google.com/kfk-wepz-bvf>

2 INSTRUCTIONS TO BIDDERS

A) GENERAL

2.1 General terms of Bidding

- 2.1.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a Member of a Consortium shall not be entitled to submit another Bid either individually or as a Member of any Consortium, as the case may be.
- 2.1.2 Unless the context otherwise requires, the terms not defined in this RFP, but defined in the Draft Concession Agreement for the Project (the “DCA”) shall have the meaning assigned thereto in the DCA.
- 2.1.3 The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids. Nothing contained in the Bidding Documents shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Bidding Documents.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Draft Concession Agreement (DCA) shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Draft Concession Agreement.
- 2.1.5 The Bid should be furnished in the formats as specified in the Appendix VIII, clearly indicating the Percentage Revenue Share in both figures and words and signed by the Bidder’s authorized signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account. The Successful Bidder may be subsequently invited for award of the Concession. The Bidders should note that the formats specified in the RFP have been provided for the convenience of the Bidders and may not exhaustively enumerate or describe various information required to be provided by the Bidders under the Bidding Documents. The Bidders should ensure that all the information required to be provided by it in terms of the Bidding Documents is included in its Bid whether or not a particular format specified herein makes provision for submission of such information and/or whether or not a format for submission of such information is incorporated in the Bidding Documents.
- 2.1.6 The Bid shall consist of Technical Bid which includes Pre-qualification details and Technical proposal along with Commercial Bid of the Revenue Share to be quoted by the Bidder for award of concession, to be payable by the Concessionaire to the Authority, as per the terms and conditions of this RFP and the provisions of the Concession Agreement.
- 2.1.7 The Bidder shall deposit a Bid security of Rs.50,00,000/- (Rupees Fifty Lakh only) in accordance with the provisions of this RFP for the Bid submitted (“**Bid Security**”). The

Bidder has the option to provide the Bid Security in accordance with the Clause 2.20 of this RFP.

- 2.1.8 The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder.. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 60 (sixty) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Guarantee under the Concession Agreement.
- 2.1.9 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorizing the signatory of the Bid to commit the Bidder.
- 2.1.10 In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix-IV.
- 2.1.11 Any condition or qualification or any other stipulation contained in the Bid which is inconsistent with the terms of the Bidding Documents shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.12 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.
- 2.1.13 The Bidding Documents including this RFP, Draft Concession Agreement and other documents which may be issued at a later stage including replies to queries, addendum, corrigendum etc., provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance with the Bidding Documents. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.13, shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith. However, this provision of confidentiality shall be subject to the relevant and prevailing laws, rules and regulations.
- 2.1.14 A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Single Entity found to have a Conflict of Interest shall be disqualified and in case of a Consortium there shall be replacement of the Consortium Member suffering from Conflict of Interest. In case of Consortium, if the Bidder is not able to replace the Consortium Member suffering from Conflict of Interest, then the Bidder shall be disqualified.

In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security and/or Performance Guarantee (to the extent of the Bid Security), as the case may be, as liquidated damages (“the **Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise. Without limiting the generality of the above, determining the Conflict of Interest shall be the prerogative of the Authority.

Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- i the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A Section 2 (72) of the Companies Act, 2013 . For the purposes of this Clause 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or
- ii a constituent of such Bidder is also a constituent of another Bidder;
- iii such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof;
- iv such Bidder has the same legal representative for purposes of this Bid as any other Bidder;
- v such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both

of them in a position to have access to each other's' information about, or to influence the Bid of either or each other; or

- vi such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.13, shall include each Member of such Consortium. For purposes of this RFP, **Associate** means, in relation to the Bidder/Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/Consortium Member (the "**Associate**"). As used in this definition, the expression "**control**" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law, agreement or otherwise.

- 2.1.15 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical advisor of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LoA or (ii) execution of the Concession Agreement. In the event any such advisor is engaged by the Successful Bidder or Concessionaire, as the case may be, after issue of the LoA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LoA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Guarantee (to the extent of the Bid Security), as the case may be, which the Authority may have thereunder or otherwise, the LoA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Successful Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such advisor was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project. Nor will this disqualification apply where such advisor is engaged after a period of 3 (three) years from the date of signing of this Concession Agreement.

- 2.1.16 This RFP is not transferable.

- 2.1.17 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.2 Change in composition of the Consortium:

- 2.2.1 Where the Bidder is a Consortium, change in composition of the Consortium may be permitted by the Authority during the Bid Stage, only where:

- a. the Lead Member continues to be the Lead Member of the Consortium;
- b. the substitute is at least equal, in terms of Technical Capacity or Financial Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Bidders; and
- c. the new Member(s) expressly adopt(s) the Bid already made on behalf of the Consortium as if it were a party to it originally, and is not a Bidder/Member/ Associate of any other Consortium bidding for this Project.

2.2.2 Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing. The Bidder must submit its Bid for change in composition of the Consortium no later than 15 (fifteen) days prior to the Bid Due Date.

2.2.3 The modified/ reconstituted Consortium shall submit a revised Jt. Bidding Agreement and a Power of Attorney, substantially in the form at Appendix-IV and Appendix-V, prior to the Bid Due Date.

2.2.4 The option of change in composition of the Consortium which is available under Clause 2.2.1 may be exercised by any Bidder who is either a Consortium or a single entity. In the case of a single entity Bidder adding a Consortium Member at the Bid Stage, the single entity Bidder shall be the Lead Member of the Consortium. Provided, however, that no member of such Consortium shall be a Bidder or the member of a Consortium which has been pre-qualified.

2.3 Change in Ownership

2.3.1 By submitting the Bid, the Bidder acknowledges that it was pre-qualified and short-listed on the basis of Technical Capacity and Financial Capacity of those of its Consortium Members who shall, until the 2nd (second) anniversary of the date of commercial operation of the Project, hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

2.3.2 By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of short-listing and pre-qualification under and in accordance with the RFP, the Bidder shall be deemed to have knowledge of the same and shall be required to inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole

discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Guarantee, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

2.4 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, baseline of assets, location, surroundings, climate, availability of power, handling and storage of materials, applicable laws and regulations, and any other matter considered relevant by them.

2.5.2 It shall be deemed that by submitting a Bid, the Bidder has:

- a. made a complete and careful examination of the Bidding Documents;
- b. received all relevant information requested from the Authority;
- c. accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above;
- d. satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;
- e. acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- f. acknowledged that it does not have a Conflict of Interest; and
- g. agreed to be bound by the undertakings provided by it under and in terms hereof.

- 2.5.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data provided by the Authority.
- 2.5.4 The Bidder shall continue to be responsible for all claims and declarations made under its Bid for the entire Bidding Process and if selected under the Bid Process as Successful Bidder, throughout the Concession Period.

2.6 Verification and Disqualification

- 2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- 2.6.2 Without prejudice to Clause 2.20, the Authority reserves the right to reject any Bid and appropriate the Bid Security if:
- a. at any time, a material misrepresentation is made or uncovered, or
 - b. the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by them for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Successful Bidder gets disqualified/ rejected, then the Authority reserves the right to:

- i. invite the remaining Bidders to submit their Bids in accordance with this RFP; or
 - ii. take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.
- 2.6.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after their execution and during the period of subsistence thereof, including the Concession thereby granted by the Authority, that one or more of the qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LoA or entering into of the Concession Agreement, and if the Successful Bidder has already been issued the LoA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be

liable to be terminated, by a communication in writing by the Authority to the Successful Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Successful Bidder or the Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Guarantee (to the extent of the amount of the bid security), as the case may be, as liquidated damages, without prejudice to any other right or remedy that may be available to it under the Bidding Documents and/or the Concession Agreement, or otherwise.

B) DOCUMENTS

2.7 Contents of the RFP

- 2.7.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9 and any clarifications and interpretations issued in accordance with Clause 2.8.

Invitation for Bids

Section 1. Introduction

Section 2. Instructions to Bidders

Section 3. Evaluation of Bids

Section 4. Fraud & Corrupt Practices

Section 5. Pre Bid Conference

Section 6. Miscellaneous

Appendices

Appendix I

Annex I: Letter for Bid

Annex II: Details of Bidder

Annex III: Statement of Legal Capacity

Appendix II: Bank Guarantee for Bid Security

Appendix III: Power of Attorney for signing of Bid

Appendix IV: Power of Attorney for Lead Member of Consortium

Appendix V: Joint Bidding Agreement for Consortium

Appendix VI: Anti-Collusion Certificate

Appendix VII: Format for Qualification

Annex I: Format of Financial Capacity for purpose of evaluation

Annex II: Format of Technical Capacity for purpose of evaluation

Annex III: Details of Eligible Projects

Appendix VIII: Format of Commercial Proposal

Appendix IX: Guidelines of the Department of Disinvestment

Appendix X: Integrity Pact

Appendix XI: Information for Security Clearance

Appendix XII: Information TO Bidders

- 2.7.2 The draft Concession Agreement (DCA) provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing by speed post/ courier/ special messenger and by e-mail in accordance with Clause 1.2.10. They should send in their queries on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 7 (seven) days prior to the Bid Due Date. The responses will be sent by e-mail. The Authority will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.
- 2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.9 Amendment of RFP

- 2.9.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of an addendum to the RFP.
- 2.9.2 Any addendum issued hereunder will be published on the websites of the Authority.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

C) PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

- 2.10.1 The Bidder shall in its Bid provide all the information sought under the Bidding Documents. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects.
- 2.10.2 The Bid shall be typed and signed by the authorized signatory of the Bidder who shall also initial each page, in blue ink. In case of printed and published documents, only the cover shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. The Bid shall contain page numbers.
- 2.10.3 Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient.; Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information.

2.11 Uploading of Bids

- 2.11.1 The interested bidders (“Bidders”) are being called upon to submit their pre-qualification details and Technical Proposal in Cover-1 at the CPPP website (“Technical Bid”) as per Appendix VII and financial proposal of Revenue Share in the format at Appendix-VIII in Cover-2 at the CPPP website (“Commercial Bid”) (both shall collectively have referred as “Bid”) in accordance with the terms specified in these Bidding Documents. The Bid shall be valid for a period of 120 (one hundred twenty) days from the Bid Due Date. The Bidders shall submit their respective Bids online at the CPPP website (<https://eprocure.gov.in/eprocure/app>) only. Any bid submitted in only physical form shall be rejected by the Authority. For the purpose of submission of the Bid online, a Bidder shall first register itself on the CPPP.
- 2.11.2 Complete bid submission is online on the website www.eprocure.gov.in. The Tender fee and EMD shall be submitted in the form of Demand Draft or Bank Guarantee issued by Scheduled Bank , on or before the last date and time of bid submission, failing which the tender shall liable to be rejected. DGLL shall not be responsible for any delay.
- 2.11.3 Bidders shall have to submit sealed cover containing the Tender Fee and EMD in original OR MSME Certificate in the box provided in the office of the Directorate General of Lighthouses and Lightships , Deep Bhawan, A-13, Tulsi Marg, Noida-201301 on or before the Due Date and Time.
- 2.11.4 Since the Tender set is non-transferable, the tenderer who is making the online payment should only utilize the same for submitting his/her own Tender on CPP portal.

2.11.5 Each Bid shall have to be prepared and submitted in accordance with provisions of this RFP. Thus the Bid shall comprise of 2 (two) submissions:

Submission 1: Technical Bid

Submission 2: Commercial Bid

2.11.6 All the documents for each Submission as per above clause should be uploaded by the Bidders in the form of PDF files in the same order as mentioned below, on the e-tendering website during the online Bid Preparation stage. In case of any discrepancy of information between online and physical submission, then online submission shall be final.

2.11.7 Submission 1: Technical Bid

Sr. No.	Documents to be submitted online	Online submission (soft copy)	Physical submission (Hard Copy)
1	Scanned copy of the Tender Fee and BidSecurity / EMD OR the scanned copy of original certificate issued from: - i. District Industries Centers (DICs) ii. Khadi & Village Industries Commission (KVIC) iii. Khadi & Village Industries Board (KVIB) iv. Coir Board v. National Small Industries Corporation (NSIC), Govt. of India enterprises under “Single Point Registration Scheme” of Ministry of MSME vi. Directorate of Handicrafts and Handloom vii. Any other body specified by Ministry of Micro Small & Medium Enterprises (MoMSME) viii. Udyog Adhar Memorandum (UAM) under the public procurement policy with effect from 18.9.2015 towards availing benefits like the exemption of cost of tender fee and EMD	Yes	Yes
2	Letter for bid, details of bidder, incorporation / registration certificate and statement of legal capacity as per Appendix I Certified true copy of the incorporation certificate of the Single Entity Company. In the case of a Consortium, certified	Yes	No

Sr. No.	Documents to be submitted online	Online submission (soft copy)	Physical submission (Hard Copy)
	true copy of the incorporation certificate of each of the Members of the Consortium companies		
3	Power of Attorney for signing of Bid in the format at Appendix-III (By Single Entity / Lead Member) <i>Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.</i>	Yes	Yes
4	If applicable, the Power of Attorney for Lead Member of Consortium in the format at Appendix-IV (By each members of Consortium in favour of Lead Member) <i>Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.</i>	Yes	Yes
5	Joint Bidding Agreement (in case of consortium) as per Appendix V	Yes	Yes
6	Anti-collusion Certificate as per Appendix VI	Yes	Yes
7	Integrity Pact as per Appendix X (To be executed on Rs. 100 stamp paper)	Yes	Yes
8	Information for Security Clearance as per Appendix XI	Yes	Yes
9	Documents for Technical and Financial Capacity – eligibility criteria as per Appendix VII along with all supporting documents in full duly filled in and signed at required places	Yes	No
10	Duly filled in and signed scanned copy of all bid documents along with Corrigendum and Addendum Issued	Yes	No
11	Technical Proposal in accordance with clause 2.22 of RFP	Yes	No

2.11.8 Submission 2: Commercial Bid

- a. The Commercial Bid shall be submitted in Excel file (.xls) as published along with this tender. Commercial bid should not be submitted in hard copy format in any case.

- b. It may be noted that Bids of Bidders, which do not contain the Commercial Bid as specified in the RFP, would be considered as invalid and liable for rejection.

2.11.9 All eligible/interested Bidders are required to be enrolled on portal <https://eprocure.gov.in/eprocure/app> before downloading Bid Documents and participate in e-tendering.

2.11.10 Other instructions can be seen in the CPPP website. In case of any discrepancy in submission, all or any one of the tender may be rejected by competent authority.

2.11.11 The Bidders are requested to familiarize themselves with the use of the e-Tendering portal (central procurement portal) of Government of India well in advance.

2.11.12 Bidders will have to pay cost of Bid Document through as mentioned in clause 2.11.2 above, of Rs. 42,000/- (Rupees Forty Two Thousand only) (inclusive of 5% GST) towards the non-refundable Bid fee/ Cost of Bid Documents ("Tender Fee").

2.11.13 Deleted

2.11.14 For a bidder, online bidding process consists of following 3 stages:

1. Online Bid Document Download
2. Hard copy submission of required documents as per clause 2.11.6 above
3. Online Bid Preparation and Submission.

All of 3 stages are mandatory in order for Bidders to successfully complete Online Bidding Process.

2.11.15 Bid Document Purchase and Download

The RFP document/ bid document will uploaded / released on Government of India, CPP portal <https://eprocure.gov.in/eprocure/app> RFP Document/bid document and supporting documents can be downloaded from this website.

2.11.16 The Bidders are required to download the RFP Document/bid documents within the prescribed date & time mentioned in online schedule. After expiry of the date and time for Bid document download, Department / Authority will not be responsible for any such failure on account of Bidders for not downloading the document within the schedule even though they have paid the cost of the Bid documents to the Authority. In such case the cost of the Bid document paid by the Bidders will not be refunded.

2.12 Bid Due Date

2.12.1 Bids should be submitted as per the schedule provided in Clause 1.3 and in the manner and form as provided in the RFP / Bid Documents.

2.12.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an addendum in accordance with Clause 2.9 2.9 uniformly for all Bidders.

2.13 Late Bids

- 2.13.1 Bids will not be accepted by the e-tendering system (or the Authority) after the specified time on the Bid Due Date and the same shall not be eligible for consideration and shall be summarily rejected.

2.14 Contents of the Bid

- 2.14.1 Without prejudice to the other provisions of the Bidding Documents, the Bid shall be furnished in the formats as prescribed in this RFP documents, and shall consist of a Revenue Share to be quoted by the Bidder, payable annually, to undertake the Project in accordance with this RFP and the provisions of the Concession Agreement.
- 2.14.2 Generally, the Project will be awarded to the Highest Bidder.
- 2.14.3 The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.
- 2.14.4 The proposed Draft Concession Agreement enclosed with this RFP (to be issued as Volume 2, after the issue of Volume 1 of the RFP) shall be deemed to be part of the Bid.

2.15 Modification / Substitution/ Withdrawal of Bids

- 2.15.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.15.2 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.16 Rejection of Bids

- 2.16.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.16.2 The Authority reserves the right not to proceed with the Bidding Process or to modify the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.17 Validity of Bids

The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective

Bidders and the Authority, provided that the Successful Bidder shall extend the validity of the Bid until the execution of the Concession Agreement.

2.18 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the Authority in relation to or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Authority or as may be required by law or in connection with any legal process.

2.19 Correspondence with the Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

D) BID SECURITY

2.20 Bid Security

- 2.20.1 The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of Demand Draft or Bank Guarantee issued by a nationalized bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. one thousand crore), in favour of **“Pay and Accounts Officer, Lighthouses & Lightships, Noida ”** in the format at Appendix–II (the **“Bank Guarantee”**) and having a validity period of not less than 180 (onehundred eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalised bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 2.20.1 Bid Security can also be in the form of online payment as prescribed in clause 2.11.1 above. The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.20.2 Any Bid not accompanied by the Bid Security shall be summarily rejected as non-responsive.
- 2.20.3 Save and except as provided in Clauses 1.2.4 and 1.2.5 above, The Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as

possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 60 (sixty) days from the Bid Due Date. Where Bid Security has been paid by online payment, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

- 2.20.4 The Successful Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Guarantee in accordance with the provisions thereof. The Authority shall retain the Bid Security of the Successful Bidder until the execution of the Concession Agreement and furnishing of the Performance Guarantee.
- 2.20.5 The Authority shall be entitled to forfeit and appropriate the Bid Security as liquidated damages inter alia in any of the events specified in Clause 2.20.7 herein below and pursuant to other provisions of this RFP providing for a forfeiture of Bid Security. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.20.6 The Bid Security shall be forfeited as damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, under the following conditions:
- a. Bidder submits a non-responsive Bid;
 - b. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
 - c. In the case of Successful Bidder, if within the specified time limit –
 - i it fails to sign and return the duplicate copy of LOA;
 - ii it fails to incorporate the SPV / Concessionaire or such SPV / Concessionaire fails or refuses to sign the Concession Agreement;
 - iii the Concessionaire fails to provide the Performance Guarantee within the period prescribed therefor in the Concession Agreement.
 - d. a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
 - e. the Successful Bidder fails or refuses to provide any documents required to be provided by it after its selection;

- f. the Successful Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Guarantee.

2.21 Eligibility Criteria for Bidders

2.21.1 For determining the eligibility of Bidders for their qualification hereunder, the following shall apply:

(a) The Bidder qualification may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.

(b) A Bidder may be a natural person, any entity, or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.21.6 below.

(c) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process as per the provisions of Clause 2.1.14.

2.21.2 To be eligible for pre-qualification and short-listing as Pre-qualified Bidders, a Bidder shall fulfil the following conditions of eligibility:

A. **Technical Capacity:** For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder shall over the past 5 (five) financial years preceding the Bid Due Date, have:

Category 1

Owned and / or operated, maintained and managed functional hotels / resorts of 3 star and above category having the sum total of more than **100 residential rooms** (“**Threshold Technical Capacity 1**”) such that,

- i. Each qualifying hotel / resort must have minimum 25 residential rooms under operation for at least 2 (two) years in last 5 (five) years;
- ii. Maximum 4 (four) hotels / resorts can be used for qualification under category 1.

OR

Category 2

Owned and / or operated, maintained and managed projects of Theme parks (adventure / amusement / water / eco-tourism / entertainment) spread over total area of more than **24 acres** (“**Threshold Technical Capacity 2**”) under operation such that,

- i. Each qualifying project must have minimum area of 6 acres under operation for at least 2 (two) years in last 5 (five) years;
- ii. Maximum 4 (four) Theme park (adventure / amusement / water / eco-tourism / entertainment) can be used for qualification under category 2.

OR

Category 3

Made strategic capital investment of more than Rs. 100,00,00,000/- (Rupees Hundred crore only) (“**Threshold Technical Capacity 3**”) in Event and Activation industry for creation of tourist attractions, user experiences, organizing and managing events in tourist destinations. The qualifying amount must be capital expenditure only, operational expenses shall not be considered for qualifications.

B. Details of Experience:

- (i) The Bidder should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date.
- (ii) The Bidders must provide the necessary information relating to Technical Capacity as per format at Annex-II of Appendix-VII such as Client’s Certificate / Statutory Auditor’s Certificate clearly specifying the necessary eligibility requirements along with the supporting documents.
- (iii) The Bidder should furnish the required Project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annex-III of Appendix-VII.
- (iv) Experience for any activity relating to an eligible project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.
- (v) The entity claiming experience should have held, in the company owning / executing / operating the eligible project, a minimum of 26% (twenty six per cent) equity during the entire year for which eligible experience is being claimed.
- (vi) The Bidder should extend necessary support for inspection of possession of experience claimed and infrastructure by Authority.

2.21.3 Financial Capacity:

A. The Bidder shall have to demonstrate (the “**Financial Capacity**”) the following:

- (i) Financial Capacity: The Applicant shall have a minimum Net Worth (the “Financial Capacity”) of [Rs. 12.5 (Twelve Crores and fifty lakhs)] as at the close of the preceding financial year. In case of a Consortium, the combined technical capability and net worth of those members, who have an equity share of at least 26% each in such Consortium, should satisfy the above conditions of eligibility.
- (ii) In case of a Consortium, the combined technical capacity and financial capacity of those Members, who shall have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the Appointed Date of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.

B. Financial information for purposes of evaluation

- (i) The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 5 (five) financial years, preceding the year in which the Bid is made.

- (ii) In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- (iii) The Bidder must establish the minimum Net Worth, Turnover and Net Cash Accruals specified above and provide details as per format at Annex-I of Appendix-VII.

2.21.4 The Bidder shall enclose with its Bid, to be submitted as per the format at Appendix-VII, complete with its Annexes, the following^{\$}:

- (i) Certificate(s) from statutory auditors of the Bidder or its Associates or the concerned client(s) stating the eligibility experience, as the case may be, during the past 5 (five) years in respect of the projects specified in paragraph 2.21.4 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and
- (ii) certificate(s) from statutory auditors of the Bidder or its Associates specifying the Net Worth, Turnover and Net Cash Accrual of the Bidder, as at the close of the preceding financial year, and also specifying that the methodology adopted for calculating such parameters conforms to the provisions of this Clause 2.21.4 (ii). For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders.

2.21.5 The Bidder should submit a Power of Attorney as per the format at Appendix-III, authorizing the signatory of the Bid to commit the Bidder. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-IV.

2.21.6 Where the Bidder is a single entity, it shall be required to form an appropriate Special Purpose Vehicle, incorporated under the Indian Companies Act, 2013 (the “**SPV**”), to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

^{\$} In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 2.21.5. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

- (a) Number of members in a consortium shall not exceed 3 (three);
- (b) subject to the provisions of sub-clause (a) above, the Bid should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-IV, signed by all the other members of the Consortium;
- (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Bidder cannot at the same time be member of a Consortium applying for pre-qualification. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for pre-qualification;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-V (the “**Jt. Bidding Agreement**”), for the purpose of making the Bid and submitting a Bid in the event of being short-listed. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
 - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the minimum equity stake to be held by each member;
 - (iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
 - (v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of the Project; and
 - (vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and
- (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

2.21.7 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (PPP or otherwise), and the bar subsists as on the date

of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.21.8 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

2.21.9 In computing the Technical Capacity & Financial Capacity of the Bidder/ Consortium Members under the provisions of this RFP, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

2.21.10 The following provisions shall apply for Qualifications:

- (a) Where, on the date of the Bid, 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its Member is held by persons resident outside India or where a Bidder or its Member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty five per cent) or more of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its Member;

then the Qualification of such Bidder or in the event described in sub clause (b) above, the continued Qualification of the Bidder shall be subject to approval of the Authority from

national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

- 2.21.11 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years or 1 (one) year, as the case may be, preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.22 Technical Proposal

- 2.22.1 The Bidders shall submit its Technical Proposal as part of its technical bid under Submission 1. It would be a conceptual master plan of various activities the bidders would be proposing to undertake the Project. The Technical Proposal shall essentially include:

- a) Conceptual Master Plan of the Project Site: It objective of Authority is to develop the Project Site as a tourist destination so as to cater to the demand of the tourist / visitors amongst foreign and domestic tourists along with the local population. Keeping this objective in view, a Master Plan with an optimized disposition of project facilities and products is recommended. The Master Plan would involve all activities for development of the Project in an integrated manner. A total of approximate 11 acres of Project Site as per the Layout attached in the Draft Concession Agreement is to be planned as per the scope of the Project as prescribed in the Draft Concession Agreement. Bidders are also advised to give emphasis on Innovative and environment friendly solutions and clearly mark in their proposal such details.
- b) Preliminary Layout Plan with area utilization under various activities.
- c) Implementation plan, O&M plan and Environment Management Plan clearly stating how bidder is planning to develop and operate the Project Site.
- d) Product Term Sheet, which shall clearly state the complete product specifications of all major items, products, components and services for example specification of major construction materials, important furniture & equipment, tents, electricity and water arrangements, waste management arrangements etc.
- e) Quality and Experience of Project Team (for both development and operation) as a brief details of the key personnel to be employed and their similar experiences.
- f) While submitting the Technical Proposal, Bidders are required to note the following –

- Technical Proposal shall be a document of not more than 20 pages including the preliminary layout drawings of master plan.
- Technical Proposal shall be submitted online under Submission 1 in PDF format along with a presentation (power point presentation saved in PDF format only).
- The Pre-qualified Bidders will require to make a presentation to the Technical evaluation committee as constituted by Authority.
- Bidders shall give an undertaking in the proposal that Master Plans and other details proposed and submitted by them are in total conformity of applicable laws, town planning norms, building bye-laws, forest & environment department acts, rules, regulations and other relevant guidelines.
- The submitted Technical Proposal shall essentially form part of the Concession Agreement and Concessionaire shall be liable to execute the project in line with the plans submitted under Technical Proposal, failing to which shall be considered as Concessionaire's default as per the provisions of Concession Agreement.

2.23 Payment to be made by Successful Bidder / Concessionaire

2.23.1 The Successful Bidder / Concessionaire shall, in consideration of award of concession, pay the Authority Annual Concession Fee and Revenue Share of Gross Revenue as mentioned below and in accordance with the Provisions of Concession Agreement.

Annual Concession Fee	Rs 1/- (Rupees One) per annum
RevenueShare	[<i>Percentage as quoted</i>] Revenue Share of Gross Revenue for the respective financial year, Due and Payable within 30 days of close of respective financial year

2.23.2 The above mentioned payments are exclusive of applicable GST and any other applicable taxes, which shall be additionally payable by the Concessionaire over and above the payments as mentioned in clause 2.23.1 above.

- 2.23.3 Any delay in payment of the amount in the preceding clause (a) shall entail payment of interest @ the standard rate specified by Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 plus 3%, per annum on the amount outstanding.

2.24 Other Provisions:

- 2.24.1 The Bidders shall during the Bidding Process, and The Selected Bidder /Concessionaire during the Concession Period shall pay in a timely manner all taxes, duties, levies, VAT, cess and charges including but not limited to income tax, GST, sales tax, excise duty, customs duty, service tax and octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project/ the Project Facilities and Services and towards any Annual Concession Fee and Revenue Share.
- 2.24.2 The Bidders shall submit the necessary information for obtaining Security Clearance as per the formats prescribed in Appendix XI. All supporting documents shall be enclosed as may be necessary. If necessary, Authority may call for additional information as may be required in obtaining Security Clearance. Selection of Successful bidder shall be subject to Security Clearance receipt from Government of India.

3 EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids

- 3.1.1 The Authority will examine and evaluate the Bids in accordance with the provisions set out in this RFP.
- 3.1.2 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid and such Bidder shall provide its response within the time specified by the Authority in this regard.

3.2 Tests of responsiveness

- 3.2.1 Prior to evaluation of Bids, the Authority shall determine whether each Bid is responsive to the requirements of this RFP. A Bid shall be considered responsive if:
- a. it is received as per the format at Appendix-I to Appendix-XI;
 - b. it is received by the Bid Due Date including any extension thereof;
 - c. it is signed, marked and uploaded as stipulated in RFP;
 - d. the Bid Security and cost of Bid Documents is paid as specified in this RFP;
 - e. it is accompanied by the Power(s) of Attorney as specified in this RFP, as the case may be;
 - f. it contains all the information, Technical Proposal & presentation (complete in all respects) as requested in this RFP and/or Bidding Documents (and if formats have been specified, then in those formats);
 - g. it contains the Bidding Documents signed by the authorized signatory of the Bidder;
 - h. it does not contain any condition or qualification; and
 - i. it is not non-responsive or inconsistent in terms of the Bidding Documents.
- 3.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid. Provided, however, that the Authority may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.
- 3.2.3 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the Bid Due Date, would not be eligible to submit Bid, either individually or as member of a Consortium.
- 3.2.4 A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event

specified in this Clause 2.2.8 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any wilful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

3.3 Selection of Bidder

- 3.3.1 Subject to the provisions of Clause 2.16.1, the Bidders whose Bid is adjudged as responsive in terms of Clause 3.2.1 above and it qualifies the minimum Technical and Financial eligibility criteria in terms of Clause 2.21 of this RFP, shall be declared as Pre-qualified Bidders (**“Pre-qualified Bidders”**) and shall be invited for making presentation of their Technical Proposal on a scheduled date.
- 3.3.2 The Authority shall constitute a committee to evaluate Technical Proposal of the Pre-qualified Bidders and to award the Technical Score. The committee shall be chaired by the Dy. Director General, DGLL, Director, DGLL, one member each from Ministry of PSW and IFW of MoPSW and one member from IPA (**“Technical Evaluation Committee”**).
- 3.3.3 The Pre-qualified Bidders shall be allowed maximum 15 minutes for presentation followed by brief queries and clarifications round by the committee members (if any). The Technical Bid shall be evaluated on scale of maximum 100 marks in accordance with the following marking scheme.

S.no	Parameters	Maximum Marks
1 (A)	In case of Eligibility under Category 1 - Category of Highest Qualifying eligible Hotel / Resort project	Max 20 marks
	3 star	15 marks
	4 star	17.5 marks
	5 star and above	20 marks
OR		
1 (B)	In case of Eligibility under Category 2 - Area of Highest Qualifying eligible Theme park project	Max 20 marks
	above 6 acres up to 12 acres	12.5 marks
	above 12 acres up to 18 acres	15 marks
	above 18 acres up to 24 acres	17.5 marks
	above 24 acres	20 marks
OR		

1 (C)	In case of Eligibility under Category 3 - amount of total capital investment in last 5 years	Max 20 marks
	above Rs. 100 crores up to Rs. 125 crores	12.5 marks
	above Rs. 125 crores up to Rs. 150 crores	15 marks
	above Rs. 150 crores up to Rs. 175 crores	17.5 marks
	above Rs 175 crores	20 marks
2	Net worth	Max 20 marks
	above Rs. 12.50 crore up to Rs. 25.00 crore	12.5 marks
	above Rs. 25.00 crore up to Rs. 50.00 crore	15 marks
	above Rs. 50.00 crore	20 marks
3	Average Annual Turnover in past 3 years	Max 15 marks
	above Rs. 15.00 crore up to Rs. 30.00 crore	10 marks
	above Rs. 30.00 crore up to Rs. 60.00 crore	12.5 marks
	above Rs. 60.00 crore	15 marks
4	Maximum years of operation in any eligible project	Max 15 marks
	Up to 5 years	10 marks
	above 5 years up to 10 years	12.5 marks
	above 10 years	15 marks
5	Presentation of proposed development plan	Max 30 marks
	Overall Concept of Master Plan	10 marks
	Sustainability & Environment friendly provision	10 marks
	Innovative features proposed	5 marks
	Provisions for general public & local villagers	5 marks
Maximum Technical Score		100 marks
Minimum qualifying score		70 marks

- 3.3.4 On evaluation of Technical Bid, the Authority shall declare list of Qualified Bidders with minimum Technical Score of 70 marks (“**Qualified Bidder**”). The Qualified Bidders shall be invited for opening of Commercial Bid. It is further clarified that the Commercial Bid of Qualified Bidders shall only be opened. In case there are less than 2 (two) Qualified Bidders with minimum 70 (seventy) marks, the Authority may decide to reduce the minimum qualifying score to 60 (sixty) marks. In absence of 2 (two) Qualified Bidders for Commercial opening as above, Authority may, in its own discretion, decide to further modify the qualifying criteria or may re-invite fresh Bids.
- 3.3.5 On opening of Commercial Bid, the Qualified Bidder who offers the highest Revenue Share shall ordinarily be the Successful Bidder, Subject to the provisions of Clause 2.16.1 and Clause 2.24.3.
- 3.3.6 In the event that two or more Bidders quote the same Revenue Share (“**Tie Bidders**”), the Bidder getting higher Technical Score shall be identified as Selected Bidder by Authority. In case the Technical Score of Tie Bidders is also same, the Authority shall identify the Selected

Bidder by draw of lots, which shall be conducted, with prior notice, in presence of the Tie Bidders who choose to attend.

- 3.3.7 In the event that the selected bidder as per 3.3.6, who withdraws or is not selected for any reason, the Authority may invite all the remaining bidders to revalidate or extend their respective bid security, as necessary, and match the Bid of the aforesaid Highest Bidder in the second round of bidding. If in the second round of bidding, only one Bidder matches the Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.
- 3.3.8 In the event that no Bidder offers to match the Highest Bidder in the second round of bidding as specified in Clause 3.3.3, the Authority may, in its discretion, invite fresh Bids (“**third round of bidding**”) from all Bidders except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.3.9 After selection, a Letter of Intent for Award of Concession (“**LOA**”) shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 3.3.10 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.4 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award to the Bidders. While the Bids are under consideration, Bidders and/or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Authority and/or their employees/representatives on matters

related to the Bids under consideration.

3.5 Bid Parameter

- 3.5.1 The Bid shall comprise a Percentage figure, as Revenue Share of Gross Revenue which the Bidder offers to share to Authority annually (“**Revenue Share**”) in accordance with the provisions of this RFP and the Concession Agreement. The Qualified Bidder who offers the highest Revenue Share shall ordinarily be the Successful Bidder.

4 FRAUD AND CORRUPT PRACTICES

4.1 Fraud and Corrupt Practices

- 4.1.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LoA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, in the LoA, the Concession Agreement, the Authority as the case may be may reject a Bid, withdraw the LoA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security and/or Performance Guarantee, as the case may be, as liquidated damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise.
- 4.1.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LoA or the Concession Agreement, or otherwise, if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LoA or the execution of the Concession Agreement, such Bidder or Concessionaire shall not be eligible to participate in any tender or RFP issued by any Department or Undertaking of Government of India during a period of 2 (two) years from the date such Bidder or Concessionaire, as the case may be, is found to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.1.3 For the purposes of this Clause 4.1.3, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence directly or indirectly the actions of any person connected with the Bidding Process (for the avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, without prior approval of Concessioning Authority, any official of the Concessioning Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LoA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) acting contrary to applicable anti-bribery or anti-corruption laws;

- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) “**coercive practice**” means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5 PRE-BID CONFERENCE

5.1 Pre Bid Conference

- 5.1.1 Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place through video conferencing . Only duly authorized representatives of the Bidders shall be allowed to participate in the Pre-Bid conference. A maximum of 2 (two) representatives of each Bidder shall be allowed to participate .
- 5.1.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process. The Authority shall provide clarifications to only those queries which Authority has received in writing from the Bidders. The Authority will not provide clarifications to queries received orally.

6 MISCELLANEOUS

6.1 Miscellaneous

- 6.1.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the State of Tamil Nadu and Court at Chennai only shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bidding Documents and/or the Bidding Process.
- 6.1.2 The Authority, in its sole discretion and without incurring any obligation or liability or assigning any reason, reserves the right, at any time, to:
- (a) suspend, withdraw and/or cancel the Bidding Process and/or amend and/or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to the Authority by, on behalf of, and/or in relation to any Bidder; and/or
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder
 - (e) amend, modify or reissue the Bidding Documents or any part thereof;
 - (f) to accept or reject any or all of the Bids; and/or
 - (g) include additional evaluation criteria or to modify the eligibility criteria for the further short-listing of person for issue of the Bidding Documents during the Bidding Process.
 - (h) to consider any variation in the Bid submitted by the Bidder provided such variation is as per the project scope, project structure and as per the terms and conditions of the RFP
- 6.1.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.1.4 The DCA and RFP are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them the priority shall be in the following order:
- (a) the DCA;
 - (b) the RFP.
- i.e. the DCA (a) above shall prevail over the RFP at (b) above.

Appendix I

Annex I: Letter for Bid

[On the letter head of the Bidder/lead Member]

Original or copy No:

Dated:

To,

**Director General ,
Deep Bhawan, A-13,
Tulsi Marg,
Noida-201301**

**Sub: Bid for Development of Tourism Project on PPP basis at Muttom Point Lighthouse ,
Tamilnadu .**

Dear Sir,

With reference to your RFP dated -----, I/we, having examined the RFP and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.

1. I/We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
2. This statement is made for the express purpose of our selection as Concessionaire for the development, construction, operation and maintenance of the aforesaid Project.
3. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
4. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. I/ We certify that in the last three years, we/ any of the Consortium Members[£] or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial.
6. Pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. 7. I/ We declare that:

[£] If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.

- (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority; and
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFP document; and
 - (c) I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposals issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16 of the RFP document.
9. I/ We believe that we/ our Consortium satisfy(s) the Technical Capacity and Financial Capacity criteria and meet(s) the requirements as specified in the RFP document.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our directors/ managers/ employees.£
14. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-IX thereof.

£ In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.
16. I/ We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity of those of its Members who shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.
17. I/We acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
18. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/ 2013, or shall incorporate as such prior to execution of the Concession Agreement.
19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/ We have studied all the Bidding Documents carefully and also surveyed the Project Site. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
22. I/ We offer a Bid Security of Rs (Rupees only) to the Authority in accordance with the RFP Document.

23. The Bid Security in the form of a Online Payment / Bank Guarantee (strike out whichever is not applicable) is attached.
24. The documents accompanying the Bid, as specified in Clause 2.11.3 of the RFP, have been uploaded online and the physical copies are submitted herewith in a separate envelope and marked as “Enclosures of the Bid”.
25. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
26. The Revenue Share has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and revenues and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
27. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
28. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.
29. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
30. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised signatory)

Place: Name and seal of Bidder/Lead Member

Annex II: Details of Bidder

[On the letter head of the Single Entity/Each Members of Consortium]

Original or copy No:

Dated:

1.
 - (a) Name:
 - (b) Country of incorporation:
 - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
 - (d) Date of incorporation and/or commencement of business (Please provide a true copy of the incorporation certificate):
2. Brief description of the Bidder including details of its main lines of business and proposed role and responsibilities in [this/these Project(s)]:
3. Details of individual(s) who will serve as the point of contact/communication for the Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone number:
 - (f) E-Mail Address:
 - (g) Fax number:
4. Particulars of the authorized signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone number:
 - (e) Fax number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the Members.

- (b) A copy of the Joint Bidding Agreement, as provided in Appendix V should be attached to the Bid.
- (c) Information regarding role of each Member should be provided as per table below:

S No.	Name of Member	Role*	Percentage of equity in the Consortium
1.			
2.			
3.			

** The role of each Member, as may be determined by the Bidder, should be indicated in accordance with instruction 4 at Annex-III of Appendix VII.*

- (d) The following information shall also be provided by Bidder/for each Member:

Name of Bidder/ member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/constituent of the Consortium been barred by the Central/ any State Government, or any entity controlled by them, from participating in any project (PPP or otherwise).		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid.		
3.	Has the Bidder/constituent of the Consortium paid liquidated damages of more than 5% (five percent) of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Bidder and each of its Members (where applicable) disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/arbitration in the recent past is given below (Attach extra sheets, if necessary):

Annex III: Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder/lead Member of Consortium)

Original or copy No:

Ref. Date:

To,

**Director General,
Deep Bhawan, A-13, Tulsi Marg,
Noida-201301**

**Sub: Bid for Development of Tourism Project on PPP basis at Muttom Point Lighthouse,
Tamilnadu**

Dear Sir,

We hereby confirm that we/our Members in the Consortium (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP.

We have agreed that (insert member's name) will act as the lead Member of our consortium.*

We have agreed that (insert individual's name) will act as our representative/will act as the representative of the Consortium on its behalf and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of

*Please strike out whichever is not applicable.

APPENDIX II: Bank Guarantee for Bid Security

B.G. No. Dated:

1. In consideration of you, Directorate General having its office at Deep Bhawan, A-13, Sector-24, Noida (hereinafter referred to as the “**Authority**”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under the Companies Act, 2013) and having its registered office at..... (and acting on behalf of its Consortium) (hereinafter referred to as the “**Bidder**” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for **Development of Tourism Project on PPP basis at Muttom Point Lighthouse, Tamilnadu** (hereinafter referred to as “**the Project**”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the Concession Agreement (hereinafter collectively referred to as “**Bidding Documents**”), we (name of the bank) having our registered office at and one of its branches at (hereinafter referred to as the “**Bank**”), at the request of the Bidder, do hereby in terms of Clause 1.2.4 read with Clause 2.23 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. _____ (Rupees _____ only) (hereinafter referred to as the “**Guarantee**”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs _____ (Rupees _____ only)
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, *inter alia*, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to name of Bank along with branch address and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. _____ (Rupees _____ only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before *** (indicate date falling 180 days after the Bid Due Date).

Signed and Delivered byBank

By the hand of Mr./Ms., its.....and authorised official.

(Signature of the Authorised Signatory) (Official Seal)

APPENDIX III: Power of Attorney for signing of Bid (Single Entity)

Know all persons by these presents, [We..... (name of the company) incorporated under the laws of India and having its registered office at [.....] “**Company**”] do hereby irrevocably constitute, nominate, appoint and authorize Mr. /Ms (name), son/daughter/wife of and presently residing at, who is presently employed with us and holding the position of, as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to do in our name and on our behalf, all such acts, deeds, matters and things as are necessary or required in connection with or incidental to submission of our Bid for **Development of Tourism project on PPP basis at Muttom Point Lighthouse, Tamilnadu** pursuant to the RFP dated [] (“RFP”) issued by the Mumbai Port Trust (the “Authority”) and for our selection as Successful Bidder including but not limited to signing and submission of all Bids and other documents and writings, participate in pre-bid conferences and other conferences and providing information/responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deed, matters and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

Capitalised terms not defined herein shall have the meaning assigned to them under the RFP.

IN WITNESS WHEREOF,....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 2.....

For

(Signature)

(Name, Title and Address)

Witnesses:

(Notarised)

Accepted

..... (Signature)

(Name, Title and Address of the Attorney)

Notes:

- 1. The Power of Attorney for signing of Bid must be submitted in original*
- 2. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- 3. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- 4. For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX IV: Power of Attorney for Lead Member of Consortium

Whereas the Authority has invited proposals from interested parties for Bid **Development of Tourism Project on PPP basis at Muttom Point Lighthouse, Tamilnadu**

Whereas, _____, _____ and _____ (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project and implementing the Project in accordance with the terms and conditions of the Request for Proposal (RFP) Document and other connected documents in respect of the Project, and

Whereas, it is necessary under the RFP Document for the members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project who, acting jointly, would have all necessary power and authority to do all acts, deeds and things on behalf of the Consortium, as may be necessary in connection with the Consortium’s bid for the Project.

NOW THIS POWER OF ATTORNEY WITNESSETH THAT;

We, M/s. _____ (Lead Member) and M/s _____ (*the respective names and addresses of the registered office*) do hereby designate M/s.

_____ being one of the members of the Consortium, as the Lead Member of the Consortium, to do on behalf of the Consortium, all or any of the acts, deeds or things necessary or incidental to the Consortium’s bid for the Project, including submission of Bid/proposal, participating in conferences, responding to queries, submission of information/ documents and generally to represent the Consortium in all its dealings with the Authority, any other Government Agency or any person, in connection with the Project until culmination of the process of bidding and thereafter till the Concession Agreement is entered into with the Authority.

We hereby agree to ratify all acts, deeds and things lawfully done by Lead Member, our said attorney pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us/Consortium.

Dated this the _____ day of _____, 20____

(Executants)

Notes:

- 1. This Power of Attorney must be submitted in original.*
- 2. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- 3. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- 4. For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

APPENDIX V: Joint Bidding Agreement (for Consortium)

(To be executed on stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of.....20...
(the “**Agreement**”)

AMONGST

1. { Limited, a company incorporated under the (Indian) Companies Act, 1956/2013¹ } and having its registered office at (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

2. Limited, a limited liability company incorporated under the (Indian) Companies Act, 1956/2013 } and having its registered office at (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns);

AND

3. Limited, a limited liability company incorporated under the (Indian) Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns) } *

The above mentioned parties of the FIRST, SECOND and, THIRD PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”.

WHEREAS,

The Directorate General of Lighthouses and Lightships , represented by its designated officer and having its principal offices at Deep Bhawan, A-13, Sector- 24, Noida -201301 (hereinafter referred to as “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Bids by its Request for Proposal No. dated (the “**RFP**”) for qualifying and selecting bidders for **Development of Tourism Project on PPP basis at Muttom Point Lighthouse, Tamilnadu**

The Parties are interested in jointly bidding for the Project as members of a Consortium (as defined below) and in accordance with the terms and conditions of the Bidding Documents including the RFP; and

¹ A Bidder who is registered abroad may substitute the words, viz “a company registered under the Companies Act, 1956/2013” by the words, viz “a company duly organised and validly existing under the laws of the jurisdiction of its incorporation”. A similar modification may be made in Recital 2, as necessary.

* The number of Parties will be shown here, as applicable

- A. It is a necessary condition under the RFP that the members of the Consortium shall enter into a joint bidding agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/or through any other consortium constituted for the Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate the SPV under the (Indian) Companies Act 2013 as required by and in accordance with the Bidding Documents for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below.

- a) Party of the First Part shall be the lead Member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- b) {Party of the Second Part shall be _____{the Technical Member of the Consortium} }

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project in accordance with the terms of the RFP, the Concession Agreement and for the performance of the Concessionaire’s obligations under the Concession Agreement.

6. Shareholding in the SPV

- (a) The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

First Party:
Second Party:
- (b) Subject to the terms of the Concession Agreement, the lead Member shall during the term of the Concession Agreement hold equity share capital not less than 26% (fifty one percent) of the subscribed, paid up and voting equity share capital of the SPV until the 2nd (second) anniversary of Appointed Date (date of Award of Concession) as defined in Clause 1.1;
- (c) Subject to the terms of this Concession Agreement, members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the 2nd (second) anniversary of date of signing of concession agreement of the Project; and

- (d) Subject to the terms of the Concession Agreement, the Member (other than the Lead Member) whose financial and technical capacities has been utilized for the purposes of qualification and in the Bid shall, at all times till the 2nd (second) anniversary of date of signing of concession agreement of the Project, hold equity share capital not less than 26% (twenty six percent) of the subscribed, paid up and voting equity share capital of the SPV.

The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- a. such Party is duly organised, validly existing and in GoM standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- b. the execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Member of Consortium is annexed to this Agreement, and will not, to the best of its knowledge:
 - i. require any consent or approval not already obtained;
 - ii. violate any applicable law presently in effect and having applicability to it;
 - iii. violate the memorandum of association and articles of association, by-laws or other applicable organisational documents thereof;
 - iv. violate any clearance, permit, Concession, grant, Concession or other governmental authorisation, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; and
 - v. create or impose any liens, mortgages, pledges, claims, security interests, charges or any other encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- c. this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- d. there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect till the full and final satisfaction of all obligations under the Concession Agreement in accordance with the terms thereof, in case the Project is awarded to the Consortium. However, in case the Consortium is either not qualified for the Project or does not get selected for award of the Project as the Successful Bidder, the Agreement will stand terminated, in accordance with the mutual agreement of the Parties.

9. Miscellaneous

This Joint Bidding Agreement shall be governed by laws of India.

The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

(Signature)

(Name)

(Address)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SECOND PART

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

THIRD PART

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

- 1.
- 2.

Notes:

1. The mode of execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Member of Consortium.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.

APPENDIX VI: Anti-Collusion Certificate

(To be executed on Rs. 100 stamp paper)

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely “Prevention of Corruption Act, 1988” and its subsequent amendments thereof.

We hereby certify and confirm that in the preparation and submission of our Proposal, we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Proposal.

Dated thisDay of, 20.....

.....

(Name of the Bidder)

.....

(Signature of the Bidder / Authorised Person)

.....

(Name of the Authorised Person)

Appendix VII

Annex-I: Format of Financial Capacity for purpose of evaluation

[On the letter head of the Single Entity/lead Member]

Bidder type \$\$	Member Code [‡]	Net Cash Accruals (In Rs.\$)			Net Worth (In Rs. Crore\$)	Turnover – average of last 3 years (In Rs. Crore\$) (9)
		Year 1 (3)	Year 2 (4)	Year 3 (5)	Year 1 (8)	
(1)	(2)					
Single entity Bidder						
OR						
Consortium Member 1						
Consortium Member 2						
Consortium Member 3						
TOTAL						

Name & address of Bidder's Bankers:

^{\$}For conversion of other currencies into rupees, see notes below Annex-II of Appendix-VII.

^{\$\$}A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

[‡]For Member Code, see instruction 4 at Annex-III of this Appendix-VII.

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets, financial statements, cash-flow statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit After Tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).
4. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year.
5. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with this RFP document.
6. The Bidder shall provide an Auditor's Certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with this RFP document.
7. The Bidder shall provide an Auditor's Certificate specifying the Net Cash Accruals of past 3 (three) financial years of the Bidder and also specifying the methodology adopted for calculating such Net Cash Accrual in accordance with this RFP document.

Annex II: Format of Technical Capacity for purpose of evaluation

Technical Capacity of the Bidder

[On the letter head of the Single Entity/Members of Consortium]

Bidder type [#]	Member Code [¥]	Project Code ^{¥¥}	Technical Experience [£] (fill only one from Category 1 or 2 or 3)		
			Category 1 Owned and / or operated, maintained and managed functional hotels / resorts	Category 2 Owned and / or operated, maintained and managed projects of Theme parks (adventure / amusement / water / eco-tourism / entertainment)	Category 3 Made strategic capital investment in event and activation industry
			Number of residential rooms (nos)	Area under operation (acres)	Capital investment (Rs. Crore)
Single entity Bidder					
Consortium Member 1					
Consortium Member 2					
Consortium Member 3					
Total Experience					
Threshold Technical Capacity			100 residential rooms	24 acres	Rs. 100 Crore

- [#]A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, shall be provided.

- [¥]*Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.*
- [£]*Bidders shall claim Eligible Experience in any one Category only (i.e. Category 1 or 2 or 3).*
- ^{¥¥}*Refer Annex-III of this Appendix-VII. Add more rows if necessary.*
- [@]*Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an eligible project company. Include only those projects which qualifies the minimum requirement as specified in Clause 2.21.*
- ^{\$\$}*For conversion of US Dollars to Rupees, the rate of conversion shall be from the daily exchange rate published by the International Monetary Fund for the relevant date (such as Date of Completion / last payment made / received for the Eligible Project). In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.*

Annex III: Details of the Eligible Project

Project Code: _____

Member Code: _____

Item (1)	Particulars of the Project (3)
Category of eligibility	[1 or 2 or 3]
Title & nature of the hotel / resort / theme park / investment project with address	
Name of entity claiming experience	
Equity shareholding (with period during which equity was held)	
Whether credit is being taken for the Eligible Experience of an Associate	[Yes/ No]
For Category 1:	
Number of Residential rooms	[Number] residential rooms
Whether certification of classification for star category from Ministry of Tourism is available	[Yes / No] If Yes, specify [3 star / 4 star / 5 star / 5 star deluxe]
Date of Commencement of Operation by Bidder	[DD-MM-YYYY]
Date of End of operation by Bidder (if facility is currently in operation, mention Bid Due Date)	[DD-MM-YYYY]
Total experience of bidder in years (up to Bid Due Date)	[____years____months]
For Category 2:	
Area under operation	[Area] acres
Details of the Theme park, if it in operation as amusement park, adventure park, water park, eco-tourism, entertainment park or similar facility	
Date of Commencement of Operation by Bidder	[DD-MM-YYYY]

Date of End of operation by Bidder (if facility is currently in operation, mention Bid Due Date)	[DD-MM-YYYY]
Total experience of bidder in years (up to Bid Due Date)	[____years____months]
For Category 3:	
Amount of Capital investment	Rs. [Amount] crore
Details and nature of activities and components for which investment has been made	
Year wise breakup of investment	

Instructions:

- Bidders are expected to provide information in respect of each Eligible Project in this Annex. The projects cited must comply with the eligibility criteria specified in Clause 2.21.2 of the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.
- For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
- A separate sheet should be filled for each Eligible Project.
- Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member; and OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write "Associate" along with Member Code.
- Category shall be mentioned as Category 1 or Category 2 or Category 3.
- Particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grantor, counter party to PPA, etc.) may be provided.
- The equity shareholding of the Bidder, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given.
- Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
- Certificate from the Bidder's statutory auditor or its respective clients must be furnished as per formats below for each Eligible Project. In jurisdictions that do not have statutory auditors, the auditors who audit the annual accounts of the Bidder/ Member/Associate may provide the requisite certification.

10. IF The Bidder is claiming experience under Category 1, it should provide a certificate from the statutory auditor of the Bidder, or its Associate, in the format below:

Certificate from the Statutory Auditor regarding hotel / resort^Φ

Based on its books of accounts and other published information authenticated by it, this is to certify that (*name of the Bidder/Member/Associate*) is/was an equity shareholder in (*title of the project company*) and hold / held Rscrore. (Rupees Crore) of equity (which constitutes% of the total paid up and subscribed equity capital) of the project company from (*date*) to(*date*).

We certify that.....(*title of the project company*) {*owned / operated, maintained and managed*} a (*name of the hotel*) having a capacity of.....Numbers of residential rooms.

We further certify that the star category of the project is.....as per following certification process method: (Certification of categorization by Ministry of Tourism, India or equivalent international process). We also certify that the project was / is in operation from to..... (or presently functional).

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, name and designation of the
authorised signatory).

^Φ Provide Certificate as per this format only. Attach certificate of star category along with this certificate. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

11. IF The Bidder is claiming experience under Category 2, it should provide a certificate from the statutory auditor of the Bidder, or its Associate, in the format below:

Certificate from the Statutory Auditor regarding Theme Park^Φ

Based on its books of accounts and other published information authenticated by it, this is to certify that (*name of the Bidder/Member/Associate*) is/was an equity shareholder in (*title of the project company*) and hold / held Rs crore. (Rupees Crore) of equity (which constitutes% of the total paid up and subscribed equity capital) of the project company from (*date*) to(*date*).

We certify that.....(*title of the project company*) {*owned / operated, maintained and managed*} a (*name of the theme park*) having total area ofAcres under operation.

We also certify that the project was / is in operation from to
(or presently functional).

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, name and designation of the
authorised signatory).

^Φ Provide Certificate as per this format only. Attach necessary documents certifying the exact area of the Project. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

12. IF The Bidder is claiming experience under Category 3, it should provide a certificate from the statutory auditor of the Bidder, or its Associate, in the format below:

Certificate from the Statutory Auditor regarding Capital investment in events and activation industry^Φ	
Based on its books of accounts and other published information authenticated by it, this is to certify that (<i>name of the Bidder/Member/Associate</i>) is/was an equity shareholder in (<i>title of the project company</i>) and hold / held Rscrore. (Rupees Crore) of equity (which constitutes% of the total paid up and subscribed equity capital) of the project company from (<i>date</i>) to(<i>date</i>).	
We certify that.....(<i>title of the project company</i>), in last 5 financial years, has made capital investments of Rs. crore in (<i>name of project</i>) for creation of { <i>nature of investment</i> }. The year-wise break-up of investment is as follows:	
(Year wise investment details)	
.....	
.....	
We also certify that the above certified amount is for capital expenditure only and operational expenses are not considered in qualifying investment amount. We also certify that the project was / is in operation from to (or presently functional).	
Name of the audit firm:	
Seal of the audit firm:	(Signature, name and designation of the
Date:	authorised signatory).

^Φ Provide Certificate as per this format only. Attach explanatory notes to the Certificate, if necessary. In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Bidder or its Associate may provide the certificates required under this RFP.

13. In the event that credit is being taken for the Eligible Experience of an Associate as defined in this RFP, the Bidder should also provide a certificate in the format below:

Certificate from the Statutory Auditor/ Company Secretary regarding Associate^{\$}

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of (name of the Bidder/ Consortium Member/ Associate) is held, directly or indirectly[£], by (name of Associate/ Bidder/ Consortium Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in terms of the RFP.

A brief description of the said equity held, directly or indirectly, is given below:

*{Describe the share-holding of the Bidder/ Consortium Member and the Associate.
In the event the Associate is under common control with the Bidder/ Consortium Member, the relationship may be suitably described and similarly certified herein. }*

Name of the audit firm:

Seal of the audit firm:

(Signature, name and designation of
the authorised signatory).

Date:

^{\$} In the event that the Bidder/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

[£] In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of “control” is not broken.

Note – In case the Bidder/Consortium Member participating is a subsidiary company, and in the event that credit is being taken for the Eligible Experience of Parent / Holding company; the Bidder / Consortium member shall submit the NOC from such Parent / Holding company and the Certificate from Statutory Auditor in the suitably modified above format.

14. It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience.

Appendix VIII: Format of Commercial Proposal

(BOQ Excel file to be downloaded to be submitted online only)

[To be submitted online (submission 2) only]

APPENDIX IX : Guidelines of the Department of Disinvestment

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment
Block 14, CGO Complex New Delhi. Dated 13th July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like Net Worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.
- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

[Note: In this particular Project, for the purposes of the above mentioned guidelines, EOI shall be synonymous with RFP.]

APPENDIX X: INTEGRITY PACT

BETWEEN
DIRECTORATE GENERAL OF LIGHTHOUSES AND LIGHTSHIPS
(DGLL) hereinafter referred to as "The Principal" AND
(Name of The bidders and consortium members).....hereinafter referred to as
"The Bidder"

Preamble:

The Principal intends to award, under laid down organizational procedures, contract/s for Tender No. E64/2020 **Development of Tourism Project on PPP basis at Muttom Point Lighthouse, Tamilnadu**. The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources, and of fairness / transparency in its relations with its Bidder(s) and /or Contractor(s). In order to achieve these goals, the principal will appoint an Independent External Monitor (IEM), who will monitor the tender process and the execution of the contract for compliance with the principal mentioned above.

Section 1 - Commitments of the Principal.

- (1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -
 - (a) No employee of the Principal, personally or through family members, will in connection with the tender for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
 - (b) The Principal will, during the tender process, treat all BIDDERS with equity and reason. The principal will in particular, before and during the tender process, provide to all bidder(s) the same information and will not provide to any bidder(s) confidential/ additional information through which the bidder(s) could obtain an advantage in the relation to the process or the contract execution.
 - (c) The Principal will exclude from the process all known prejudiced persons.
- (2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Chief Vigilance Officer and in addition can initiate disciplinary actions.

Section 2 - Commitments of the Bidder(s) / Contractor(s)

- (1) The Bidder (s)/Contractor(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.
 - a. The Bidder(s)/Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process or the execution of the contract or to any third person any material or other benefit, which he/she is not legally entitled to, in order to obtain in exchange any advantage or during the execution of the contract.

b. The Bidder(s) /Contractor(s) will not enter with other Bidders in to any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids, or any other actions to restrict competitiveness, or to introduce cartelization in the bidding process.

c. The Bidder(s)/Contractor(s) will not commit any offence, under the relevant IPC/PC Act; further the Bidder(s)/Contractor(s) will not use improperly, for purposes of competition, or personal gain, or pass on to others, any information or document provided by the Principal, as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

d. The bidder(s)/contractor(s) of foreign origin shall disclose the name and address of the agents / representatives in India if any. Similarly, the bidder(s)/contractor(s) of Indian Nationality shall furnish the name and address of the foreign principle if any. Further details as mentioned in the “Guidelines on Indian agents of Foreign Suppliers” shall be disclosed by the Bidder(s)/ Contractor(s). Further, as mentioned in the guidelines all the payments made to the Indian agents/ representative have to be in Indian rupees only. Copy of the “Guidelines on Indian agents of Foreign Suppliers “as Annexed and marked as Annex- “A”.

e. The Bidder(s)/Contractor(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries, in connection with the award of the contract.

- (2) The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section-3 Disqualification from Tender process and exclusion from future contracts.

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression, through a violation of Section-2, above or in any other form, such as to put his reliability or credibility in question, the principal is entitled to disqualify the Bidder(s)/contractor(s), from the tender process, or take action as per the procedure mentioned in the “Guidelines on Banning of Business dealings”. Copy of the “Guidelines on Banning of Business dealings” is annexed and marked as Annexure “B”.

Section-4 Compensation for damages.

1. If the Principal has disqualified the Bidder(s), from the tender process prior to the award, according to Section-3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.
2. If the Principal has terminated the contract according to Section-3, or if the Principal is entitled to terminate the contract according to Section-3, the Principal shall be entitled to demand and recover from the Contractor, liquidated damages of the contract value, or the amount equivalent to Performance Bank Guarantee.

Section-5 Previous transgression

1. The Bidder declares that, no previous transgressions occurred in the last 3 years, with any other company, in any country, confirming to the anti-corruption approach or with any other Public Sector Enterprise in India, that could justify his exclusion from the tender process.
2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process for action can be taken as per the procedure mentioned in “Guidelines on Banning of Business dealings”.

Section-6 Equal treatment of all Bidders/Contractors/Subcontractors

1. The Bidder(s)/Contractor(s) undertake(s) to demand from all subcontractors, a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.
2. The Principal will enter into agreements with identical conditions as this one with all Bidders, Contractors and Subcontractors.
3. The Principal will disqualify from the tender process all Bidders, who do not sign this pact or violates its provisions.

Section-7 Criminal charges against violation Bidder(s)/Contractor(s)/Sub-contractor(s)

If the principal obtains knowledge of conduct of a Bidder/Contractor or Subcontractor, or of an employee, or a representative, or an associate of a Bidder, Contractor, or Subcontractor, which constitutes corruption, or if the Principal has substantive suspicion, in this regard, the Principal will inform the same to the Chief Vigilance officer.

Section-8 Independent External Monitor/ Monitors

1. The principal appoints competent and credible Independent External Monitor for this Pact. The task of the Monitor, is to review independently and objectively, whether and to what extent, the parties comply with the obligations under this agreement.
2. The Monitor is not subject to instructions, by the representative of the parties and performs his functions neutrally and independently. He reports to the Director General ,DGLL.
3. The Bidder(s)/Contractor(s) accepts that, the monitor has the right to access, without restriction to all Project documentation of the Principal including that provided by the Contractor. The Contractor will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access, to the project documentation. The same is applicable to Subcontractors. The monitor is under contractual obligation, to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality.
4. The Principal will provide to the Monitor, sufficient information about all meetings, among the parties related to the Project, provided such meetings could have an impact, on the contractual relations between the Principal and the Contractor. The parties offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the management to discontinue, or take corrective action, or to take other relevant action. The Monitor can

in this regard submit non-binding recommendations. Beyond this, the Monitor has no right to demand from the parties, that they act in a specific manner, refrain from action or tolerate action.

6. The Monitor will submit a written report, to the Director General ,DGLL within 8 to 10 weeks, from the date of reference or intimation to him by the Principal and, should the occasion arise, submit proposals for correcting problematic situations.

7. If the Monitor has reported to Director General ,DGLL, a substantiated suspension of an offence, under relevant IPC/PC Act, and the Director General ,DGLL has not, within reasonable time, taken visible action to proceed against such offence, or reported it to the Chief Vigilance Officer, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.

8. The word 'Monitor' would include both singular and Plural.

Section-9 - Pact Duration

This Pact begins when both parties have legally signed it. It expires for the contractor 10 months after the last payment under the contract, and for all other bidders & three months the contract has been awarded.

If any claim is made/lodged during this time, the same shall be binding and continue to be valid, despite the lapse of this Pact, as specified above, unless it is discharged/determined by Director General ,DGLL.

Section-10 Other Provisions

- This agreement is subject to Indian Law, Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Chennai, Tamil Nadu .
- Changes and supplements as well as termination notices, need to be made in writing. Side agreements have not been made.
- If the Contractor is a partnership or a consortium, this agreement must be, signed by all partners or consortium members.

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Annexure A of Integrity Pact

GUIDELINES FOR INDIAN AGENTS OF FOREIGN SUPPLIERS

- 1.0 Valid Authorized Dealership Certificate from the Foreign Principal/O.E.M. should be submitted by the Indian Agent/Dealer and such firm's name shall be added to the Approved List of O.E.M. and Authorized Dealers.
- 2.0 Registered address of the foreign principal and their Indian Agent should appear in the Authorized Dealership Certificate.
 - i) The tenderer shall submit an undertaking along with their tender offer that they have not made any payment or illegal gratification to any person/authority connected with the tender process so as to influence the tender process and have not committed any offense under the Prevention of Corruption Act in connection with the tender.
 - ii) The tenderer shall disclose any payments made or proposed to be made to any intermediaries (agents etc.) in connection with the tender.
- 2.1 DGLL standard payment terms are as per mutually agreed INCO terms.
Agency Commission:DGLL does not agree to pay any agency commission either in Indian or in Foreign Currency.
- 2.2 Failure to furnish correct and detailed information as called for in paragraph 2.0 above may render the concerned tenderer's offer liable for rejection OR in the event of a contract materializing, the same may be liable for termination by DGLL. Besides, a penalty of payment of a named sum OR banning business dealings with DGLL may be levied.

Annexure B of Integrity Pact

GUIDELINES ON BANNING OF BUSINESS DEALINGS CONTENTS

Sr. No.	Description	Page (s)
1.	Introduction	1
2.	Scope	1-2
3.	Definitions	2-3
4.	Initiation of banning / suspension	3
5.	Suspension of business dealings	3-4
6.	Ground on which banning of business dealing can be initiated	5-6
7.	Banning of business dealings	6-7
8.	Removal from list of approved agencies – Suppliers/ contractors etc.	8
9.	Procedure for issuing Show cause notice	8
10.	Appeal against the decision of Competent Authority	8
11.	Review of the decision by the competent authority.	9
12.	Circulation of the names of agencies with whom business dealings have been banned.	9

1. Introduction

- 1.1 Director General of Lighthouses & Lightships is a subordinate office under Ministry of Ports, Shipping & Waterways responsible for providing Navigational Aids to the Vessels plying on the Indian Ocean. The services provided by the DGLL includes, Visual Aids to Navigation through Lighthouses, Light vessels, Buoys and Beacons , Radio Aids to navigation through DGPS, Racon and Loaran-C and Vessel Traffic Services. DGLL have a very high degree of integrity, commitments and sincerity towards the work undertaken.
- 1.2 Since banning of business dealings involves civil consequences for an Agency concerned, it is incumbent that adequate opportunity of hearing is provided and the explanation, if tendered, is considered before passing any order in this regard keeping in view the facts and circumstances of the case.

2. Scope

- 2.1 The General Finance Rule (GFR), 2017 generally provide that authority reserves the rights to remove from list of approved suppliers/ contractors or to ban business dealings if any Agency has been found to have committed misconduct and also to suspend business dealings pending investigation.
- 2.2 Similarly, in case of sale of material there is a clause to deal with the Agencies / customers / buyers who indulge in lifting of material in unauthorized manner.
- 2.3 However, absence of such a clause does not in any way restrict the right of DGLL to take action / decision under these guidelines in appropriate cases.
- 2.4 The procedure of (i) Removal of Agency from the List of approved suppliers / contractors (ii) Suspension and (iii) Banning of Business Dealing with Agencies has been laid down in these guidelines.
- 2.5 These guidelines apply to all departments of DGLL.
- 2.6 It is clarified that these guidelines do not deal with the decision of the Management not to entertain any particular Agency due to its prior / inadequate performances or for any other reason.
- 2.7 The banning shall be with prospective effect, i.e. future business dealings.

3. Definitions

In these Guidelines, unless the context otherwise requires

- (i) Party/ Contractor/ Supplier/ Purchaser/ Customer shall mean and include a public limited company or a private limited company, a firm whether registered or not, an individual, a co-operative society or an association or a group of persons engaged in any commerce, trade, industry etc. Party/ Contractor / Supplier/ Purchaser / Customer in the context of those guidelines is indicated as ‘Agency’
- (ii) ‘Inter-connected Agency’ shall mean two or more companies having any of the following features:
 - (a) If one is a subsidiary of the other.
 - (b) If the Director(s), Partner(s), Manager(s) or Representative(s) are common.
 - (c) If management is common.
 - (d) If one owns or controls the other in any manner.
- (iii) ‘Competent Authority’ and ‘Appellate Authority’ shall mean the following:
 - a) For DGLL Banning
The Head of the Department shall be “Competent Authority” for the purpose of these guidelines. Chairman, DGLL shall be ‘Appellate Authority’ in respect of such cases except banning of business dealings with Foreign Suppliers of imported material.
 - b) For banning of business dealings with Foreign Suppliers of imported material, DGLL officer committee shall be the ‘Competent Authority’. The Appeal against the Order passed by DGLL Officer Committee shall lie with Chairman as First Appellate Authority.
 - c) In case the foreign supplier is not satisfied by the decision of the First Appellate Authority, it may approach to the Secretary, Ministry of Ports, Shipping & Waterways as Second Appellate Authority.
 - d) DGLL shall have overall power to take *suo-moto* action on any information available or received by him and pass such order(s) as he may think appropriate, including modifying the order(s) passed by any authority under these guidelines.
- iv) ‘Investigating Department’ shall mean any Department Investigating into the conduct of the Agency and shall include the Vigilance Department, Central Bureau of Investigation, the State Police or any other department set up by the Central or State Government having powers to investigate.
- v) List of approved Agencies – Parties / Contractors / Suppliers/ Purchasers/ Customers shall mean and include list of approved registered Agencies – Parties/ Contractors / Suppliers / Purchasers / Customers etc.

4. Initiation of Banning / Suspension

Action for banning/ suspension business dealing with any Agency should be initiated by the department having business dealing with them after noticing the irregularities or misconduct on their part. Besides any department, Vigilance Department may also be competent to initiate such action.

5. Suspension of Business Dealings

- 5.1 If the conduct of any Agency dealing with DGLLs under investigation by any department (except Foreign Supplier of imported material), the Competent Authority may consider whether the allegations under investigation are of a serious nature and whether pending investigation, it would be advisable to continue business dealings with the Agency. If the Competent Authority, after consideration of the matter including the recommendation of the Investigating Department, if any, decides that it would not be in the interest to continue business dealings pending investigation, it may suspend business dealings with the Agency. The order to this effect may indicate a brief of the charges under investigation. It is decided that inter-connected Agencies would also come within the ambit of the order of suspension, the some should be specifically stated in the order. The order of suspension would operate for a period not more than six months and may be communicated to the Agency as also to the Investigating Department. The Investigating Department may ensure that their investigation is completed and whole process of final order is over within such period.
- 5.2. The order of suspension shall be communicated to all Departmental Heads. During the period of suspension, no business dealing may be held with the Agency.
- 5.3 As far as possible, the existing contract(s) with the Agency may continue unless the Competent Authority, having regards to the circumstances of the case, decided otherwise.
- 5.4 If the gravity of the misconduct under investigation is very serious and it would not be in the interest of DGLL, as a whole, to deal with such an Agency pending investigation, the competent Authority may send his recommendations to Chief Vigilance Officer (CVO), DGLL Head of Department (HOD) along with the material available. If HOD considers that depending upon the gravity of the misconduct, it would not be desirable to have any dealings with the Agency concerned an order suspending business dealing may be issued by the Competent Authority, copy of which may be endorsed to the Agency concerned. Suchan order would operate for a period of six months from the date of issue.
- 5.5 For suspension of business dealing with foreign suppliers of imported material, following shall the procedure.
 - i) Suspension of the foreign suppliers shall apply throughout D G L L .
 - ii) Based on the complaint forwarded or received directly by Vigilance Department, if Gravity of the misconduct under investigation is found serious

and it is felt that it would not be in the interest of DGLL to continue to deal with such Agency pending investigations. Vigilance Dept. may send such recommendation on the matter to HOD to place before DGLL Officer Committee consisting of the following:

1. Head of Finance Department.
2. Head of Executing Department.
3. Head of User Department.
4. Head of Legal Department.

The Committee shall expeditiously examine the report, give its comments/recommendations within twenty-one days of receipt of the reference by HOD.

- iii) If DGLL Officer Committee opines that it is a fit case for suspension, DGLL Officer Committee may pass necessary orders which shall be communicated to the foreign supplier by HOD.

5.6 If the Agency concerned asks for detailed reasons of suspension, the Agency may be informed that its conduct is under investigation. It is not necessary to enter into - correspondence / argument with the Agency at this Stage.

5.7 It is not necessary to give any show cause notice or personal hearing to the Agency before issuing the order of suspension. However, if investigations are not complete in six months' time, the Competent Authority may extend the period of suspension by another three months, during which period the investigation must be completed.

6 Ground on which Banning of Business Dealing can be initiated

- 6.1 If the security consideration including questions of loyalty of the Agency to the State, so warrants.
- 6.2 If the Director / Owner of the Agency, Proprietor or partner of the firm is convicted by a Court of Law for offences involving moral turpitude in relation to its business dealing with the Government or any other public sector enterprises or DGLL, during the last five years.
- 6.3 If there is strong justification for believing that the Directors Proprietors, Partners, owner of the Agency have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolations, etc.
- 6.4 If the Agency continuously refuses to return/ refund/ the dues of DGLL without showing adequate reason and this is not due to any reasonable dispute which attracts

proceeding in arbitration of Court of Law.

- 6.5 If the Agency employs a public servant dismissed / removed or employs person convicted for an offence involving corruption or abetment of such offences.
- 6.6 If business dealing with the Agency have been banned by the Govt. or any other public sector enterprises.
- 6.7 If the Agency has resorted to Corrupt, fraudulent practices including misrepresentation of facts.
- 6.8 If the Agency uses intimidation / threatening or brings under outside pressure DGLL or its Official in acceptance/ performances of the job under the contract.
- 6.9 If the Agency indulgence in repeated and / or deliberate use of delay tactics in complying with contractual stipulations.
- 6.10 willful indulgence by the Agency in Supplying sub-standard material irrespective of whether pre-dispatch inspection was carried out by DGLL or not.
- 6.11 Based on the findings of the investigation report of CBI/Police against the Agency for malafide/unlawful acts or improper conduct on his part in matters relating to DGLL or even otherwise;
- 6.12 Establishment litigant nature of the Agency to derive under benefit.
- 6.13 Continued poor performance of the Agency in several contracts.
- 6.14 If the Agency misuses the premises of facilities of DGLL forcefully occupies tampers or damages the properties including land, water resources forests/ trees, etc.

(Note: The examples given above are only illustrative and not exhaustive.

The Competent Authority may decide to ban business dealing for any good and sufficient reason).

7. Banning of Business Dealings.

- 7.1 Normally, a decision to ban business dealings with any Agency should apply throughout the DGLL. However, the Competent Authority can impose such ban if in the particular case banning of business dealings will serve the purpose and achieve its objective and banning throughout the DGLL is not required in view of the local conditions and impact of the misconduct/ default. Any ban imposed shall be applicable across the DGLL.
- 7.2 For banning, the proposal should be sent by Head of Executing Department to the CVO setting out the facts of the case and the justification of the action proposed alongwith all the relevant papers and documents except for banning of business dealings with Foreign suppliers of imported material.

The Vigilance Department shall process the proposal for a prima-facie view in the matter by the Competent Authority nominated for DGLL-wide banning.

The CVO shall get feedback about that agency from the HOD, based on this feedback, a prima-facie, decision for banning/ or otherwise shall be taken by the Competent Authority.

If the prima-facie decision for banning has been taken, the Vigilance Department shall issue a show-cause notice to the agency conveying why it should not be banned throughout DGLL. After considering the reply of the Agency and other circumstances and facts of the case, a final decision for banning shall be taken by the Competent Authority.

7.3 There will be a Standing Committee to be appointed by HOD for processing the cases of Banning of Business Dealings except for banning of business dealings with foreign suppliers. However, for procurement of items/ award of contracts, to meet the requirement of Department, the committee shall be consisting of HOD from Executing, Finance, Law & User Department. Member from Executing Department shall be the convener of the Committee. The functions of the Committee shall, inter-alia include.

- i) To study the report of the investigating Agency and decide if a prima-facie case for DGLL-wide / Local unit, wise banning exists, if not, send back the case to the Competent Authority.
- ii) To recommend for issue of show cause notice to the Agency by the concerned department.
- iii) To examine the reply to show cause notice and call the Agency for personal hearing if required.
- iv) To submit final recommendation to the Competent Authority for banning or otherwise.

7.4 If the Competent Authority is prima-facie of view that action for banning business dealings with the Agency is called for, a show cause notice may be issued to the Agency as per paragraph 9.1 and an enquiry held accordingly.

7.5 Procedure for Banning of Business Dealings with Foreign supplier of imported material.

- i) Banning of the agencies shall apply throughout the DGLL including subsidiaries.
- ii) Based on the complaint forwarded by HOD or received directly by Vigilance Department, an investigation shall be carried out by Vigilance Department. After investigation depending upon the gravity of the misconduct Vigilance

Department may send their report to HOD to be placed before MHC consisting of the following: -

- (i) Head of Finance Department.
- (ii) Head of Executing Department.
- (iii) Head of User Department.
- (iv) Head of Legal Department.

The committee shall examine the report and give its comments/ recommendations within 21 days of receipt of the reference by HOD.

- iii) If DGLL Officer Committee opinion that it is a fit case for initiating banning action, it will direct HOD to issue show-cause notice to the agency for replying within a reasonable period.
- iv) On receipt of the reply or on expiry of the stipulated period, the case shall be submitted by HOD to DGLL Officer Committee for consideration & decision.
- v) The decision of the DGLL Officer Committee shall be communicated to the agency by HOD.

8. Removal from List of Approved Agencies- Suppliers/ Contractors, etc.

- 8.1 If the Competent Authority decides that the charge against the Agency is of a minor nature, it may issue a show-cause notice as to why the name of the Agency should not be removed from the list of approved Agencies- Suppliers/ Contractors, etc.
- 8.2 The effect of such an order would be that the Agency would not be disqualified from competing in Open Tender Enquiries but Limited Tender Enquiry may not be given to the Agency concerned.
- 8.3 Past performance of the Agency may be taken into account while processing for approval of the Competent Authority for awarding the contract.

9. Show-cause Notice

- 9.1 In case where the Competent Authority decides that action against an Agency is called for, a show-cause, notice has to be issued to the Agency, Statement containing the imputation of misconduct or misbehavior may be appended to the show-cause notice and the Agency should be asked to submit within 15 days a written statement in its defense.
- 9.2 If the Agency requested for inspection of any relevant document in possession of DGLL necessary facility for inspection of documents may be provided.

- 9.3 The Competent Authority may consider and pass an appropriate speaking order.
- For exonerating the Agency if the charges are not established.
 - For removing the Agency from the list of approved Suppliers/Contractors, etc.
 - For banning the business dealings with the Agency.
- 9.4 It is to ban business dealing, the period for which the ban would be operative may be mentioned. The order may also mention that the ban would extend to file interconnected Agencies of the Agency.

10. Appeal against the Decision of the Competent Authority

- 10.1 The Agency may file an appeal against the order of the Competent Authority banning business dealings, etc. The appeal shall lie to Appellate Authority. Such an appeal shall lie preferred within one month from the date of receipt of the order banning business dealing etc.
- 10.2 Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.

11. Review of the Decision by the Competent Authority

Any petition/ application filed by the Agency concerning the review of the banning order passed originally by HOD under the existing guidelines either before or after filing of appeal before the Appellate Authority or after disposal of appeal by the Appellate Authority, the review petition can be decided by the HOD upon disclosure of new facts/ circumstances or subsequent development necessitating such review. The Competent Authority may refer the same petition to the Standing Committee for examination and recommendation.

12. Circulation of the names of Agencies with whom Business dealings have been banned.

- 12.1 Depending upon gravity of misconduct established, the Competent Authority of the corporate office, may circulate the names of Agency with whom business dealings have been banned, to the Government Departments, other Public Sector Enterprises, etc. for such action as they deem appropriate.
- 12.2 If Government Departments or a Public Sector Enterprise request for more information about the Agency with whom business dealings have been banned, a copy of the report of Inquiring Authority together with the copy of the order of the Competent Authority/ Appellate Authority may be supplied.
- 12.3 If Business dealings with any Agency have been banned by the Central or State Government or any other Public Sector Enterprises, DGLL may without any further enquiry or investigation issue an order banning dealing with the Agencies and its interconnected Agencies.

APPENDIX XI: Information for Security Clearance

(Bidders to provide information in the formats provided below)

Format 1: Details of companies/Bidders/Consortium Partner(s)

- Name of the Company/Consortium Members and their address, including Address of Indian subsidiary or branch/liaison office, etc.
- List of Promoters/Board of Directors of bidders/consortium members with particulars like, Name, Address – Permanent & Present, Nationality, etc.
- Nature of the Company, whether private or State-owned entity.
- Share holding details with particulars or entities/individuals having more than 5% stake with ownership details to the last layer indicating the promoting individuals time.
- Parental organisation and sister concerns.
- Number of foreign national likely to be required for the execution of the project and their likely locations / deployment.
- Presence of the investing companies/ Bidders/Consortium Partners and shareholders in the countries across the world, including collaborations with other foreign companies.

Format 2

(i) Proposed – For individuals (Board of Directors)

S. No.	Full name of Board of Directors/ News editor	Date of Birth	Parentage	Complete Present & Permanent Address	Nationality	Passport Nos. and issue date, if any	Contact Address & telephone number, if any,
1	2	3	4	5	6	7	8

(ii) For Companies/firms

S. No.	Full name of Companies and its foreign collaborator if any; Including details of board of	Date of Registration	Present & Permanent Address including address of head office, Regional offices and Registered Office.	Link with Other firm	Activities and other Business	Name of CEO s/ Partners (with details)	Shareholding pattern for Applicant Company and investing	Details of earlier approvals, if any (Ref. No. & date)	Ultimate ownership of shareholding companies and the investing company along with	Presence of investing Companies and shareholders in countries across the worlds, including collaborations with other
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	Director as in (i) above				ow ned		compa ny.		detailed particular of owners.	foreign companies.
1	2	3	4	5	6	7	8	9	10	11

(iii) Parental Organization and sister concerns

Format 3: Project work details

- i. Nature and scope of the project work – types of civil / engineering works required, Project cost etc.
- ii. Location and coverage area of the project site with info regarding sensitive/vital/defence installation in the vicinity (5kms radius area).
- iii. Model of project allocation – PPP, BOT, BOOT etc.
- iv. Duration of the project – completion, commissioning, lease period.
- v. Machineries or heavy/sophisticated equipment needed for the project.
- vi. Total Manpower projection for the execution of the project.
- vii. Number of foreigners' likely/necessary to be involved for the project completion.
- viii. Earmarked place for stay of foreigners with details.

**ADDITIONAL PERFORMA – SECURITY CLEARANCE DEVELOPMENT OF
MAJOR AND MINOR PORT (as provided by Ministry of Shipping vide letter No. PD-
24018/4/2010-PD.I dated 14th August 2012).**

- i. Details of the firms (Indian/Foreign) including foreign Consortium involved in the development

APPENDIX XII – Instructions for Online Bid Submission

The bidders are required to submit soft copies of their bids electronically on the CPP Portal, using valid Digital Signature Certificates. The instructions given below are meant to assist the bidders in registering on the CPP Portal, prepare their bids in accordance with the requirements and submitting their bids online on the CPP Portal.

More information useful for submitting online bids on the CPP Portal may be obtained at: <https://eprocure.gov.in/eprocure/app>.

REGISTRATION

- 1) Bidders are required to enroll on the e-Procurement module of the Central Public Procurement Portal (URL:<https://eprocure.gov.in/eprocure/app>) by clicking on the link "Online bidder Enrollment" on the CPP Portal which is free of charge.
- 2) As part of the enrolment process, the bidders will be required to choose a unique user name and assign a password for their accounts.
- 3) Bidders are advised to register their valid email address and mobile numbers as part of the registration process. These would be used for any communication from the CPP Portal.
- 4) Upon enrolment, the bidders will be required to register their valid Digital Signature Certificate (Class II or Class III Certificates with signing key usage) issued by any Certifying Authority recognized by CCA India (e.g. Sify/ nCode/e Mudhra etc.), with their profile.
- 5) Only one valid DSC should be registered by a bidder. Please note that the bidders are responsible to ensure that they do not lend their DSC's to others which may lead to misuse.
- 6) Bidder then logs in to the site through the secured log-in by entering their user ID/password and the password of the DSC/e-Token.

SEARCHING FOR TENDER DOCUMENTS

- 1) There are various search options built in the CPP Portal, to facilitate bidders to search active tenders by several parameters. These parameters could include Tender ID, Organization Name, Location, Date, Value, etc. There is also an option of advanced search for tenders, wherein the bidders may combine a number of search parameters such as Organization Name, Form of Contract, Location, Date, Other keyword set to search for a tender published on the CPP Portal.
- 2) Once the bidders have selected the tenders they are interested in; they may download the required documents/ tender schedules. These tenders can be moved to the respective 'My Tenders' folder. This would enable the CPP Portal to intimate the bidders through SMS/e-mail in case there is any corrigendum issued to the tender document.
- 3) The bidder should make a note of the unique Tender ID assigned to each tender, in case they want to obtain any clarification/help from the Help desk.

PREPARATION OF BIDS

- 1) Bidder should take into account any corrigendum published on the tender document before submitting their bids.
- 2) PLicense go through the tender advertisement and the tender document carefully to understand the documents required to be submitted as part of the bid. PLicense note the number of covers in which the bid documents have to be submitted, the number of documents-including the names and content of each of the document that need to be submitted. Any deviations from these may lead to rejection of the bid.
- 3) Bidder, in advance, should get ready the bid documents to be submitted as indicated in the tender document/schedule and generally, they can be in PDF/XLS/RAR/DWF/JPG formats. Bid documents may be scanned with 100 dpi with black and white option which helps in reducing size of the scanned document.
- 4) To avoid the time and effort required in uploading the same set of standard documents which are required to be submitted as a part of every bid, a provision of uploading such standard documents (e.g. PAN card copy, annual reports, auditor certificates etc.) has been provided to the bidders. Bidders can use "MySpace "or" Other Important Documents" area available to them to upload such documents. These documents may be directly submitted from the "My Space" are a while submitting a bid, and need not be uploaded again and again. This will lead to a reduction in the time required for bid submission process.

SUBMISSION OF BIDS

- 1) Bidder should log into the site well in advance for bid submission so that they can upload the bid in time i.e. on or before the bid submission time. Bidder will be responsible for any delay due to other issues.
- 2) The bidder has to digitally sign and upload the required bid documents one by one as indicated in the tender document.
- 3) Bidder has to select the payment option as "offline" to pay the tender fee/EMD as applicable and enter details of the instrument.
- 4) Bidder should prepare the EMD as per the instructions specified in the tender document. The original should be submitted in the sealed cover as specified in the tender document in person latest by the last date of bid submission. The details of the DD/any other accepted instrument, physically sent, should tally with the details available in the scanned copy and the data entered during bid submission time. Otherwise the uploaded bid will be rejected.
- 5) Bidders are requested to note that they should necessarily submit their financial bids in the format provided and no other format is acceptable. If the price bid has been given as a standard financial offer format with the tender document, then the same is to be downloaded and to be filled by all the bidders. Bidders are required to download the financial offer file, open it and complete the white colored (unprotected) cells with their respective financial quotes and other details (such as name of the bidder). No other cells should be changed. Once the details have been completed,

the bidder should save it and submit it online, without changing the file name. If the financial offer file is found to be modified by the bidder, the bid will be rejected.

- 6) The server time (which is displayed on the bidder's dashboard) will be considered as the standard time for referencing the deadlines for submission of the bids by the bidders, opening of bids etc. The bidders should follow this time during bid submission.
- 7) All the documents being submitted by the bidders would be encrypted using PKI encryption techniques to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of bid opening. The confidentiality of the bids is maintained using the secured Socket Layer 128 bit encryption technology. Data storage encryption of sensitive fields is done. Any bid document that is uploaded to the server is subjected to symmetric encryption using a system generated symmetric key. Further this key is subjected to asymmetric encryption using buyers/bid openers public keys. Overall, the uploaded tender documents become readable only after the tender opening by the authorized bid openers.
- 7) The uploaded tender documents become readable only after the tender opening by the authorized bid openers.
- 8) Upon the successful and timely submission of bids (i.e. After Clicking "Freeze Bid Submission" in the portal), the portal will give a successful bid submission message & a bid summary will be displayed with the bid no. and the date & time of submission of the bid with all other relevant details.
- 9) The bid summary has to be printed and kept as an acknowledgement of the submission of the bid. This acknowledgement may be used as an entry pass for any bid opening meetings.

ASSISTANCE TO BIDDERS

- 1) Any queries relating to the tender document and the terms and conditions contained therein should be addressed to the Tender Inviting Authority for a tender or the relevant contact person indicated in the tender.
- 2) Any queries relating to the process of online bid submission or queries relating to CPP Portal in general may be directed to the 24 x 7 CPPP Portal Help desk. The contact number for the help desk is 180030702232. Foreign bidder can get help at +91-79-40007451 to 460.

DIRECTORATE GENERAL OF
LIGHTHOUSES AND LIGHTSHIPS

VOLUME 2

DRAFT CONCESSION AGREEMENT
BETWEEN
DIRECTORATE GENERAL OF LIGHTHOUSES AND LIGHTSHIPS
(THE CONCESSIONING AUTHORITY)
AND

.....
(THE CONCESSIONAIRE)

FOR

DEVELOPMENT OF TOURISM PROJECT ON PPP BASIS AT MUTTOM POINT
LIGHTHOUSE, TAMILNADU



November 2021

(This draft Concession Agreement will be finalised in terms of conditions of Bid Document (including addendum, if any), once the Preferred Concessionaire is selected and meets the Pre-conditions of the Agreement)

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DRAFT

CONESION AGREEMENT	12
ARTICLE 1: DEFINITIONS AND INTERPRETATION	13
1.1 Definitions	13
1.2 Other References	23
1.3 Interpretations	24
1.4 Measurements and Arithmetic Conventions	25
1.5 Ambiguities and Discrepancies	25
2 ARTICLE 2: CONCESSION AND PROJECT SITE ASSETS	26
2.1 Concession	26
2.2 Concession Period	26
2.3 Acceptance of the Concession	27
2.4 Project Site’s Assets	27
2.5 Use of Project Site’s Assets	27
2.6 Information about Project Site and Assets	28
2.7 Acceptance of the Project Site and Project Site’s Assets	28
2.8 Peaceful Occupation	29
3 ARTICLE 3: CONDITIONS PRECEDENT	30
3.1 Conditions Precedent	30
4 ARTICLE 4: PERFORMANCE GUARANTEE	33
4.1 Performance Guarantee	33
4.2 Deemed Performance Guarantee	34
4.3 Appropriation of Deemed Performance Guarantee	34
4.4 References to Performance Guarantee	34
5 ARTICLE 5: INDEPENDENT ENGINEER	36
5.1 Independent Engineer	36
6 ARTICLE 6: PROJECT IMPLEMENTATION	37
6.1 Preparation of Drawings	37
6.2 Review of the Drawings	37
6.3 Development and Construction Phase	37

6.4	Obligations of the Concessionaire	37
6.5	Obligations of the Concessioneing Authority.....	39
6.6	Suspension of Works	39
6.7	Issue of Completion Certificate	40
6.8	Change of Scope	41
6.9	Liquidated Damages	44
6.10	Commercial Operation Date (COD)	44
7	ARTICLE 7: OPERATIONS & MAINTENANCE.....	45
7.1	(a) Obligations of the Concessionaire.....	45
	(b) Rights of Concessionaire	48
	(c) Obligations of the Concessioneing Authority.....	48
	(d) Rights of Authority	49
7.2	Utilities and Services	49
7.3	Liability for shortfall in performance.....	50
7.4	Performance Standards	51
7.5	Safety, Breakdowns and Accidents.....	51
7.6	Concessioneing Authority’s rights to take remedial measures	51
7.7	Overriding power of Concessioneing Authority.....	52
7.8	Restoration of loss or damage to the Project Site	52
7.9	Modifications to the Project Site.....	52
7.10	Excuses from performance of obligations	53
8	ARTICLE 8: USER CHARGES	54
8.1	Applicable User Charges	54
8.2	Deleted	54
8.3	Collection of Cesses and Charges	54
9	ARTICLE 9: PAYMENTS TO THE CONCESSIONING AUTHORITY	55
9.1	Annual Concession Fee.....	55

9.2 Deleted	55
9.3 Payments of Revenue Share.....	55
9.4 Additional Utilities or Services.....	56
9.5 Certified Accounts	56
9.6 Escrow Account.....	57
10 ARTICLE 10: ASSETS: OWNERSHIP AND PERMITTED CHARGE.....	59
10.1 Ownership of Assets	59
10.2 Permitted Charge on Assets	59
11 ARTICLE 11: SHAREHOLDING	61
11.1 Ownership Structure	61
11.2 Shareholding	61
11.3 Constituent Documents	61
12 ARTICLE 12: GENERAL RIGHTS, DUTIES AND OBLIGATIONS	63
12.1 Of the Concessionaire	63
12.2 Of the Concessioneing Authority	67
12.3 Of the Concessioneing Authority and the Concessionaire	68
13 ARTICLE 13: CHANGE IN LAW	70
13.1 Change in Law	70
13.2 The Concessionaire’s Remedy.....	70
14 ARTICLE 14: FORCE MAJEURE.....	73
14.1 Force Majeure Event.....	73
14.2 Non-Political Events	73
14.3 Political Events	74
14.4 Other Events.....	74
14.5 Notice of Force Majeure Event.....	75
14.6 Period of Force Majeure	75
14.7 Resumption of Performance	75

14.8	Performance Excused.....	76
14.9	Costs, Revised Timetable.....	76
14.10	Termination Due to Force Majeure Event	77
15	ARTICLE 15: EVENTS OF DEFAULT.....	79
15.1	Events of Default	79
15.2	Parties Rights	80
15.3	Consultation Notice	81
15.4	Remedial Process	81
15.5	Obligations during Remedial Period.....	81
15.6	Revocation of Consultation Notice	82
15.7	Termination due to Events of Default.....	82
15.8	Concessioneing Authority’s Rights of Step-in	82
16	ARTICLE 16: TERMINATION OF THE CONCESSION/AGREEMENT.....	83
16.1	Termination Procedure.....	83
16.2	Obligations during Termination Period	83
16.3	Requisition	83
16.4	Condition Survey	84
16.5	Consequences of Termination.....	84
17	ARTICLE 17: COMPENSATION	86
17.1	Compensation	86
(a)	Termination due to Force Majeure Event	86
(b)	Termination due to Concessionaire Event of Default	86
(c)	Termination due to Concessioneing Authority Event of Default	86
17.2	No Compensation on Expiry of Concession Period.....	86
17.3	Transfer Fee and Charges	87
17.4	Payment of Compensation to Senior Lenders.....	87
17.5	Delayed Payment of Compensation.....	87

17.6	Delayed Transfer of Assets	88
17.7	Remedies Cumulative	88
17.8	Extension of Concession Period	88
17.9	Compensation for breach of Agreement	89
18	ARTICLE 18: TRANSFER ON EXPIRY OF THE CONCESSION PERIOD	91
18.1	General Scope of Transfer/Payment	91
18.2	Concessionaire's Obligations.....	91
18.3	Concessioneing Authority's Obligations	92
18.4	Risk	92
18.5	Vesting Certificate	92
19	ARTICLE 19: DISPUTE RESOLUTION	93
19.1	Amicable Settlement	93
19.2	Assistance of Expert	93
19.3	Conciliation.....	93
19.4	Arbitration	93
20	ARTICLE 20: REPRESENTATIONS AND WARRANTIES	95
20.1	Representations and Warranties of the Concessionaire	95
20.2	Representation and Warranties of the Concessioneing Authority	96
20.3	Disclosure	96
21	ARTICLE 21: MISCELLANEOUS PROVISIONS	97
21.1	Datum.....	97
21.2	Survival of Obligations	97
21.3	Articles to survive Termination	97
21.4	Joint Responsibility.....	97
21.5	Several Obligations.....	97
21.6	Severability	97
21.7	Notices	98

21.8 Waiver.....	98
21.9 Amendments, Modifications or Alterations.....	99
21.10 Governing Law	99
21.11 Entire Agreement.....	99
21.12 Stamp Duty and Registration.....	99
APPENDIX 1: PROJCT SITE	100
APPENDIX 2: PROJECT SITE’S ASSETS	102
APPENDIX 3: SUBSTITUTION AGREEMENT	102
ARTICLE 1: DEFINITIONS AND INTERPRETATION	104
1.1 Definitions.....	104
ARTICLE 2: ASSIGNMENT	105
ARTICLE 3: SUBSTITUTION OF THE CONCESSIONAIRE	106
3.2 Substitution upon occurrence of Financial Default.....	106
3.3 Substitution upon occurrence of Concessionaire Default	106
3.4 Procedure for substitution	107
3.5 Selection to be binding.....	108
ARTICLE 4: TRANSACTION DOCUMENTS	109
ARTICLE 5: TERMINATION OF CONCESSION AGREEMENT	110
5.1 Termination upon occurrence of Financial Default	110
5.2 Termination when no Selectee is selected	110
5.3 Realisation of Debt Due.....	110
ARTICLE 6: DURATION OF THE AGREEMENT.....	110
ARTICLE 7: INDEMNITY	111
7.2 Notice and contest of claims	111
ARTICLE 8: GENERAL	111
SCHEDULE A: PARTICULARS OF FINANCIAL ASSISTANCE.....	114
APPENDIX 4: SCOPE OF WORKS	115

2. Development of Resort	116
3. Minimum Development Obligations (MDO) of the Concessionaire.....	117
4. Development of Resort	117
5. Maintenance of Project Facilities & Services	120
6. Revenue Generation through User Charges	122
7. Specification & Standards.....	123
APPENDIX 5: PROJECT SCHEDULE	127
APPENDIX 6: DESIGN & DRAWINGS	128
APPENDIX 7: TERMS OF REFERENCE FOR INDEPENDENT ENGINEER	129
APPENDIX 8: PERMITS AND CLEARANCES TO BE PROCURED BY THE CONCESSIONAIREAND / OR CONCESSIONING AUTHORITY	132
APPENDIX 9: PERFORMANCE GUARANTEE(PROFORMA OF BANK GUARANTEE)	132
APPENDIX 10: CERTIFICATESCOMPLETION CERTIFICATE	137
PROVISIONAL CERTIFICATE.....	138
APPENDIX 11: PERSONNEL AND LABOUR REQUIREMENT	139
APPENDIX 12: USER CHARGEES	140
APPENDIX 13: RATES APPLICABLE IN RESPECT OF LAND, UTILITIES AND SERVICES.....	141
APPENDIX 14: MINIMUM GUARANTEED REVENUE	142
APPENDIX 15: PERFORMANCE STANDARDS	143
6. Safety Requirements	144
Annexure - II Safety Guidelines.....	146
4. Fire safety.....	146
APPENDIX 16: ESCROW AGREEMENT	147
1. DEFINITIONS AND INTERPRETATION	147
2. ESCROW ACCOUNT.....	148
2.1 Escrow Bank to act as trustee	149

2.2	Acceptance of Escrow Bank	149
2.3	Establishment and operation of Escrow Account	149
2.4	Escrow Bank's fee	150
2.5	Rights of the parties	150
2.6	Substitution of the Concessionaire.....	151
3.	DEPOSITS INTO ESCROW ACCOUNT	151
4.	WITHDRAWALS FROM ESCROW ACCOUNT	151
4.2	Withdrawals upon Termination:	152
4.2	Withdrawals upon end of Concession Period	154
4.3	Application of insurance proceeds	154
4.4	Withdrawals during Suspension.....	154
5.	OBLIGATIONS OF THE ESCROW BANK.....	154
5.2	Notification of balances	154
5.3	Communications and notices	155
5.4	No set off.....	155
5.5	Regulatory approvals	155
6	ESCROW DEFAULT.....	155
7.	TERMINATION OF ESCROW AGREEMENT	156
7.2	Substitution of Escrow Bank.....	156
7.3	Closure of Escrow Account	156
8.	SUPPLEMENTARY ESCROW AGREEMENT	156
9.	INDEMNITY	157
9.2	Notice and contest of claims	157
10.	MISCELLANEOUS PROVISIONS.....	158
10.2	Waiver of sovereign immunity	158
10.3	Priority of agreements.....	158
10.4	Alteration of terms	158

10.5 Waiver.....	159
10.6 No third party beneficiaries.....	159
10.7 Survival.....	159
10.8 Severability	159
10.9 Successors and assigns.....	160
10.10 Notices	160
10.11 Language	162
10.12 Authorized representatives	162
10.13 Original Document	162
APPENDIX 17: BASE CASE FINANCIAL MODEL (BCFM)	164
APPENDIX 18: MONITORING ARRANGEMENT.....	165
APPENDIX 19: MODEL TRIPARTITE AGREEMENT	171
1. DEFINITIONS AND INTERPRETATIONS.....	173
2. ISSUE OF BONDS.....	174
3. REDEMPTION OF BONDS	176
4. FEES	177
5. REPRESENTATIONS AND WARRANTIES.....	178
6. ARBITRATION	178
7. COMING INTO FORCE AND DURATION OF THE AGREEMENT	179
ANNEXURE-I.....	181
ANNEXURE-II.....	182
Schedule – II.....	182
Schedule - III Drawings	183 -189

CONSESSION AGREEMENT

THIS CONCESSION AGREEMENT is made at _____ on this the ____ day of ____ BETWEEN:

- 1. DIRECTORATE GENERAL OF LIGHTHOUSES AND LIGHTSHIPS** and having its Administrative Office at Deep Bhawan, A-13, Tulsi Marg, Sector-24, Noida-201301, hereinafter referred to as the **“Concessioneing Authority” / “DGLL” / “Authority”** (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- 2. _____**, a company registered under the Companies Act, 2013, and having its registered office at _____ hereinafter referred to as **“the Concessionaire”** (which expressionshall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).

The Authority and the Concessionaire shall collectively be referred to as Parties and individually as a Party.

WHEREAS:

- (A) The Concessioneing Authority is desirous of implementing a Project Development Of **Tourism Projects on PPP basis at Muttom Point Lighthouse, Tamil Nadu (“Project”)** The Concessionaire shall Develop, Manage, Operate and Maintain the Muttom Point Lighthouse in accordancewith the provisions of this Concession Agreement and shall also be entitled to commercial operations in the designated areas as mentioned in this Concession Agreement,
- (B) In or about_____, the Concessioneing Authority invited tenders from interested parties (“Bidders”) inaccordance with the Request for Proposals (“RFP”) for implementing the Project;
- (C) In response to the RFP, the Concessioneing Authority received bids from the Bidders including the one submitted by the Selected Bidder;
- (D) The Concessioneing Authority, after evaluating all the bids received by it from the Bidders, accepted the bid referred to in recital “C” above submitted by the Selected Bidder and communicated its acceptance to the Selected Bidder vide Letter of Intent for Award of Concession dated_____;
- (E) The Selected Bidder has incorporated the Concessionaire as a special purpose company in India, under the Companies Act,2013 to implement the Project;
- (F) Following the issue of the Letter of Intent for Award of Concession, the Concessioneing Authority has agreed to grant the Concession to the Concessionaire to implement the Project on the terms, conditions and covenants hereinafter set forth in this Concession Agreement.

NOW, THIS CONCESSION AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Concession Agreement, unless the context otherwise requires the following terms shall have the following meanings assigned/ascribed thereto: -

“Additional Auditor” has the meaning ascribed to it in Article 9.5.

“Additional Cost” means the additional capital expenditure which the Concessionaire has or would be required to incur and which has arisen as a result of Change in Law.

“Affiliate” means, with respect to any Party and/or with respect to the Bidder and/or with respect to any member of Consortium, any other Person directly or indirectly controlling, controlled by or under common control with such Party, Bidder and/or member of Consortium. For the purposes of this definition, the term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as applied to any Party or Bidder or a member of Consortium, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party or Bidder or a member of Consortium whether through ownership of 50 (fifty) % or more of the voting securities, by contract, or otherwise.

“Agreement” or “Concession Agreement” means this Concession Agreement as of date hereof, including Appendices and Annexures attached and as may be amended, supplemented or modified in accordance with the provisions hereof.

“Annual Concession Fee” shall have the meaning assigned to it under Article 9.1(a).

“Appendix” means the schedules, supplements or documents, appended to this Concession Agreement.

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

“Applicable Permits” means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Concession Agreement or any other Transaction Document.

“Appointed Date” or “Date of Award of Concession” means the date when the Conditions Precedent have either been satisfied or waived by the Party other than the Party responsible for satisfying the same and the Concession Period commenced.

“Associated Services” shall mean the additional value added services performed at project site such as telephone, internet, laundry, recreational amenities, pool, health

club, spa, sauna, fitness facility, outdoor catering, vending machines and any such additional services.

“Selected Bidder” means [●],

“**Bid**” means the proposal and the entire set of documents submitted by the Selected Bidder in response to the tender.

“**Bid Security**” means the bank guarantee [●] dated [●] furnished by the Selected Bidder along with its Bid.

“**Board**” means the Board of Trustees for the Port of Mumbai.

“**Book Value**” means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, and (ii) the moveable assets belonging to the Concessionaire, in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 2013, as applicable from time to time.

“**Change in Law**” shall have the meaning set out under Article 13.1 of this Concession Agreement.

“**Change of Scope**” shall have the meaning assigned to it under Article 6.8(a).

“**Change of Scope Notice**” shall have the meaning assigned to it under Article 6.8(b).

“**Concession**” means the Concession granted by the Concessions Authority to the Concessionaire in accordance with the provisions of Article 2.1 of this Concession Agreement for implementing the Project and providing Project Facilities and Services.

“**Concessions Authority Event of Default**” shall have the meaning as set out under Article 15.1(b).

“**Concessionaire Event of Default**” shall have the meaning as set out under Article 15.1 (a).

“**Concession Period**” means the period of the Concession specified in Article 2.2 of this Concession Agreement.

“**Conditions Precedent**” shall mean the conditions prescribed in Article 3 of this Concession Agreement.

“**Consortium**” means the consortium consisting of (i) XXXX, (ii) YYYY, and (iii) ZZZZ formed, to implement the Project.

“**Consultation Notice**” has the meaning ascribed to it in Article 15.3.

“**Contractor**” means a person or entity with whom the Concessionaire has entered into/may enter into a contract relating to the execution of any works and /or operation

and maintenance of the Project Facilities and Services, including the O&M Contractor.

“Day” means the 24 (twenty four) hour period beginning and ending at 12:00 midnight Indian Standard Time.

“Debt Due” means the aggregate of the following sums representing the amounts advanced by the Senior Lender towards Total Project Cost, expressed in Indian rupees as may be outstanding and payable to the Senior Lenders under the Financing Documents on the Transfer Date:

- (a) The principal amount of the debt by the Senior Lenders including any subordinated debt provided by Senior Lenders and/or other lenders and/or Concessionaires stakeholders under the Financing Documents for financing the Project (“the Principal”) but excluding (i) working capital loans; (ii) any part of the Principal that had fallen due for repayment six months prior to the Transfer Date, if the Transfer Date is related to expiry of the Concession Period or, if the Transfer Date is related to termination prior to the expiry of the Concession Period; and (iii) any debt that has been rescheduled or refinanced, unless such repayment had been rescheduled or refinancing made with the prior consent of Concessioneing Authority; and
- (b) All accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (a) above up to the Transfer Date but excluding (i) any interest, fees or charges that had fallen due six months prior to the Transfer Date, and (ii) penal interest or charges, payable under the Financing Documents to any Senior Lender (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c) Any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

Provided further that the Debt Due, on or after the Project COD, shall in no case exceed 85% (Eighty Five percent) of the Total Project Cost;

“Design & Drawings” means all of the drawings, calculations and documents pertaining to the Project as set forth in Appendix 6, and shall include as built drawings of the Resort and other Infrastructure created as per scope of works;

“Development and Construction Works” means all works, equipment and things necessary to complete the project and provide project facilities and services in accordance with this agreement.

“Development Period” shall have the meaning set out under Appendix 5.

“Encumbrance” means any encumbrance 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, physical encumbrances and encroachments on the Project Site/Project’s Assets/Project Facilities and Services.

“Environmental Law” means any statute, rule, regulation, ordinance, code, guideline or policy having the force of law, in each case, applicable to the Project now or hereafter in effect and any applicable judicial or administrative interpretation, pronouncement, order, decree or judgment, relating to the environment, health and safety.

“Equity” means the paid up share capital of the Concessionaire representing the equity component of the Total Project Cost and for the purpose of this Agreement shall include convertible instruments or other similar form of capital, which shall compulsorily convert into equity share capital of the Company and any interest-free loans advanced by any share holder of the Company for meeting such equity component, as capitalized in the books of the Concessionaire and duly certified by the Statutory Auditors.

“Equity Documents” means collectively the documents evidencing subscription to Equity to the extent of equity component of cost of the Project.

“Equity IRR” means the internal rate of return on equity investment of the project based on projected/actual cashflows during the Concession Period.

“Escrow Account” shall have the meaning assigned to it under Article 9.6.

“Escrow Agreement” means the agreement to be executed *inter alia* amongst the Concessionaire, the Concessional Authority, the Senior Lenders/Senior Lenders representative and Escrow bank substantially in the format set out in Appendix 16 hereto.

“Event of Default” shall have the meaning assigned to it under Article 15.1.

“Expert” means any person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Concession Agreement.

“Financial Assistance” means all funded and non-funded credit assistance including but not limited to loans, advances, lease assistance and guarantees required for the Project.

“Financial Close” means Furnishing its Financing Plan and Financing Documents for the Project and demonstrating Financial Close. Provided Financial Close shall be deemed to be achieved, if the only conditions pending for achieving Financial Close are those which are required to be fulfilled by the Concessional Authority under clause 3.1 (b) of Article 3.

“Financial Year” means any twelve month period commencing from 1st April and ending on 31st March.

“Financing Documents” means, collectively, the documents executed in favour of or entered into with the Senior Lenders, by the Concessionaire in respect of the Financial Assistance relating to the financing (including any re-financing) of the Total Project Cost and includes any document providing security for the Financial Assistance.

“Financing Plan” means the base case financial model adopted by Concessionaire with the approval of the Senior Lenders and approved by the Concessioneing Authority in accordance with Article 3.1(a)(vii) , setting forth the capital and operating cost of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the **Senior** lenders, and includes a detailed description of the assumptions and parameters used for making calculation and projections therein including inter alia the Estimated Project Cost, Concession Fee and Revenue Share payable to the Concessioneing Authority annual estimated revenue, equity contribution, number of tourists visiting KAI projections estimated by Concessionaire, discounted net present value of the cashflows, Equity IRR, debt equity ratio and debt service coverage ratio, as set out in Appendix 17.

“Force Majeure Event” shall have the meaning ascribed to it in Article 14.1 of this Concession Agreement.

“GoI” means the Government of India.

“Good Industry Practice” means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced Concessionaire engaged in Operation & Maintenance, operation and maintenance of facilities, equipment or systems of the type and size similar to the Project Facilities and Services.

“Government Authority” means GoI, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the Concessionaire, the Project’s Assets, the Project Facilities and Services or any portion thereof, but shall not include the Concessioneing Authority.

“Gross Revenue” of the Project for and in respect of any Accounting year shall mean the total amount of pre-tax gross revenues and receipts of any kind derived by the Concessionaire under or pursuant to the Concession Agreement, collected in form of User Charges or any other receipts on account of providing Hospitality Services, Associated Services, Notional Rent and deposits (refundable or otherwise) from sub-licenses of commercial spaces. For the avoidance of doubt, Gross Revenue shall also include any amount and revenue received by the Affiliate or any third party to whom the Concessionaire has contracted whole or part of Hospitality Services, Associated Services . In case the Concessionaire has contracted sub-license of commercial spaces on rental

basis, Notional Rent will be considered as Gross Revenue and its respective revenue share shall be due and payable to Concessioneing Authority by Concessionaire.

Further, Gross Revenue shall exclude the following

- a) any insurance proceeds received by the Concessionaire relating to: (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against; and (ii) any form of physical damage of assets, and the Concessionaire has incurred or will incur an expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently of such assets;
- b) any monies received by the Concessionaire, for or on behalf of any Government Instrumentality (as defined in the Concession Agreement), as an authorized agent of such Government Instrumentality;
- c) any deposit amounts refunded to the relevant sub-licensee or any other person authorized by the Authority in a particular Concession Year provided these pertain to past deposits on which Revenue Share has been paid to the Authority;
- d) All statutory applicable indirect taxes such as luxury tax, GST, entertainment tax, expenditure tax, and the like by whatever name called now or in future, which Concessionaire is bound to pay
- e) any revenue earned by the Concessionaire on sale of assets of a capital nature which are owned by the Concessionaire and
- f) any interest earned by the Concessionaire through investments made.
- g) It is expressly clarified that:
 - i insurance proceeds referred to in exclusion (a) above, shall not include any exclusion of insurance proceeds received for loss of revenues and/or business interruption;
 - ii monies referred to in exclusion (b) above, shall be excluded only if the same has been credited or will be credited by the Concessionaire to the relevant Government Instrumentality promptly and diligently and any fine, penalty or other amounts of similar nature that may accrue as a result of non-payment or delayed payment of such monies under the Applicable Laws, will not be excluded;
 - iii Gross Revenue will be computed on an yearly basis for an Accounting Year, in accordance with the Indian Generally Accepted Accounting Principles, as applicable on the closing of financial year;

In case of any dispute, discrepancy, ambiguity, doubt or otherwise, relating to the computation and/ or meaning of Gross Revenue, the decision of the Concessioneing Authority, at its sole discretion, shall be final.

“Hospitality Services” shall mean the hospitality services performed at Resort such accommodation room rentals, room services, provision of foods & beverages, liquor

inside the resort, banquet hall, seminars, events and any such hospitality services in the Resort.

“Indian Accounting Standards” means the Indian accounting standards issued by the Institute of Chartered Accountants of India.

“Insurance Cover” shall have the meaning ascribed to it in Article 12.1(c)(ii).

“Annual License Fee” shall have the meaning assigned to it under Article 9.1(a).

“Management Control” means the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of the Concessionaire, whether through the ownership of voting securities, by contract or otherwise or the power to elect or appoint more than 50% (fifty percent) of the directors, managers, partners or other individuals exercising similar authority with respect to the Concessionaire.

“Material Adverse Effect” means material adverse effect of any act or event on the ability of either Party to perform any of its rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Concession Agreement and which act or event causes a material financial burden or loss to either Party.

“Milestone Dates” means the dates for completion of specified Project activities as contained in the Project Schedule.

“Month” means the calendar month as per the Gregorian calendar.

“Non-Political Event” means the Force Majeure Events set out in Article 14.2.

“Notional Rent” shall mean the annual rental revenue of Concessionaire from sub-licensing of any commercial space on rental basis at the project site. The Notional Rent for the rented commercial space shall be calculated as maximum of –

- (a) Actual annual rent received by Concessionaire under the leave and license agreement executed with third parties for period not more than 5 (five) years;

“O&M Contract” means the contract, if any, entered into by the Concessionaire for the operation and maintenance of the Project in accordance with the provisions of this Concession Agreement.

“Operation & Maintenance Works” means all works, equipment and things necessary to complete the Project and provide the Project Facilities and Services in accordance with this Concession Agreement.

“Other Events” means the Force Majeure Events set out in Article 14.4.

“Other Persons” means persons to whom the Concessionaire has contracted any services forming part of the project and / or any other activity related to the Project’.

“Party” means either the Concessioneing Authority or the Concessionaire as the context

may require or admit and

“Parties” means both Concessioneing Authority and Concessionaire.

“Performance Standards” means the minimum standards of performance set out in Appendix 15 with regards the Project Facilities and Services.

“Performance Guarantee” shall mean the bank guarantee(s) procured by the Concessionaire for the benefit of the Concessioneing Authority guaranteeing the performance of the obligations of the Concessionaire hereunder inthe manner specified in Article 4.1.

“Person” means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity.

“Political Event” means the Force Majeure Events set out in Article 14.3.

“Project Site’s Assets” means the assets set out in Appendix 2, belonging to the Concessioneing Authority and shall also include-

- a. Tangible assets such as civil works including foundations, drainage works, pavements, electrical systems,fare collection systems, IT installations and administrative offices
- b. Project Facilities and Services including Specified Assets provided at Project Site;
- c. Building and Immovable fixtures or structures forming part of Project Facilities and Services including Specified Assets;
- d. All rights of the Concessionaire under the Agreement;
- e. Financial assets such as receivables, security deposits etc.;
- f. Insurance proceeds; and
- g. Applicable permits and authorization relating to or in respect to Project Facilities and Services including Specified Assets.

“Project” means the design, develop, finance, Operation & Maintenance, operation, maintenance, and marketingand providing of the Project Facilities and Services at Project Site in accordance with the provisions of this Concession Agreement.

“Project Contracts” means collectively this Concession Agreement and any other material contract (other than the Financing Documents, the Escrow Agreement, the Substitution Agreement or any commercial agreement withthe users) entered into or may hereafter be entered into by the Concessionaire in connection with the Project and Project Facilities and Services.

“Project Facilities and Services” includes the Minimum Development Obligations as set out under Scope of Works, Hospitality Services, Associated Services, to be provided by the Concessionaire during the Concession Period, in accordance with this Concession

Agreement.

“Project Site” means the area described in Appendix 1 at Muttom Point Lighthouse and easement rights thereto that may be given to the Concessionaire and all other assets comprised therein on which the Concessionaire is authorized to develop and operate the Project Facilities and Services as set forth in this Concession Agreement. This shall also include additional land, utilities and services allowed by DGLL in terms of Article 7.1 (c)(iii), wherever applicable.

“Quarter” means a period of 3 (three) Months.

“Remedial Period” has the meaning ascribed to it in Article 15.4.

“Requisition” has the meaning ascribed to it in Article 16.3.

“Revenue Share” means [% as quoted] share of Gross Revenue, to be paid to Concessioning Authority by Concessionaire for each financial year during Concession Period as per the terms set forth in Article 9 of Concession Agreement.

“Safety Standards” means the minimum standards of safety set out in the Clause 7.9 of Appendix 4 with regards the Project/Project Facilities and Services and fulfillment of Safety requirements and guidelines as set out in Annexure II of Appendix 15.

“Scope of Work” means the requirements as to the Development, Construction, Operation & Maintenance of the Project and provision of Project Facilities and Services set out in Appendix 4.

“Selectee” has the meaning ascribed to it in Article 15.4(b).

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

“Special Audit” shall have the meaning assigned to it under Article 9.4.

“Specifications & Standards” means the minimum standards of development / construction works or completion of Scope of Works set out in the annexure to Appendix 4 of this Concession Agreement.

“Statutory Auditors” means a firm of chartered accountants appointed in terms of Section 139 of the Companies Act, 2013 and acting as the statutory auditors of the Concessionaire.

“Stressed Project” means the PPP Project reaching a situation in which either Party is unable to perform/discharge its obligations under this Concession Agreement due to reasons beyond its control or due to certain unanticipated conditions.

“Substitution Agreement” means the agreement substantially in the form set out at Appendix 3, to be entered into between the Concessioneing Authority, the Concessionaire and the Senior Lenders.

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

- (a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in sub-Article (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans denominated in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter-Bank Offer Rate) plus 2% (two per cent) in case of loans denominated in foreign currency, but does not include any interest that had fallen due six months prior to the Transfer Date;

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

“Tender” means the tender documents of No. CE.T. X issued by the Concessioneing Authority to the Bidders and includes any addendum / clarifications issued in respect thereof by the Concessioneing Authority.

“Termination Notice” means the termination notice issued pursuant to Article 16.1 hereof.

“Termination Period” shall have the meaning as set out under Article 16.1 hereof.

“Total Project Cost” means the lowest of -

- (a) The capital cost of the Project as set forth in the Financial Package
- (b) The actual capital cost of the project upon completion
- (c) A sum of Rs. 50 crores (Rupees Fifty crores)

“Transfer” means to transfer, sell, assign, pledge, hypothecate, create a security interest in or other encumbrance on, place in trust (voting or otherwise), transfer by operation of law or in any other way dispose of, whether or not voluntarily, the legal or beneficial interest in the equity shares of the Concessionaire upon termination/expiration of Agreement.

“Transfer Date” means the transfer date i.e. date of expiry or termination as the case may be, of the Concession Period in accordance with the terms of this Concession Agreement.

“Transaction Documents” means collectively the Project Contracts and the Financing Documents.

“User” shall include the tourists visiting the and other users of Project Facilities and Services, general public, associates, sub-contractors, sub-licensee or any third party entity and any other person in accordance to the terms and conditions of this Agreement and approved by the Concessioneing Authority from time to time.

“User Charges” means the applicable rate(s) and tariff that may be charged by the Concessionaire to users, tourists, general public, associates, sub-contractor, sub-licensee or any third party entity for and in respect of providing the Project Facilities and Services in accordance with the terms of this Concession Agreement.

1.2 Other References

In this Concession Agreement:

“BIS” means Bureau of Indian Standards.

“BS” means British Standard.

“CISF” means Central Industrial Security Force. **“Cr”** means Crore

“DIN” means German Industrial Standard.

“FEM” means Federation of Equipment Manufacturers.

“GST” means Goods & Services Tax.

“IS” means Indian Standard.

“ISO” means International Standards Organization. **“IEC”** means International Electro Technical Commission. **“IMDG”** means International Maritime Dangerous Goods. **“IMO”** means International Maritime Organization.

“km” means Kilometre, the unit of length.

“kWh” means Kilowatt-hour, the unit of electrical energy.

“KVA” means Kilovolt-Ampere, the unit of power.

“m” means Metre, the unit of length.

“mm” means Millimetre, the unit of length.

“MT” means Metric Tonne, the unit of weight.

“MVA” means Mega Volt Ampere, the unit of power.

“MSIHC” means Manufacture Storage and Input of Hazardous Chemicals.

“OISD” means Oil Industry Safety Directorate. **“Rs.”** Means Indian Rupees.

“sq ft” means Square feet, the unit of area

“sqm” means Square metre, the unit of area.

1.3 Interpretations

This Concession Agreement constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project. If there is any aspect of the Project not covered by any of the provisions of this Concession Agreement, then and only in that event, reference may be made by the Parties to the bid documents, *inter alia* including the tender documents, issued by the Concessioneing Authority and also including addendums, clarifications given in writing in the pre- bid meetings and the submissions of the Concessionaire and the bid submitted by the Concessionaire but not otherwise. In case of any contradictions in the terms of this Concession Agreement and any such other bid documents as referred to above, the terms of this Concession Agreement shall prevail.

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 modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (c) the table of contents and any headings in this Concession Agreement are for ease of reference only and shall not affect the Operation & Maintenance or interpretation of this Concession Agreement;
- (d) the words “include” and “including” are to be construed without limitation;
- (e) references to “Operation & Maintenance” include design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the Operation & Maintenance;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (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) “Recital”, “Article” and “Appendix” shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Concession Agreement. The Appendices to this Concession Agreement shall form an integral part and parcel of this Concession Agreement and will be in full force and effect as though they were expressly set out in the body of this Concession 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 novated at the time of such reference;
- (k) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Concession Agreement from or by any Party or the Concessioneing Authority and/or Statutory Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Concessioneing Authority and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;
- (l) unless otherwise stated, 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;
- (m) unless otherwise specified, any interest to be calculated and payable under this Concession Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Concession Agreement; and
- (n) any word or expression used in this Concession Agreement, unless defined or construed in this Concession Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

1.4 Measurements and Arithmetic Conventions

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

1.5 Ambiguities and Discrepancies

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

- (a) between two Articles of this Concession Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- (b) between the dimension scaled from the Design and Drawings and its specific written dimension, the latter shall prevail;
- (c) between any value written in numerals and that in words, the latter shall prevail; and
- (d) between the provisions of this Concession Agreement and any other documents forming part of this Concession Agreement, the former shall prevail.

2 ARTICLE 2: CONCESSION AND PROJECT SITE ASSETS

2.1 Concession

In consideration of the Concessionaire agreeing to pay to the Concessioneing Authority (a) the Annual Concession Fee, and (b) Revenue Share as defined in this Concession Agreement, and performing its obligations as set out in this Concession Agreement, the Concessioneing Authority hereby grants to the Concessionaire, subject to the provisions of this Concession Agreement, an exclusive license for development, operation and maintenance of the Project site and for providing Project Facilities and Services as per Scope of works set forth in Appendix 4 and in accordance with the provisions of this Concession Agreement.

It is expressly clarified that, Concessionaire shall not have any exclusive rights on the entire Lighthouse complex under this Concession Agreement and all such rights shall always remain vested with Concessioneing Authority. The Concessionaire is merely a development and O&M service provider for the entire Project Site. However, for carrying out its commercial activities and generating revenue thereon; Concessionaire shall have exclusive license of use for the permitted areas as described in layout attached as Annexure 1.

The Concessionaire shall have exclusive license to use 91100 sqm area out of which –

- i. 4,300 sqm maximum built-up area is permitted for development of 47 key Resort.
- ii. 900 sqm area for Reception cum Admin Block with Recreational center .
- iii. 1000 sqm built up area for Restaurant cum Food Court cum Bar
- iv. 200 sqm built up area for Coffee Shop
- v. 1000 sqm built up area for Rejuvenation or Ayurvedic Spa block
- vi. Operation and Management of the Authority's museum including manpower, infrastructure such as guide , queuing ,crowd management, information pertaining to operation time , non-working days/hours , briefing / debriefing to visitors etc. including maintenance of building
- vii. 48000 sqm open area for Landscape including plantation, lighting, pathways, parking
- viii. 20000 sqm open area for future development
- ix. 15700 sqm for on site utilities like Water Tank, Bio Toilet, Septic Tank , Waste Disposal Treatment , Modular Waste Composter.

2.2 Concession Period

The Concession hereby granted is for a period of 30 (Thirty) years commencing from Date of Award of Concession or Appointed Date ("**Award of Concession**") or

(“Appointed Date”) during which the Concessionaire is authorized and obliged to implement the Project and to provide Project Facilities and Services as per Scope of work in accordance with the provisions hereof. Provided that:-

- (a) in the event of the Concession being extended by the Concessioneing Authority with the prior approval of the Government beyond the said period of 30 years in accordance with the provisions of this Concession Agreement, the Concession Period shall include the period by which the Concession is so extended, and
- (b) in the event of an early termination/determination of the Concession/ this Concession Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the date of termination/ determination of the Concession/this Concession Agreement.
- (c) The Concessioneing Authority shall have the right, subject to Applicable Laws and provision of Article 2.1 and Article 17.8 to extend the Concession Period for a term as mutually decided by the Parties by issuing a notice to the Concessionaire by no later than 6 (six) months prior to the date of expiry of the Concession Period.
- (d) (Delete)

2.3 Acceptance of the Concession

The Concessionaire hereby accepts the Concession and agrees and undertakes to implement the Project and to provide Project Facilities and Services in accordance with the provisions of this Concession Agreement. Subject to and in accordance with the provisions of this Concession Agreement and Applicable Laws and Applicable Permits, the Concessionaire shall at its costs, charges, expenses and risk including but not limited to foreign exchange variation risk if any, conceptualize, design, engineer, finance, construct, equip, operate, maintain and replace the Project/ Project Facilities and Services.

2.4 Project Site’s Assets

- (a) In consideration of the Concessionaire agreeing to perform and discharge its obligations as set forth in this Concession Agreement, the Concessioneing Authority hereby grants to the Concessionaire, the exclusive right to enter upon, occupy and use the Project Site and Assets for the purpose of implementing the Project and provision of Project Facilities and Services pursuant thereto in accordance with this Concession Agreement.
- (b) The Concessionaire shall at its costs, charges and expenses make such development and improvements limited to the Scope of work in the Project Site and Assets as may be necessary or appropriate for implementing the Project and providing Project Facilities and Services in accordance with the Agreement, Applicable Laws and Applicable Permits.

2.5 Use of Project Site’s Assets

The Concessionaire shall not, without the prior written consent or approval of the

Concessioneing Authority use the Project Site and the Assets for any purpose other than for the purposes of the Project/ the Project Facilities and Services and purposes incidental thereto as permitted under this Concession Agreement or as may otherwise be approved by the Concessioneing Authority.

2.6 Information about Project Site and Assets

The information about the Project Site and Assets as set out in Appendix 1 and Appendix 2 respectively is provided by the Concessioneing Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessioneing Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site and Assets, which the Concessioneing Authority may now possess or may hereafter come to possess, as may be relevant to the implementation of the Project. Subject to this, the Concessioneing Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project Site and Assets.

Concessionaire acknowledges that it has, after a complete and careful examination made an independent evaluation of the Project Site as a whole and has determined the nature and extent of the difficulties, upgradations,

inputs, costs, time, resources, risk and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement and the extent and manner of efforts required. Concessionaire further acknowledges that it shall have no recourse against the Authority if it, is at a later date, found that the Project Site is deficient in any manner whatsoever. If a deficiency is found, Concessionaire hereby acknowledges and agrees that it shall, at its own cost and at no cost to the Authority, take all appropriate measures to remedy the same.

If any defect, discrepancy, error or deficiency in the information supplied by the Concessioneing Authority through inadvertence is noticed at any time during the Concession Period, no claim on this account shall be entertained by the Concessioneing Authority including claim for extension of time nor shall the Concessioneing Authority in any way be responsible or liable for any loss or damage, if any, caused to the Concessionaire as a result thereof.

2.7 Acceptance of the Project Site and Project Site's Assets

The Concessionaire accepts possession of the Project Site and Assets on 'as is where is' basis and confirms having:

- (a) inspected the Project Site and Assets, including all structures thereat and its surroundings;
- (b) satisfied itself as to the nature of the climatic, hydrological and general physical conditions of the Project Site's Assets, the nature of the ground and subsoil, the form and nature of the Project Site and Assets, and the nature of the design, work and materials necessary for the performance of its obligations under this Concession Agreement; and

- (c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Concession Agreement.

2.8 Peaceful Occupation

The Concessions Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Concession Agreement, remain in occupation of the Project Site and Assets during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site and Assets or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have charge on the Project Site and Assets or any part thereof, the Concessions Authority shall, if called upon by the Concessionaire, defend such claims and proceedings.

3 ARTICLE 3: CONDITIONS PRECEDENT

3.1 Conditions Precedent

The award of the Concession shall be subject to the satisfaction or waiver of the following conditions precedent (the “**Conditions Precedent**”):

- (a) The following Conditions Precedent shall be satisfied by the Concessionaire:
 - (i) Furnishing of the Performance Guarantee as stipulated in Article 4.1 hereof;
 - (ii) Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;
 - (iii) Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;
 - (iv) Executing the Escrow Agreement and Opening the Escrow Account;
 - (v) Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;
 - (vi) Furnishing its Financing Plan and Financing Documents for the Project and demonstrating Financial Close. Provided Financial Close shall be deemed to be achieved, if the only conditions pending for achieving Financial Close are those which are required to be fulfilled by the Concessions Authority under clause 3.1 (b) of Article 3.
 - (vii) Procuring and furnishing the following confirmations, in original, from the Selected Bidder / members of Consortium:
 - (a) it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;
 - (b) it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Concession Agreement;
 - (c) the Bidder is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessions Authority to enter into this Concession Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Concession Agreement;
 - (viii) Furnishing to the Concessions Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability hereof; and
 - (ix) Obtaining Applicable Permits as may be required for commencement of Construction Works as set out in sub-clause 1 of Appendix 8

- (x) Execution of Substitution Agreement
- (b) The Conditions Precedent to satisfied by the Concessioneing Authority shall be limited to the following:
- (i) procurement of the clearances required for the Project as set out in para sub-clause 2 of Appendix 8;
 - (ii) Handing over physical possession of the Project Site and/or the Assets for the purposes of the Project after receipt of performance guarantee from the concessionaire with the provision that License Fee, GST and other applicable taxes shall be paid by concessionaire on or before Appointed Date.
- 3.2 The aforesaid Conditions Precedent shall be complied with within 180 Days - (One Hundred and eighty) of the date of the Agreement. For the purpose of compliance of Financial Close obligation, Concessionaire, shall not be considered at default if the conditions pending for achieving financial close are only those which are required to be fulfilled by the Concessioneing Authority under Article 3.1(b).
- 3.3 Any of the Conditions Precedent set forth in Articles 3.1(a) may be waived fully or partially by the Concessioneing Authority at any time in its sole discretion or the Concessioneing Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance with such additional time as may be specified by the Concessioneing Authority. Any of the Conditions Precedent set forth in Articles 3.1 (b) may be waived fully or partially by the Concessionaire at any time in its sole discretion.
- 3.4 If the Concessionaire has fulfilled all the Conditions Precedent under Article 3.1(a) including the furnishing of the Bank Guarantee and has not waived or extended the time under Clause 3.3 above, and if the Concessioneing Authority has failed to fulfill the Conditions Precedent to be fulfilled by it under Article 3.1(b) (and which are within the power of the Concessioneing Authority), the Concessioneing Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessioneing Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;
- 3.5 If the Concessioneing Authority has fulfilled all the Conditions Precedent under Article 3.1(b) and has not waived or extended the time under Clause 3.3 above, and if the Concessionaire has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 3.1(a) (and which are within the power of the Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the Performance Guarantee furnished by the Concessionaire. In such event, having regard to the quantum of damages, the time for

the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Concessionaire is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Clause 3.6 below;

- 3.6 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 3.2 to 3.5, this Concession Agreement shall be liable to be terminated. If such termination is on account of failure of the Concessionaire to comply with the Conditions Precedent, the Bid Security shall stand forfeited. If such termination is on account of failure of the Concessioning Authority, the Concessioning Authority shall be obliged to return the Bid Security/Performance Guarantee. It is clarified that except for the payment as stipulated in the foregoing Article 3.4 and 3.5 and forfeiture in this Article 3.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.
- 3.7 The date on which Financial Close is achieved and all the Conditions Precedent specified in Article 4.1, are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of the commencement of the Concession Period. For avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence Implementation of the Project as per provisions of the Concession Agreement.

4 ARTICLE 4: PERFORMANCE GUARANTEE

4.1 Performance Guarantee

- a) The Concessionaire shall for due performance of its obligations during the Concession Period provide to Concessioneing Authority an unconditional and irrevocable bank guarantee, within 30 days from theDate of signing of Concession Agreement, in favour of the Concessioneing Authority en-cashable andenforceable at Mumbai substantially in the form set forth in Appendix 9 in the form acceptable to theConcessioneing Authority (the “Performance Guarantee”). The Performance Guarantee shall be for a sum of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs only). Till such time the Concessionaire provides to Concessioneing Authority the Performance Guarantee pursuant hereto, the Bid Security shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiryof each year, for an additional term of 1 (one) year until date of receipt of Completion Certificate (“validity period”) and will have a claim period of one year from expiry of validity period.. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amountin case of part encashment of the same by the Concessioneing Authority. This shall be done within 30(thirty) Days of any such part encashment. The Performance Guarantee furnished under this provisionshall be valid until expiry of 6 (six) months from the Date of Commercial Operation (COD). Failure of the Concessionaire to provide a valid Performance Guarantee and/or restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessioneing Authority to forthwith terminate this Concession Agreement and also if relevant, to forfeit the Bid Security.
- b) Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent or failure tomake any payment which becomes due and payable to the Concessioneing Authority under and in accordance with this Agreement, the Concessioneing Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable as liquidated damages from the Performance Guarantee as Damages for such ConcessionaireDefault or failure to meet any Condition Precedent or failure to pay such amounts which are due and payable by the Concessionaire to the Concessioneing Authority under and in accordance with the provisions of this Agreement. Upon such encashment and appropriation of the Performance Guarantee, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Guarantee provide a fresh Performance guarantee, as the case may be, failing which theAuthority shall be entitled to terminate this Agreement in accordance with Article 16. Upon such replenishment or furnishing of a fresh Performance Guarantee, as the case may be, the Concessionaireshall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Concessioneing Authority shall be entitled to encash and appropriate such Performance Guarantee as Damages, and to terminate this Agreement in in

accordance with Article 16.

4.2 Deemed Performance Guarantee

The Parties expressly agree that at least 15 (fifteen) days prior to release of the Performance Guarantee in accordance with the provisions of Article 4.1, a substitute Performance Guarantee for the same amount shall be deemed to be created under this Article 4.2, as if it is a Performance Guarantee under Article 4.1 for and in respect of the entire remaining Concession Period (the “**Deemed Performance Guarantee**”). The Deemed Performance Guarantee shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Article 9.6, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Concessioneing Authority shall have the first and exclusive charge, including to the exclusion of the Senior Lenders, and shall be entitled to appropriate any amount therefrom as if it is an appropriation from the Deemed Performance Guarantee under Article 4.3. For avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire to the Concessioneing Authority under and in accordance with the provisions of this Agreement shall be liable to appropriation hereunder.

4.3 Appropriation of Deemed Performance Guarantee

Upon any amounts becoming due and payable by the Concessionaire to the Concessioneing Authority under and in accordance with the terms of this Agreement, the Concessioneing Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the amounts due and payable. For avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Guarantee being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

In the event of non-realization of the amounts to be encashed from the Deemed Performance Guarantee after COD due to unavailability of funds in the Escrow Account, the same will be treated as Concessionaire Event of Default and the Concessioneing Authority shall accordingly be entitled to terminate this Agreement in accordance with Article 12.

4.4 References to Performance Guarantee

References to the Performance Guarantee occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Guarantee by the Concessionaire to the Concessioneing Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire and/or any amounts due and payable by the Concessionaire to the Concessioneing Authority under and in

accordance with the provisions of this Agreement, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Guarantee after COD, as the case may be.

5 ARTICLE 5: INDEPENDENT ENGINEER

5.1 Independent Engineer

- (a) The Independent Engineer shall be selected through competitive bidding with the terms as per the guidelines prescribed by the Ministry of Finance for selection of Technical Consultant. The Concessions Authority shall in the procurement documents published by it, set out in reasonable qualification & experience criteria of Independent Engineer, detail the scope of work as indicated in Appendix 7 and shortlist bidders based on their technical capability. The Concessions Authority shall within 30 (thirty) Days of the date of this Concession Agreement forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of Persons so shortlisted. If within 15 (fifteen) Days of forwarding the list, the Concessions Authority does not receive any objection from the Concessionaire with reasons therefor, the Concessions Authority shall call for a financial bid from the shortlisted Persons and select the Independent Engineer. Any objection raised by the Concessionaire shall be considered by the Concessions Authority and Persons against whom such objections are raised will at the discretion of the Concessions Authority, which discretion shall be used with the highest degree of prudence and fairness, be disqualified prior to seeking a financial bid.
- (b) The Independent Engineer selected pursuant to the aforesaid process shall be appointed for a period commencing from the Appointed Date to the date of expiry of 6 (six) months from the Date of Commercial Operation. The scope of work of the Independent Engineer shall be substantially as set out in Appendix
- (c) The costs and expenses of the Independent Engineer for their services shall be borne by the Concessions Authority and Concessionaire, equally.
- (d) If the Concessions Authority either on its own or on a report of the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties in a fair, appropriate and diligent manner, the Concessions Authority may after giving the Independent Engineer due opportunity of being heard, terminate the appointment of the Independent Engineer and appoint another firm in its place in accordance with the preceding clause (a) above.
- (e) If either Party disputes any advice, instruction or decision of the Independent Engineer, the dispute shall be resolved in accordance with the dispute resolution procedure set out in Article 19.
- (f) Deleted

6 ARTICLE 6: PROJECT IMPLEMENTATION

6.1 Preparation of Drawings

The Concessionaire shall at its cost, charges and expenses, prepare the Drawings in conformity with the Scope of works and other provisions of the Concession Agreement.

6.2 Review of the Drawings

- (a) The Concessionaire shall submit the Drawings for the review of the Independent Engineer first and further for Approval of Concessioning Authority with a set of the Drawings.
- (b) The Independent Engineer shall review the Drawings submitted by the Concessionaire and provide its comments/observations and suggestions on the within 21 (twenty one) Days from the date of the receipt of such Drawings.
- (c) In the event that the Independent Engineer has observed that the Drawings are not in conformity with the Scope of works, the Concessionaire shall promptly and without any undue delay revise and resubmit the Drawings or satisfy the Concessioning Authority with regards its compliance.
- (d) If the Independent Engineer / Concessioning Authority does not make any observation/comments with respect to the Drawings submitted to it by the Concessionaire within 21 (twenty one) Days of the submission, it shall be deemed that the Independent Engineer / Concessioning Authority has no suggestions to make with respect to the Drawings and the Concessionaire shall be entitled to proceed with the Project accordingly.
- (e) The Concessionaire shall not change any Drawings reviewed by the Independent Engineer and approved by Concessioning Authority under this Concession Agreement, without submitting such revised Drawings for the review of the Independent Engineer / Concessioning Authority.
- (f) Notwithstanding the review by the Independent Engineer, the Concessionaire shall be severely be responsible for any defect and/or deficiency in the Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Concession Agreement.

6.3 Development and Construction Phase

- (a) The Concessionaire shall promptly commence and complete the Development of Resort and Minimum Development Obligations (“Development and Construction Works”) as set forth in Appendix 4 Scope of works within the Development Period in accordance with the Project Schedule and shall also obtain from the Independent Engineer Completion certificate as per clause 6.7 in accordance with the provisions of this Agreement (“Completion Certificate”) within Development Period as prescribed in Project Schedule Appendix 5 of this Concession Agreement.

6.4 Obligations of the Concessionaire

Without prejudice to the generality of Article 6.3 and in addition to any of its other

obligations under this Concession Agreement, during the Concession Period, the Concessionaire shall:

- (a) arrange for, in a timely manner all necessary financial and other resources required for Construction and Installation of the Project Facilities and Services.
- (b) engage professionally competent Persons for project management, Construction and Operation & Maintenance and ensure that all works are carried out in compliance with the Specifications and Standards and Performance Standards;
- (c) give written notice to the Concessioneing Authority within 7 (seven) Days of any material modification or change to any of the Financing Documents and/or any Equity Documents and shall simultaneously therewith also furnish copies of such modified/ amended documents to the Concessioneing Authority. Provided no such modification/amendment will be made if it in any manner whatsoever has the effect of imposing an additional financial obligation or increasing the financial obligation of the Concessioneing Authority in addition to that contemplated under the Financing Documents provided on Financial Close, without the prior written consent of the Concessioneing Authority. For avoidance of doubt any such modifications/amendments made without the prior written consent of the Concessioneing Authority will not be enforceable against the Concessioneing Authority;
- (d) obtain Applicable Permits, comply with Applicable Laws and Applicable Permits and give priority to safety in its Construction, Operation & Maintenance and planning activities in order to protect life, health, property and environment;
- (e) provide to the representative(s) of the Concessioneing Authority, at reasonable times and upon prior intimation, access to the Project Site to review progress in Construction and to ascertain compliance with any of the requirements of this Concession Agreement. Provided that non-inspection by the Concessioneing Authority of any works shall not, in relation to such works,
 - (i) amount to any consent or approval by the Concessioneing Authority nor shall the same be deemed to be waiver of any of the rights of the Concessioneing Authority under this Concession Agreement; and
 - (ii) release or discharge the Concessionaire from its obligations or liabilities under this Concession Agreement in respect of such work;
- (f) provide monthly reports on the progress of Construction works or such other relevant information as may be required by the Independent Engineer / Concessioneing Authority;
- (g) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer / Concessioneing Authority and ensure timely completion of Construction of the Project / the Project Facilities and Services in all respects in accordance with the provisions of this Concession Agreement; and
- (h) to ensure safe and timely Implementation, Construction and completion of the Project/Project Facilities and Services, the Concessionaire may, at its cost, interrupt and divert/create barriers on the flow of water or on the road , adjacent to the Project Site if such interruption and diversion is imperative for the efficient progress of Construction

Works and conforms to Good Industry Practice; provided that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Concessioneing Authority which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe Construction and shall remove the interruption or diversion within the period specified by the Concessioneing Authority.

- (i) To apply, obtain and comply with Applicable Permits, permissions and approvals from the concern government authorities under applicable laws in the matters related to national security, law and order; for involvement of foreign personnel and agencies during the Project Implementation, Construction, Operation and Maintenance directly or through its counterparties, sub-contractors, vendors, suppliers etc. For avoidance of doubt, the decision of concern government authorities on such permits, permissions and approvals shall be final. The Concessioneing Authority shall not be responsible for any claims and losses on account of any delay or refusal of such application / request of the Concessionaire.
- (j) Submit As-built drawings of the Project upon COD to the Concessioneing Authority.
- (k) Submit its Financing Plan and Financing Documents for the Project and demonstrating Financial Close as and when applicable / asked by Concessioneing Authority for verification that there is no inconsistency/contradiction with the terms & condition of the agreement. Authority, within 15 days shall notify concessionaire of inconsistency/contradictions, if any which shall be promptly addressed by the Concessionaire.

6.5 Obligations of the Concessioneing Authority

In addition to any of its other obligations under this Concession Agreement, during the Concession Period, the Concessioneing Authority shall:

- (a) in matters falling within its authority, grant, the Applicable Permits, approvals and consents as may be required by the Concessionaire and on a best efforts basis assist the Concessionaire in obtaining all other Applicable Permits as may be required by the Concessionaire;
- (b) upon written request from the Concessionaire, assist the Concessionaire, on a best effort basis, in obtaining immigration clearances, employment permits and residential premises for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project;
- (c) upon satisfaction as to completion and receipt of Completion Certificate issued by the Independent Engineer, declare the Project Facilities and Services as ready for operation;
- (d) Subject to the Concessionaire / complying with the requirements under the Applicable Laws including but not limited to payment of customs and any other duty, assist the Concessionaire or Contractor, on a best effort basis, to import into India all items of equipment and materials required for the Project.

6.6 Suspension of Works

- (a) Upon recommendation of the Independent Engineer to this effect, the Concessioneing Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Scope of Works if, in the reasonable opinion of the Concessioneing Authority, such work is not in accordance with the Specification and standards, / Safety Standards.
- (b) The Concessionaire shall, pursuant to the notice under the foregoing provision suspend the Scope of Works or any part thereof for such time and in such manner as may be specified by the Concessioneing Authority and thereupon represent to the Independent Engineer / Concessioneing Authority, the remedial measures to remedy the defects notified. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Concessioneing Authority recommending whether or not the suspension hereunder may be revoked. Any dispute as regards the suspension of works or the remedial measures proposed, if cannot resolved within 30 (thirty) Days of the suspension or proposal of the remedial measures, shall be submitted for dispute resolution in accordance with Article 19 hereof.

6.7 Issue of Completion Certificate

- (a) At least 60 (sixty) Days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of the date when it intends to achieve Completion of Development and Construction works. The Independent Engineer shall then proceed to inspect the Development and Construction Works with the intention of issuing the Completion Certificate and determine and notify to the Concessionaire the schedule and manner of the inspection and tests ("Tests") that it shall carry out to ensure that the Project meets with the Specification and Standards. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Concessioneing Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) Days' notice to the Independent Engineer;
- (b) Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Concessioneing Authority copies of all Test data including detailed Test results. The Testing procedure under the Concession Agreement shall be repeated until the Construction Works conform to the Specifications and standards under the Concession Agreement;
- (c) Upon completion of Development and Construction Works and the Independent Engineer determining all the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessioneing Authority a Completion Certificate substantially in the form set forth in Appendix 10;
- (d) The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Appendix 10 (the "Provisional Certificate") if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. Provisional Certificate can also be issued if the Minimum Development Obligations are completed and Concessionaire wishes to commence the partial commercial operation for island outdoor activities whereas

permitted permanent construction activities (i.e. construction of resort) still in progress. The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “Punch List”) to be completed by the Concessionaire within a stipulated time.. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) Days of the date of issue of the Provisional Certificate or such other extended period that the Concessions Authority may in its sole discretion determine, failing which the Provisional Certificate shall lose its validity and the Concessions Authority shall be entitled to terminate this Agreement;

- (e) When Concessionaire considers it has achieved completion of Punch List and completes all the balance works, it must request the Independent Engineer for issuance of the Completion Certificate. Within 10 (ten) days after receiving the request and upon being satisfied by the documents provided by the Concessionaire, the Independent Engineer shall inspect the Project for Punch List items and either:
 - (i) issue to the Concessionaire and the Authority the Completion Certificate, if the Punch List items as provided under the Provisional Certificate have been completed; or
 - (ii) issue a written notice to Concessionaire listing the Punch List items remaining to be completed along with the timelines to complete them.
- (f) In the event that upon successful determination by the Independent Engineer of the successful completion of all Tests, the Independent Engineer fails to issue the Completion Certificate to the Concessions Authority and the Concessionaire within the time specified in sub-clause (e) above, at the end of such period, such Completion Certificate shall be deemed to have been issued to the Concessions Authority and the Concessionaire in accordance with the provisions of this Article 6.7 (the “Deemed Completion Certificate”).
- (g) (deleted)
- (h) Without prejudice to the foregoing, if the Concessionaire shall have failed to complete any Development and Construction Works on account of Force Majeure or for reasons solely attributable to the Concessions Authority, the Concessions Authority may, in its discretion, reduce the scope of Project and require the Concessionaire to pay 80% (eighty percent) of the sum saved due to such reduction of scope. Upon such payment to the Concessions Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in the net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid

payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project (i.e. balancing NPV / IRR). It is further agreed that the liability of the Concessions Authority under this Clause 6.7 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, provisions of Article 19 of this Concession Agreement shall apply.

6.8 Change of Scope

- (a) The Concessioneing Authority may, notwithstanding anything to the contrary contained in this Concession Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Concession Agreement (“**Change of Scope**”). Provided no such Change of Scope shall be made in the Construction Phase if it is in the reasonable judgment of the parties hereto likely to delay the completion of the Project such that the Project cannot be completed within time limits provided in Project Schedule. Provided further, the cost of implementing a single Change of Scope shall not exceed a sum corresponding to 5% (five percent) of the Total Project Cost and during the Concession Period the cumulative cost of implementing orders pertaining to Change of Scope shall not exceed a sum corresponding to 20% (twenty percent) of the Total Project Cost. In case the project cost escalates beyond 20% (twenty percent) this will be dealt with in accordance with the guidelines issued by this Ministry on Delayed/Stressed PPP Projects;
- (b) If the Concessioneing Authority determines that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “Change of Scope Notice”);
- (c) Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Concessioneing Authority and Independent Engineer, the following:
 - (i) the adverse impact, if any, which the Change of Scope is likely to have on the Project; and
 - (ii) the cost to be incurred by the Concessionaire for and in respect of such Change of Scope;
 - (iii) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Concessioneing Authority to its contractors, any impact on the operations or the cost of operation of the Resort and Project Infrastructure, along with the proposed premium or discount on such rates; and
 - (iv) its likely impact on the Gross Revenue and profitability of the Project.
- (d) Upon receipt of the foregoing information and the recommendations from Independent Engineer, the Concessioneing Authority shall, if it decides to proceed with the Change of Scope, convey its agreement or otherwise of the assessment of the Concessionaire. If the Concessionaire does not notify any adverse impact of a Change of Scope notified under the Change of Scope Notice within 30 (thirty) Days of the date thereof and/or the Concessioneing Authority does not disagree with the cost assessment of the Concessionaire, the Concessioneing Authority shall issue an order requiring the Concessionaire to proceed with the implementation of such Change of Scope. If an adverse impact is notified by the Concessionaire and/or the Concessioneing Authority disagrees with the cost assessment, the Parties shall in good faith modify the Change of Scope envisaged so as to remove the adverse impact/agree to the cost implication for carrying out the Change of Scope within a period of 30 (thirty) Days of notification of the adverse impact/cost. In the event that the Parties are unable to mutually agree to a Change of Scope and/or the cost of implementing the same, they may seek intervention of Independent

Engineer to resolve the differences and upon the final determination of the desired Change of Scope and its cost implication, the Concessioneing Authority may issue an order to implement the Change of Scope. In the event, there is no resolution or final determination of the desired Change of Scope and its cost implication, even after intervention of the Independent Engineer, the Concessioneing Authority may issue an order to implement the Change of Scope pending resolution of the dispute in terms of the provisions of this Concession Agreement;

- (e) The provisions of this Concession Agreement, in so far as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire in respect of a Change of Scope;
- (f) Within 7 (seven) Days of an order for Change of Scope being issued, the Concessioneing Authority shall make an advance payment to the Concessionaire of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder. The Concessionaire shall, after commencement of work, present to the Concessioneing Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Concessioneing Authority to determine the accuracy thereof. Within 30 (thirty) Days of receipt of such bills, the Concessioneing Authority shall disburse to the Concessionaire after deducting Pro-rata advance payment, such amounts as are certified by the Statutory Auditors as being expended by the Concessionaire for and in respect of implementing Operation & Maintenance Works or procuring equipment following an order for a Change of Scope;
- (g) Notwithstanding anything to the contrary contained in this Article 6.8, the Concessioneing Authority may, after giving the Change of Scope Notice to the Concessionaire and considering its reply thereto, decide to seek competitive bids for carrying out the works envisaged in a Change of Scope; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Concessioneing Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is hereby agreed that the Concessionaire shall provide co-operation, access to site to the third party for which it is appointed through such competitive bidding process and the Concessioneing Authority shall not undertake any works or services under the clause if such works or services cause a Material Adverse Effect on the Concessionaire; and
- (h) If during the pendency of the Agreement, the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Project Facilities and Services, it shall by notice in writing request the Concessioneing Authority to consider such Change of Scope. The Concessionaire may implement the Project and provide Project Facilities and Services in accordance with the Change of Scope, wherein the Concessioneing Authority may provide its own suggestions/modifications, thereafter the accepted form of Change of Scope may be approved in writing by the Concessioneing Authority or may provide the reasons in writing to not to accept the aforesaid Change of Scope proposed by Concessionaire within 60 (sixty) days from the date of receipt of such notice. If the Change of Scope proposed by Concessionaire is approved by Concessioneing Authority as stated above, all the provisions of this Article 6 for the Project Implementation shall mutatis mutandis apply. Provided, it is clarified that the provisions

contained in Article 6.8. (f) and (g) shall not apply to a Change of Scope required by the Concessionaire.

6.9 Liquidated Damages

Subject to any of the provisions of this Concession Agreement providing for extension of time for performance or excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Concession Agreement, the Concessionaire shall pay to the Concessioneing Authority liquidated damages at the rate of 0.1% (zero point one percent) of the Performance Guarantee for every Day of delay in fulfilling the specified obligations on or before a Milestone Date including a delay in obtaining the Completion Certificate or the Provisional Certificate on or before the Project Schedule as provided in Appendix 5. Provided such liquidated damages shall not in aggregate exceed 5% (five percent) of the Total Project Cost and unless the delay is in obtaining of the Completion Certificate or the Provisional Certificate, shall not be payable for less than 15 (fifteen) Days of delay from a Milestone Date, in fulfilling a specified obligation, provided further that in the event Project COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Article 6.9 shall be refunded by the Authority to the Concessionaire, but without any interest thereon.. The Parties agree that the liquidated damages as provided are a genuine pre-estimate of the damages the Concessioneing Authority is likely

to suffer and are not by way of a penalty. In case the aggregate delay exceeds 180 (one hundred and eighty) Days or the aggregate liquidated damages paid and/or payable under this provision exceeds the specified limit of 5% (five percent) of the Total Project Cost, the Concessioneing Authority shall be entitled to terminate this Concession Agreement and the consequences of termination as laid down in Article 16.5 shall follow. The Concessioneing Authority may, at its discretion recover any amounts with respect to liquidated damages from the Performance Guarantee. Further, the Concessionaire shall not be liable to pay liquidated damages, if the delay in fulfilling the specified Concessionaire's obligations were for the reasons solely attributable to the Concessioneing Authority.

6.10 Commercial Operation Date (COD)

The Scope of Minimum Development Obligations under this Agreement shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of this Article 6, and accordingly the commercial operation date, shall be the date on which such Completion Certificate or the Provisional Certificate, as the case may be, is issued (the "Project COD" or "COD"). The project facilities and services shall enter into commercial service on Project COD whereupon the Concessionaire shall be entitled to provide its services and collect User Charges from the Users, subject to compliance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Concession Agreement.

7 ARTICLE 7: OPERATIONS & MAINTENANCE

7.1 (a) Obligations of the Concessionaire

In addition to any of its other obligations under this Concession Agreement, the Concessionaire shall provide, manage, operate, maintain and repair the Project Facilities and Services, entirely at its cost, charges, expenses and risk in accordance with the provisions of this Concession Agreement. The Concessionaire's obligations under this Article 7.1 shall include but shall not be limited to the following:

(i) Operation & Maintenance:

The Concessionaire shall during the Concession Period and as per the provision :

- (a) promptly execute and commence operations upon the Project Facilities and Services being declared by the Concessioning Authority as ready for operations;
- (b) make efforts to maximize number of tourists visiting Project Site so as to achieve optimal utilization of the Project Facilities and Services;
- (c) ensure compliance of the Project Facilities and Services at least as per the Scope of Work.;
- (d) be free to deploy higher capacity equipment/facilities/ technology, etc. and induct new technology and carry out value engineering for improved productivity and/or improved utilization and/or cost saving of Project assets during the concession period;
- (e) ensure that the Project Facilities and Services shall adhere to the Operations and Maintenance Standards and Safety Standards and there is safe, smooth and uninterrupted flow of traffic normal operating conditions;
- (f) minimize disruption to tourist movement and activities in the event of accidents or other incidents affecting the safety and use of the Project Facilities and Services by providing a rapid and effective response and maintaining liaison with emergency services of the Concessioning Authority or other agencies;
- (g) make available all necessary financial, technical, technological, managerial and other resources for operation, maintenance, repair and replacement of the Project Facilities and Services in a timely manner;
- (h) ensure maintenance of proper and accurate record/data/accounts relating to operations of the Project Facilities and Services and the revenue earned therefrom;
- (i) obtain, maintain and comply with Applicable Permits and comply with the Applicable Laws including those relating but not limited to , health, environment and labour;
- (j) subject to the provisions of this Concession Agreement, perform, undertake or provide, in connection with the Project, all services which the Concessioning Authority is authorized to perform, undertake or provide under the provisions of the MPT Act; and
- (k) prevent, with the assistance of concerned law enforcement agencies, any encroachment or unauthorized use of the Project Facilities and Services.

(ii) Repairs and Maintenance

The Concessionaire shall at its own cost:

- (a) repair as necessary and maintain the Project Facilities and Services or any part thereof in accordance with the Scope of works and for this purpose carry out routine, preventive and periodic measures and maintenance of the Project Facilities and Services including repair of pathways, repair structures and repair and refurbish equipment; and
- (b) Maintain the Project Facilities and Services in accordance with the provisions of this Concession Agreement and Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Site, Assets, Facilities and Services to be transferred to the Concessions Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.

(iii) Replacement of Equipment

The Concessionaire shall at its cost, plan for replacement of the equipment well ahead of the time when the utility thereof is reasonably expected to expire and replace the equipment in accordance with Good Industry Practice so as to ensure that the Project facilities and Services commensurate with the Scope of Work, at all times during the Concession Period.

(iv) Repairs, Replacement or Restoration

The Concessionaire shall at its own costs, promptly and diligently repair, replace or restore any of the Project Facilities and Services or part thereof which may be lost, damaged, or destroyed for any reason whatsoever.

(v) Removal / Replacement of Assets

Except as provided/authorized under this Concession Agreement the Concessionaire shall not, without the prior written intimation to the Concessions Authority, remove or replace any assets comprised in the Project Facilities and Services. Such notice shall contain the exact details of the assets that the Concessionaire intends to remove and/or replace, its reasons for doing so and the likely period for replacement.

(vi) Payments to the Concessions Authority

The Concessionaire shall make/ensure payments to the Concessions Authority as per Article 9.

(vii) Access for Inspection

The Concessionaire shall be obliged to extend all co-operation to Experts appointed by the Concessions Authority for purposes of verifying that the Project/the Project Facilities and Services are operated and maintained in compliance with the Performance Standards and adhere to the Operations and Maintenance Standards and Safety Standards. Such verification shall be made annually. Additionally, the Concessionaire

shall upon prior intimation by the Concessioneing Authority provide the authorized representatives of the Concessioneing Authority access to the Project's Assets/the Project Facilities and Services for inspection and review of operations and also to ascertain compliance with any of the requirements under this Concession Agreement. Without prejudice to the generality of this provision, it is agreed that the Concessionaire shall in particular extend all co-operation and information required by the Experts appointed by the Concessioneing Authority for conducting a safety audit and verifying that the Project/Project Facilities and Services are in strict compliance with the Safety Standards.

(viii) Reports

The Concessionaire shall provide to the Concessioneing Authority, Monthly reports on number of tourists, maintenance activities planned and carried out, User Charges collected within 15 (fifteen) Days following the end of each Month, and any other information relating to operations which the Concessioneing Authority may require from time to time. If so desired by the Concessioneing Authority, the Concessionaire shall provide the reports in prescribed formats and in electronic form so as to provide online access to the Concessioneing Authority and its representatives.

(ix) Computer System and Network

The Concessionaire shall install, operate and maintain such computer system and network (such as Electronic Data Interchange and Port Community System) and follow such protocol as the Concessioneing Authority may specify from time to time.

(x) Security Arrangements

The Concessionaire may make his own arrangements for security in the Project Site/ Assets and with respect to the Project provided the Concessionaire shall abide by the security regulations/ procedures prescribed by the Concessioneing Authority or a Government Authority from time to time. The Concessionaire shall make arrangements to provide necessary security systems such as CCTV camera, hand held scanners, metal detectors, frisking booths at its own cost on the locations as it feels desirable or as directed by Concessioneing Authority. Concessionaire to ensure that tourist's arrival shall be within its scientifically-determined carrying capacity and Concessionaire shall take necessary control measures in co-ordination with Concessioneing Authority.

(xi) Employment of Personnel

The Concessionaire shall employ qualified and skilled personnel required to operate the Project Facilities and Services. The terms of employment may be as deemed fit by the Concessionaire and the Concessionaire shall comply with all Applicable Laws and bear all costs in this regard. Without prejudice to the generality of this provision, all requisite approvals for employment of personnel of foreign origin or nationality shall be obtained by the Concessionaire prior to engaging such personnel. Failure to obtain approval will not amount to a Force Majeure Event. All employees shall always remain the Concessionaire's responsibility. Further, the Concessionaire shall comply with the

requirements of employing the existing personnel/ labour. All labour law compliances shall be that of the Concessionaire alone.

(xii) Deleted

(xiii) Deleted

(xiv) Maintenance of Project website

- (a) The concessionaire shall maintain a “Project Website” which shall be all time accessible to general public. The Project website shall essentially contain detail descriptions of the Resort, Project Facilities and Services, Latest approved User Charges for various facilities, online booking facility for resort and camping, historic information, connectivity information, emergency contact details and any other relevant information to the tourists visiting to the Lighthouse. It shall also develop an efficient Complaint redressal portal where tourists can lodge their grievance, complaints and general feedback regarding the Project.
- (b) Concessionaire shall take action for just and fair redressal of the grievance and submit a reply to the complainant within thirty days from the date of receipt with a copy to Concessioneing Authority and maintain a proof of reply.
- (c) If concessionaire fails to address the grievance and the complaint makes a reference to Concessioneing Authority, it will issue directions which shall be complied by the concessionaire.
- (d) In case of Concessionaire failing to address the complaints within prescribed time, it shall be considered as non-performance of Concessionaire’s Operation and Maintenance obligations.

(b) Rights of Concessionaire

i. Refinancing of Debts

The Concessionaire in accordance with the provisions of this Concession Agreement and the provisions of the Draft Tripartite Agreement (Appendix-19) may issue bonds to refinance the debts raised and utilized by it from Senior Lenders for financing the project for which Concessioneing Authority shall enter into Tripartite Agreement as per the Draft Tripartite Agreement annexed at Appendix-19.

(c) Obligations of the Concessioneing Authority

In addition to any of its other obligations in this Concession Agreement, the Concessioneing Authority shall arrange for and provide the following:

(i) Approvals

The Concessioneing Authority shall promptly grant approvals/ consents sought by the Concessionaire as required under this Concession Agreement subject to the Concessionaire having complied with all Applicable Laws/requirements in this regard.

(ii) Additional Land, Utilities and facilities

In the event of land, utilities and facilities are found to be insufficient by the Concessionaire for providing services as per the scope of work at any time during the concession period, the Concessionaire may approach the Concessioneing Authority for providing additional land, utilities and facilities. Concessioneing Authority on being approached by Concessionaire shall consider, subject to availability and provide additional land, utilities and facilities if considered necessary for providing project facilities as per scope of work and as per Article 9.4. Even if authority is not in a position to provide additional land, utilities and services, the Concessionaire would not be entitled to any relaxation on the grounds that land, utilities and services are found to be insufficient by the concessionaire for providing services as per Scope of Work.

(iii)(Deleted)

(d) Rights of Authority

- (i) If in the reasonable opinion of the Concessioneing Authority, the Concessionaire is in material breach of its obligations under this Concession Agreement that is causing hardship or danger to a person or property, the Concessioneing Authority may, without prejudice to any of its rights under this Concession Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures to cure such breach and comply with the Obligations.
- (ii) In the event that the Concessionaire, upon notice as per 7.1(d)(i) above fails to comply with the Obligations and cure such breach within a reasonable period, the Concessioneing Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it; provided that such taking over by the Concessioneing Authority shall be of no greater scope and of no longer duration than is *reasonably required* and recover the costs and expenses thereof from the Concessionaire.

7.2 Utilities and Services

- (a) The Concessionaire shall, at its cost, make arrangements and ensure all time availability of drinking water, power and other necessary utilities including but not limited to installation of generators, solar power plant etc, subject to obtaining Applicable Permits, if any, therefor. The Concessioneing Authority does not warranty the availability of any utilities and services and shall not be liable in any manner for the shortage in or non-supply of these utilities.
- (b) Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the

Government Instrumentalities owning the existing roads, Right of Way or utilities, on, under or above the Project Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the relevant Government Instrumentality.

- (c) The Concessionaire shall, subject to Applicable Laws, provisions of Applicable Permits and with the assistance of the Concessioneing Authority, undertake shifting of

any utility, including electric lines, waterpipes and telephone cables, to an appropriate location or alignment within or outside the Project Site, if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Resort and/or the Project Infrastructure. The cost of such shifting shall be borne by the Concessionaire, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

7.3 Liability for shortfall in performance

- (a) In the event the Concessioneing Authority, whether from the review of reports submitted by the Concessionaire in accordance with the provisions of this Concession Agreement or otherwise, observes that the Project/Project Facilities and Services do not comply with the Performance Standards or fall short of the Performance Standards, the Concessioneing Authority shall calculate the amount of liquidated damages payable by the Concessionaire in accordance with Clause 7.3 (b) below and demand the Concessionaire by a notice in writing to pay the same within 30 (thirty) Days and on failure of the Concessionaire to pay the same recover the amount from the Concessionaire. Provided that on receipt of the demand the Concessionaire may make a written representation to the Concessioneing Authority which shall be considered by the Concessioneing Authority on merits and the Concessioneing Authority may waive the liquidated damages in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.
- (b) In the event that the Concessionaire fails to repair or rectify any defect or deficiency within the reasonable period as notified by Concessioneing Authority / Independent Engineer or is in breach of the Operation & Maintenance requirements as per this Agreement, it shall be deemed to be in breach of this Agreement and the Concessioneing Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Performance Guarantee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Concessioneing Authority. Recovery of such Damages shall be without prejudice to the rights of the Concessioneing Authority under this Agreement, including the right of Termination thereof, and in the event of non-payment by Concessionaire of such delinquent amount forthwith and in any case within seven days of issue of written notice by Concessioneing Authority, the same shall be recovered by encashment of Performance Guarantee in which case the provisions of Article 4 hereof shall apply.
- (c) The Damages set forth above may be assessed and specified forthwith by the Concessioneing Authority; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith.

7.4 Performance Standards

The Concessionaire shall procure that at all times during the Concession Period, the Project site, Facilities & Services meets the standards of high quality tourist destination of international standards (3 star and above for resort and similar amenities) and are maintained in accordance with the Performance Standard as set forth in Appendix 15 and with provisions of this Concession Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the “**Performance Standards**”)

7.5 Safety, Breakdowns and Accidents

The Concessionaire shall ensure safe conditions at the Project Site for the Users and Concessioning Authority, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures in conformity with the provisions of this Concession Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In the event of occurrence of any damage, breakdowns and/or accidents, the Concessionaire shall undertake removal of obstruction and debris without delay.

Concessionaire's responsibility for rescue operations in the Project site shall include safe evacuation of all Users, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction, which may endanger or interrupt the Operation & Maintenance Services.

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice for securing the safety of the Resort, Project Infrastructure, safety of the Users and other persons present in the premises. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Resort and the Project Infrastructure and shall comply with the safety requirement set forth in Appendix 15 (the Safety Requirements). Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

7.6 Concessioning Authority's rights to take remedial measures

- (i) In the event the Concessionaire does not maintain, repair and/or rectify any defects and deficiencies in the Project Site or any part thereof in conformity with the Operation & Maintenance Requirements and fails to commence remedial works within [15 (fifteen)] days of receipt of the O&M Inspection Report or notice in this behalf from the Concessioning Authority or the Independent Engineer, as the case may be, the Authority, without prejudice to its rights under this Concession Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty percent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For avoidance of doubt, the rights of the Authority under this clause 7.7 (i) shall be without prejudice to its rights and remedies

under Article 7.3 above.

- (ii) The Concessionaire Authority shall have the right, and the Concessionaire hereby expressly grants to the Concessioneing Authority the right, to recover the costs and Damages specified in clause 7.7 (i) directly from the Escrow Account as if such cost and Damages were O&M Expenses, and for that purpose the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Concessioneing Authority under this clause 7.7 (ii) and debit the same as O&M Expense.

7.7 Overriding power of Concessioneing Authority

- (i) If in the opinion of the Concessioneing Authority, the Concessionaire is in material breach of its obligations under this Concession Agreement and in particular, the Operation & Maintenance Requirements, and such breach is causing or is likely to cause material hardship or danger to any person or property, the Concessioneing Authority may, without prejudice to any of its rights under this Concession Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for removing such hardship or danger as the case may be.
- (ii) In the event the Concessionaire, upon notice under clause 7.8 (i), fails to rectify or remove any hardship or danger within a reasonable period, the Concessioneing Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for removing such hardship or danger; provided that the exercise of such overriding powers by the Concessioneing Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Concessioneing Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Concessioneing Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of clause 7.7 along with the Damages specified therein.

7.8 Restoration of loss or damage to the Project Site

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

7.9 Modifications to the Project Site

The Concessionaire shall not carry out any material modifications to the Project Site and Assets, save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards, Operation and Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall submit its request to the Independent Engineer and Concessioneing Authority of the proposed modifications along with particulars thereof and shall carry out such modifications only on written approval from the Concessioneing Authority. Unless specified elsewhere in this Concession Agreement, the cost thereof shall be

borne by Concessionaire. For avoidance of doubt if the modification has a Material Adverse Effect on the safety thereof or the safety of Users and other persons, the same shall be subjected to tests and certification specified in this Concession Agreement. For avoidance of doubt all modifications hereunder shall comply with the safety requirements, Specifications and Standards, Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice.

7.10 Excuses from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project Site or any Project Facilities and Services are not available for the use on account of any of the following for the duration thereof:

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

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

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Resorts open to Users provided that Hospitality Services can be provided safely.

8 ARTICLE 8: USER CHARGES

8.1 Applicable User Charges

- a) The Concessionaire may determine the tariff structure of User Charges in such manner as it deems fit for Project related services; provided however, that such tariffs shall not be combined with any outside facility or outside service that is not directly connected with the scope of the Project.
- b) The Concessionaire may offer such special discounted tariffs or charges to any individual or class of clients as it may deem necessary for promotion of its business. Provided, such base tariff & discounted tariff structures shall be made available in the Project's website well in advance for convenience of tourists.
- c) The Concessionaire may levy and recover such User Charges as it may determine from time to time and shall also be entitled to charge market related rates for other services such as telephone, telefax, laundry, food, beverages, liquor, recreation amenities (outdoor pool, health club, spa, sauna, fitness facility etc.), outdoor catering, vending machines, Wi-Fi services and any other service (the Associated Services). The Concessionaire may also recover rent or fee for use of commercial spaces of every description and kind within the permitted area by way of lease and license agreement.
- d) All applicable taxes and duties shall be paid by Concessionaire.
- e) The Concessionaire shall deposit all User Charges and other receipts in relation to the Resort, Project Facilities and Services in the Escrow Account and shall not make any such deposits to any other account either of the Concessionaire or of any other person.

8.2 Deleted

8.3 Collection of Cesses and Charges

The Concessionaire shall collect all cesses and charges including infrastructure cess, if any levied on the users as may be requested by the Concessioneing Authority, on behalf of the Concessioneing Authority and remit the same to the Concessioneing Authority. Provided, the Concessionaire shall be duly authorized by the Concessioneing Authority or such other authority as may be competent in this regard, for the purpose of such collection.

9 ARTICLE 9: PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1 Annual Concession Fee

- (a) The Concessionaire shall, as consideration for the use, in its capacity as a bare Operation and Maintenance licensee of the Project Site and Assets, made available in accordance with Article 2.4, pay to the Concessioneing Authority the Annual Concession Fee annually in the manner laid down in Article 9.1 (c) (the “**Annual Concession Fee**”). The below mentioned Annual Concession Fee is exclusive of applicable GST and any other applicable taxes, which shall be additionally payable by the Concessionaire over and above the Annual Concession Fee.
- (b) Any delay in payment of the amount in the preceding clause (a) shall entail payment of interest @ the standard rate specified by Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 plus 3%, per annum on the amount outstanding.
- (c) The Schedule of Annual Concession Fee payable shall be:

Annual Concession Fees	Rs 1/- (Rupees One only)

- (d) The parties shall mutually decide to pro-rata increase / decrease the Annual Concession Fee for any change in availability of built-up area over or below 4300 sq.m. any time during the Concession Period.

9.2 Deleted

9.3 Payments of Revenue Share

- (a) The Concessionaire agrees to pay to the Concessioneing Authority, for every financial year of the Concession Period, commencing from the COD / Date of Commercial Operation, Revenue Share at rate of [% as quoted] of the Gross Revenue as its share in the revenues earned from the Project (“**Revenue Share**”). The Revenue Share shall be due and payable within 30 days of close of each financial year. The above mentioned RevenueShare is exclusive of applicable GST and any other applicable taxes, which shall be additionally payable by the Concessionaire over and above the Revenue Share.
- (b) Any delay in payment of the amount in the preceding clause (a) shall entail payment of interest @ the standard rate specified by Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 plus 3%, per annum on the amount outstanding.

(c) Verification of Gross Revenue:

- (i) The Authority may, in order to satisfy itself that the Concessionaire is reporting its Gross Revenue in an honest and faithful manner, depute its representatives to the Resort and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary to ascertain the actual Revenues.
- (ii) If the verification of Revenues pursuant to this Article 9.3 (c) demonstrates that the Gross Revenue is more than the amount reported by the Concessionaire, the Authority shall, for the purpose of determining the Gross Revenues, be entitled to undertake sampling of Revenue receipts of a continuous period of 15 (fifteen) days. The Parties hereto agree that if the Gross Revenue exceeds the Gross Revenue reported by the Concessionaire during the preceding 2 (two) months by 5% (five per cent) thereof, the difference between such Gross Revenue shall be multiplied by 60 (sixty) and the product thereof shall be paid as Damages by the Concessionaire to the Authority, and in the event of any Dispute relating to such sampling, the Dispute Resolution Procedure in Article 19 shall apply. For avoidance of doubt it is agreed that seasonal variations in Revenue shall be determined by the Independent Expert on the basis of past trends and other relevant information and due weightage shall be assigned to such variations in computing the Gross Revenue under Article 9.3.
- (d) The Concessionaire shall, with each payment of the Revenue Share, submit:
 - (i) a certificate that the amounts paid are correct and in accordance with the provisions of the Agreements;
 - (ii) detailed calculations of the Revenue Share based on the Gross Revenue;
 - (iii) details in respect of Taxes/duties payable in accordance with the provisions of this Agreement; (iv) details in respect of other Damages payable in accordance with the provisions of this Agreement; and
 - (iv) net amount payable under the provisions of this Agreement.

9.4 Additional Utilities or Services

The Concessionaire shall also pay rent or other charges for any additional land (other than the Project Site/Project Assets) or additional utilities or services, made available by the Concessioneing Authority to the Concessionaire in accordance with Article 7.1(iii) as per the terms, conditions and covenants including on payment of rates specified by the Concessioneing Authority. Such rates shall be equal to 1.20 times the Scale of Rates. The charges in case of additional land will be 1.20 times of scale of rates as applicable at the time of giving additional land, where the fees is paid on half year/ yearly basis, it may also contain an escalation clause as in Bidding Documents but periodic review of SOR, if any will not be applicable.

9.5 Certified Accounts

During the subsistence of this Concession Agreement, the Concessionaire shall maintain all documents and supporting evidences for its financial statements including

agreements and documents with respect to all capital and debt raised by the Concessionaire, capital and revenue expenses towards the Project, ship/vessel/user wise information, and, as relevant, the details of tourists visited and User Charges collected and the amount of rates received. The Concessionaire shall submit to the Concessioneing Authority a detail statement of all the commercialactivities, number of tourists and revenue collected from each activities, O&M every year, duly certified by its Statutory Auditors. The certificate must be furnished within 30 (thirty) Days of the end of each financial year.

The Concessioneing Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the “**Additional Auditor**”) to conduct a special audit of the GrossRevenue collection and the financial statements, documents and supporting evidences thereto as may be mandatedby the Concessioneing Authority and report to the Concessioneing Authority such information as may be desired by the Concessioneing Authority for any period (“**Special Audit**”).

9.6 Escrow Account

(a) Withdrawals and appropriations during the Concession Period, at any relevant time, from the Escrow Accountshall be in the following order of priority:

- (i) for all taxes due and payable by the Concessionaire;
- (ii) towards payment of Concession Fee and Revenue share;
- (iii) all Construction/implementation expenses relating to the Project/Project Facilities and Services, subjectto limits if any set out under the Financing Documents;
- (iv) all expenses relating to operations and management of the Project/Project Facilities and Services, subjectto limits if any set out under the Financing Documents;
- (v) towards its debt service obligations under the Financing documents
- (vi) towards payment of Revenue Share and other sums payable to the Concessioneing Authority, liquidated damages and towards amounts payable under Deemed Performance Guarantee after COD if any;
- (vii) towards any reserve requirements in accordance with the Financing Documents; and the Concessionaireshall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereoffor that Quarter.

(b) Withdrawals upon Termination:

- (i) 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 for and in respect of the Resort;
- (b) Outstanding Concession Fee;
- (c) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Concessionaire including amounts payable under Deemed Performance Guarantee after COD;
- (d) 90% (ninety per cent) of Debt Due less Insurance Cover, excluding Subordinated Debt;
- (e) retention and payments relating to the liability for defects and deficiencies;
- (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 Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-Article (i) of this Article 9.6 until a Vesting Certificate has been issued by the Concessions Authority under the provisions of Article 18.

- (ii) The provisions of this Article and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 9.6 (b) (i) have been discharged.
- (c) All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 17 shall be appropriated in the following order of priority:
- (i) towards taxes and statutory dues payable by the Concessionaire;
 - (ii) compensation to Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
 - (iii) all amounts due to the Concessions Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Concession Agreement;

and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Concessions Authority.

10 ARTICLE 10: ASSETS: OWNERSHIP AND PERMITTED CHARGE

10.1 Ownership of Assets

(a) Land and Water Area

The ownership of the Project Site and Project's Assets shall always remain vested with the Concessioneing Authority. The rights of the Concessionaire in the Project Site and Assets shall only be that of a bare licensee of such assets and the Concessionaire shall neither assign, transfer, sublease , create any charge or encumbrance, nor shall the Concessionaire create or permit creation of any third party rights whatsoever, on whole or any part of the Project's Assets or Project Site. Further, any such rights of the Concessionaire shall always be subject to existing rights of way. It is expressly agreed that the Concessionaire's rights in the Project Site and/or the Assetsshall cease without the need for any action to be taken by the Concessioneing Authority upon the termination of this Concession Agreement for any reason whatsoever.

(b) Assets created or provided by the Concessionaire

The ownership of all infrastructure assets, buildings, structures, plants & equipment and other immovable and movable assets constructed, installed, located, created or provided by the Concessionaire at the Project Site and/or in the Project's Assets pursuant to this Concession Agreement shall, until expiry of this Concession Agreement or transfer to the Concessioneing Authority on Termination in accordance with this Concession Agreement, be with the Concessionaire. However, such ownership of buildings etc. erected by the Concessionaire at the ProjectSite shall not be construed as and shall not confer any rights in the Project Site or other Project's Assets upon theConcessionaire, save as that of a bare licensee as provided for in this Concession Agreement. The Concessioneing Authority shall have a first charge over all infrastructure assets, buildings, structures, and other project assets constructed, installed, located, created or provided by the Concessionaire at the Project Site and/or in the Project'sAssets pursuant to this Agreement for recovering any amounts in respect of dues outstanding to the ConcessioneingAuthority under the provisions of this Agreement and shall be valid only during the Concession Period or early termination as the case may be whichever is earlier.

10.2 Permitted Charge on Assets

The Concessionaire shall be entitled to create a second or further charge on its rights, title and interest in the assets referred to in Article 10.1(b) in favour of Senior Lenders for securing the Financial Assistance provided or agreed to be provided by them under the Financing Documents. To create such charge Concessionaire is required to first take prior approval from Concessioneing Authority and any Second charge such created shall be subject to 1st charge in favor of Concessioneing Authority. Provided, any such charge shall not be effective before Financial Close and shall not continue for a period exceeding the Concession Period.

Provided further, that such charge shall not be for the Project Site nor encumber the Project Site and/or the DGLL's Assets.

Provided further, in the event of termination of this Concession Agreement, the said charge shall stand extinguished upon payment of compensation by the Concessioneing Authority to the Senior Lenders, to the extent they are entitled to receive the same in accordance with the provisions of this Concession Agreement.

11 ARTICLE 11: SHAREHOLDING

11.1 Ownership Structure

The Bidder/Consortium has caused the Concessionaire to be incorporated as a special purpose company to implement, operate and maintain the Project/Project Facilities and Services in accordance with this Concession Agreement. The shareholding pattern of Concessionaire/each member of the Consortium in the Concessionaire is[●].

11.2 Shareholding

The Concessionaire shall ensure that the Bidder/ members of the Consortium maintain Management Control at least until expiry of the one (1) year after COD as also maintain their equity holding in the Concessionaire suchthat:

- (a) Selected Concessionaire/Consortium Members together with its/their Associates hold not less than 51% (FiftyOne Percent) of its issued and paid up equity and that no member of Consortium whose technical and financialcapacity was evaluated for the purposes of Pre-qualifications in response to Invited Tender shall hold less than 26% (Twenty Six Percent) of such equity until expiry of one (1) year after COD. At any time, after expiry of the aforesaid share holding period, lead member can approach Authority for approval proposing a new entity/ consortium. Authority may at its sole discretion consider and approve it subject to the entity/consortium meeting the eligibility criteria as prescribed in Bid Document for the Project; and
- (b) M/s [●] (“**Lead Member**”) of the Consortium (original or new as the case may be) legally and beneficially holds at any time not less than 50% (fifty percent) of the Consortium’s holding in the paid up equity capital of the Concessionaire.

Any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Concessioneing Authority which consent shall not be withheld except (i) for reasons of national security; or (ii) [if the Person proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.]

Provided, nothing contained in this Article shall preclude or prevent pledge of shares in the Concessionaire in favour of Senior Lenders as security for the Financial Assistance subject to the enforcement and consequent Transfer thereof only with the prior written consent of the Concessioneing Authority as stated hereinbefore and in accordance with the Financing Documents.

11.3 Constituent Documents

The Concessionaire shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the

Bidder/Consortium.

In particular, the articles of association and the memorandum of association of the Concessionaire shall be amended within 3 (three) months of the Appointed Date to include the terms and conditions regarding the composition of share-holding and management stipulated in this Concession Agreement; and terms and conditions related to changes in the share-holding pattern stipulated in this Concession Agreement. The Concessionaire shall submit the amended articles of association and the memorandum of association to the Concessing Authority as soon as may be reasonably possible.

Any subsequent change in the articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the Concessing Authority and the articles of association and memorandum of association of the Concessionaire shall include a specific provision to this effect.

12 ARTICLE 12: GENERAL RIGHTS, DUTIES AND OBLIGATIONS

12.1 Of the Concessionaire

(a) Applicable Permits

The Concessionaire shall at all times during the Concession Period maintain and comply with the Applicable Permits.

(b) Taxes & duties

The Concessionaire shall during the Concession Period pay in a timely manner all taxes, duties, levies, VAT, cess and charges including but not limited to income tax, GST, sales tax, excise duty, customs duty, stamp duty, property tax, service tax and octroi that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project Site/ Assets / the Project Facilities and Services, Concession Fee, Revenue share and any other sum payable to the Concessions Authority in accordance of this Concession Agreement.

(c) Insurance

(i) Insurance Requirement

The Concessionaire shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

- (a) builder's all risk insurance;
- (b) loss, damage or destruction of the Project Facilities and Services, at replacement value;
- (c) comprehensive third party liability insurance including injury or death to personnel of the Concessions Authority and others who may enter the Project Site or the Project's Assets;
- (d) workmen's compensation insurance;
- (e) marine cum storage cum erection insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessions Authority, its employees and agents engaged in or connected to the Project and the Project Site and Project Assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (e).

(ii) Insurance Cover & Insurance Companies

The Concessionaire shall insure all insurable assets comprised in the Project's Assets and/or the Project Facilities and Services and all insurable risks associated with the Project to the extent advisable in accordance with Good Industry Practice (**"Insurance**

Cover”).

(iii) Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to the Concessioneing Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

(iv) Application of Insurance Proceeds

Subject to the provisions of the Financing Documents, all moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Port Assets and the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged. The Concessionaire may designate the Senior Lenders as the loss payees under the insurance policies/assign the insurance policies in their favour as security for the Financial Assistance. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

(v) Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to the Concessioneing Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to Concessioneing Authority in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Concession Agreement, the Concessioneing Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioneing Authority therefor shall be reimbursed with interest @ 10 year GSec plus 6% - (six percent) per annum by the Concessionaire forthwith on demand, failing which the same shall be recovered by the Concessioneing Authority by exercising right of set off or otherwise.

(vi) Waiver of Subrogation

All insurance policies procured in terms of the provisions hereof shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the Concessioneing Authority and its assigns and successors and their respective subsidiaries, affiliates, employees and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

(d) Indemnification

- I. The Concessionaire shall during the pendency of this Concession Agreement and thereafter until all claims and demands in respect to the acts and omissions during the period of the Agreement as described hereunder are duly settled, indemnify and keep indemnified and otherwise save harmless, the Concessioneing Authority, its agents and employees, from and against all claims, demands made against and/or loss caused and/or damages suffered and/or cost, charges/expenses incurred to and/or penalty levied and/or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to the Concessioneing Authority, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by the Concessionaire or as a result of failure on the part of the Concessionaire to perform any of its obligations under this Concession Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Concession Agreement or on the failure of the Concessionaire to perform any of its duties and/or obligations including statutory duties or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owner of goods or vessel owner/agent or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Concessionaire or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub- contractor(s) and/or invitees as the case may be, in connection with or arising out of this Concession Agreement and/or arising out of or, in connection with the Concessionaire's use and occupation of the Project Site or Project's Assets and/or Operation & Maintenance, operation and maintenance of the Project Facilities and Services.
- II. Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, save and except where amounts exceeding the Total Project Cost are specifically prescribed in this Agreement as Termination Payment, shall not exceed the Total Project Cost. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to:
 - a. any amount payable as indemnity to the Concessioneing Authority due to its acts or omissions or fraud,

gross negligence and wilful misconduct;

- b. breach of any Applicable Laws or any Applicable Permits;
- c. any claims or loss on account of Intellectual Property rights violation by the Concessionaire;
- d. any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- e. any loss of or physical damage to property of the Concessioneing Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

(e) Assignability

Except as otherwise provided in this Concession Agreement, the Concessionaire shall not assign its rights, title or interest in this Concession Agreement in favour of any Persons without prior written consent of the Concessioneing Authority.

Provided the Concessionaire may assign its rights, interests and benefits under this Concession Agreement to the Senior Lenders as security for the Financial Assistance. Provided further nothing contained in this Article shall:

- (i) absolve the Concessionaire from its responsibilities to perform/dischage any of its obligations under and in accordance with the provisions of this Concession Agreement; and
- (ii) authorize or be deemed to authorize the Senior Lenders to operate the Project Facilities and Services themselves and any such assignment to operate shall be in terms of the Substitution Agreement.

(f) Engagement of Contractors

The Concessionaire, with prior approval from Concessioneing Authority, may engage the O&M Contractor and execute the O&M Contract, thereby entrusting the O&M Contractor with the responsibilities of operating and managing the Project Facilities and Services in the manner envisaged under the Invited Tender. A copy of the O&M Contract shall be provided to the Concessioneing Authority and the same shall not be amended, substituted or revoked without prior written consent of the Concessioneing Authority.

The Concessionaire may engage any Person possessing the requisite skill, expertise and capability of designing, engineering, procurement and Operation & Maintenance of civil/ mechanical/electrical engineering structures/equipment, and /or operation and maintenance of the Project Facilities and Services.

Provided:

- (i) the Concessionaire shall at all times be solely responsible for all its obligations under this Concession Agreement notwithstanding any such engagement and anything

contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the Concessionaire from its obligations or liability hereunder and the Concessionaire shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in the Operation & Maintenance and erection and/or installation of the structures/equipment or any part thereof and for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of this Concession Agreement;

- (ii) the Concessionaire should have obtained, if required, security clearance for the Contractor the Concessionaire intends to engage;
- (iii) the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessions Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Concession Agreement; and
- (iv) any contract that it enters with an Affiliate in respect of the Project shall be on an arms length basis.

(g) Condition Survey

- (i) The Concessionaire agrees that at least 6 (six) Months prior to the expiry by efflux of time of the Concession Period, it shall, cause to be conducted at its cost by an Expert appointed by the Parties by mutual consent, a condition survey and an inventory of the entire Project Facilities and Services. If, as a result of such survey, the Expert shall observe/notice that the Project's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Concession Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working condition well before the Transfer Date. In the event the Concessionaire fails to comply with this provision, the Concessions Authority may itself cause the condition survey and inventory of the Project's Assets and Project Facilities and Services to be conducted and remove any defect or deficiency. The Concessions Authority shall be promptly reimbursed by the Concessionaire for the costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in a good working condition.
- (ii) For the performance of obligation in the preceding article by the Concessionaire, the Concessions Authority shall be entitled to invoke the Deemed Performance Guarantee after COD, which shall remain valid up to the expiry of the Concession Period. In the event of non-realization of the amount to be encashed from the Deemed Performance Guarantee after COD due to unavailability of funds in the Escrow Account, the same will be treated as Concessionaire Event of Default and the Concessions Authority shall accordingly be entitled to terminate this Agreement in accordance with Article 15.

12.2 Of the Concessions Authority

(a) Assistance in obtaining Approvals, Permits and Licenses

The Concessions Authority shall, at the written request of the Concessionaire, but

without guarantees and/or without assuming any responsibility in that behalf, issue recommendatory letters and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits including renewals thereof. Provided that, nothing contained in this Article shall relieve the Concessionaire of its obligations under this Concession Agreement to obtain the Applicable Permits and to keep them in force and effect throughout the Concession

Period.

(b) Taxes and Duties

Any levy or levies including increase therein of taxes, duties, cess and the hike, on account of/in respect of Project's Assets payable to the State Government or any statutory authority shall be met and paid by the Concessioneing Authority other than as specified in clause 12.1 (b) above. In case of nonpayment, Concessionaire may pay the amount after giving 30 days' notice to Concessioneing Authority and seek reimbursement from the Concessioneing Authority in due course.

(c) Deleted

(d) General rights of inspection and verification

The Concessioneing Authority may during the pendency of the Agreement itself or by appointment of Experts verify the performance of obligations of the Concessionaire as set out in this Concession Agreement.

(e) General Indemnification

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

- II. Deleted

12.3 Of the Concessioneing Authority and the Concessionaire

(a) Monitoring Arrangement

The Concessionaire shall furnish to Concessioneing Authority periodical status reports relating to key milestones and obligations as per Appendix 18 "Monitoring Arrangements"

(b) Compliance with Laws and Regulations

The Parties shall perform their respective obligations under this Concession Agreement in accordance with the Applicable Laws and Applicable Permits.

(c) Rights to Documents

(i) Concessioneing Authority's Documents

Documents and computer programs or copies thereof, if any, provided by the Concessioneing Authority to the Concessionaire, shall always remain the property of the Concessioneing Authority. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Concessioneing Authority, be returned by the Concessionaire to the Concessioneing Authority on the Transfer Date.

(ii) Concessionaire's Documents

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the Project /the Project Facilities and Services

shall be handed over by the Concessionaire to the Concessioneing Authority free of cost on the Transfer Date.

(iii) Confidentiality

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Concession Period.

(iv) Obligation to Cooperate

The Parties shall mutually cooperate with each other in order to achieve the objectives of this Concession Agreement.

(v) Substitution Agreement

The Substitution Agreement envisaged by Appendix 3 hereunder, will/may be executed within 30 (thirty) Days' of notice by the Concessionaire to the Concessioneing Authority of the Senior Lenders' readiness to execute the same.

13 ARTICLE 13: CHANGE IN LAW

13.1 Change in Law

“Change in Law” means any of the following events which has a Material Adverse Effect:

- (a) Adoption, promulgation, modification, reinterpretation or repeal after the date of this Concession Agreement by the relevant Government Authority within whose jurisdiction the Project lies, of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or
- (b) The imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the Concessionaire of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Concession Agreement which renders the performance by the Concessionaire of any of the terms of this Concession Agreement impossible or unviable; or
- (c) Any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Concessionaire or if granted for a limited period, being renewed on terms different from those previously stipulated.
- (d) Any imposition of new Taxes except a new Direct Tax (both State and Central), duties, cess and the like and/or the increase in Taxes except in Direct Taxes (both State and Central), duties, cess and the like effected from time to time by any Government Authority, and/or imposition of standards and conditions of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or imposition of standards and terms of employment and working conditions of Labourers and Workmen; and/or any rules or regulations stipulated by Government Authority or other regulatory authority having jurisdiction over the Project in respect of standards of service. A change in the interpretation or application of any Indian Law by the judgement of a court of record which has become final and binding in place of such interpretation or application of law by a court of record prior to the bid due date.

13.2 The Concessionaire's Remedy

- (a) In the event of Change in Law the Concessionaire may propose to the Concessions Authority modifications to the relevant terms of this Concession Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Concession Agreement including extension of the Concession Period, so as to place the Concessionaire in substantially the same legal and financial position as it were prior to such Change in Law. i.e. Protecting Project IRR / NPV as per Financing Plan. Provided however, that if the resultant Material Adverse Effect is such that this Concession Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

- (b) In the alternative to the aforesaid, subject to the Concessionaire taking necessary measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Cost in any accounting year, any such Additional Cost above a sum of Rs. 2.50 Crores in an accounting year may at the option of the Concessioneing Authority be borne by the Concessioneing Authority. It is clarified that Additional Cost up to Rs. 2.50 Crores in any accounting year shall be borne by the Concessionaire;
- (c) Upon occurrence of a Change in Law, the Concessionaire shall notify the Concessioneing Authority, of the following:
- (i) the particulars, nature and the impact of Change in Law on the Project; in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of the Change in Law; and
 - (ii) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost.
- (d) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to the preceding sub-article(c), the Concessioneing Authority and the Concessionaire shall hold discussions and take all such steps as may be necessary including determination/certification by an Expert, appointed by the Parties by mutual consent, of the Additional Cost and to determine the quantum of the Additional Cost to be incurred.
- (e) If it is determined that the only material impact of a Change in Law is Additional Cost and the Concessioneing Authority opts to compensate the same in accordance with the preceding sub-article (b), the Concessionaire shall not be entitled to any other remedy nor shall seek any alterations to the Agreement and the Concessioneing Authority shall, within 30 (thirty) Days from the date of determination of quantum of Additional Cost to be borne by the Concessioneing Authority in accordance with sub-article (b) above, compensate the Concessionaire in either of the following ways:
- (i) by lump-sum reimbursement of such Additional Cost to the Concessionaire;
 - (ii) reimbursement of the such Additional Cost to the Concessionaire, in not exceeding four half yearly installments, subject to payment of interest at 10 Year GSEC + 6% - (Six percent) on the amount the payment of which is deferred.

Notwithstanding the aforesaid, if in terms of Good Industry Practice, the event constituting a Change in Law could be insured, the Concessionaire shall not be entitled to any remedy under this Article 13.2;

If as a result of Change in Law, the Concessionaire incurs a reduction in costs or other financial gain or benefit in connection with its development or operation of the Project, the aggregate financial effect of which exceeds Rs. 2.50 Crores (Rupees Two Crore Fifty Lakh only) in any Financial Year, the Concessionaire shall notify the Concessioneing Authority and pay to the Concessioneing Authority an amount that would put the Concessionaire in the same financial position it would have occupied had there been no

such Change in Law resulting in such cost reduction, increase in return or other financial gain or benefit as aforesaid through calculation of the NPV of the net cash flow. Without prejudice to the aforesaid, the Concessioneing Authority may, by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost reduction, increase in return or other gain or benefit through calculation of the NPV of the net cash flow.

The Concessionaire shall make payment of such compensation within sixty (60) Days of the said financial benefit. If the Concessionaire shall dispute the quantum of such compensation claim of the Concessioneing Authority, the same shall be finally settled in accordance with the dispute resolution mechanism contained in Article 19 herein.

14 ARTICLE 14: FORCE MAJEURE

14.1 Force Majeure Event

As used in this Concession Agreement, Force Majeure Event means the occurrence of any of the Non-Political Events, the Political Events or the Other Events in India, set out in Articles 14.2, 14.3 and 14.4 respectively including the impact/consequence thereof which :

- (a) is beyond the control of the Party claiming to be affected thereby (the “**Affected Party**”);
- (b) prevents the Affected Party from performing or discharging its obligations under this Concession Agreement;and
- (c) the Affected Party has been unable to overcome or prevent despite exercise of due care and diligencefollowing good industry practice;
- (d) has Material Adverse Effect on the Affected Party causing material financial burden or loss to the Affected Party .

14.2 Non-Political Events

Any of the following events which prevent the Affected Party from performing any of its obligations for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute a Non-PoliticalEvent:

- (a) act of God, epidemic, pandemic (as may be declared by WHO / Indian government authorities) extremely adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption, chemical or radioactivecontamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site and by reasons not attributable to the Concessionaire or the Contractor or any of the employees or agents of the Concessionaire or the Contractor);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth in Article 14.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;
- (c) any failure or delay of a Contractor caused by any of the Non-Political Events, for which no offsettingcompensation is payable to the Concessionaire or on behalf of the Contractor;
- (d) the discovery of geological conditions, toxic contamination or archeological remains on the Project Site thatcould not reasonably have been expected to be discovered through a site inspection; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

14.3 Political Events

Any of the following events shall constitute Political Event:

- (a) Change in Law for which no relief is provided under the provisions of Article 13, resulting in Material Adverse Effect;
- (b) action of a Government Authority having Material Adverse Effect including but not limited to (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the Project/Project Facilities and Services or any part thereof or of the Concessionaire's or the Contractor's rights under any of the Project Contracts, and (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the Concessionaire's or the Contractor's breach or failure in complying with the Scope of Work, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency of any contract by which the Concessionaire or the Contractor as the case may be is bound;
- (c) early determination of this Concession Agreement by the Concessioneing Authority for reasons of nationalemergency, national security or the public interest;
- (d) any failure or delay of a Contractor caused by any of the aforementioned Political Events, for which nooffsetting compensation is payable to the Concessionaire by or on behalf of the Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

14.4 Other Events

Any of the following events which prevents the Affected Party from performing any of its obligations under thisConcession Agreement for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute the Other Event:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade,embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry wide or State wide strikes or industrial action;
- (c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire;
- (d) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in Indiamade against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of anyApplicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Concession Agreement or (iv) with respect to exercise of any of its rights under this Concession Agreement by the Concessioneing Authority; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

14.5 Notice of Force Majeure Event

- (a) The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the “Notice”) as soon as the same arises or 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 adverse effect it has or is likely to have on the performance of its obligations under this Concession Agreement.
- (b) The Notice shall inter-alia include full particulars of:
 - (i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
 - (ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party’s ability to perform its obligations or any of them under this Concession Agreement;
 - (iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
 - (iv) any other relevant information.
- (c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5(b) and such other information as the other Party may reasonably request.

14.6 Period of Force Majeure

Period of Force Majeure shall mean the period from the time of occurrence specified in the Notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- (a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7; or
- (b) termination of this Concession Agreement pursuant to Article 14.10 hereof.

14.7 Resumption of Performance

During the period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations under this Concession Agreement. The Affected Party shall also make efforts to resume performance of its obligations

under this Concession Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

14.8 Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Concession Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations. Provided that, the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

14.9 Costs, Revised Timetable

(a) Costs

- i.** Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- ii.** Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (“Force Majeure Costs”) shall be allocated and paid as follows:
 - a.** upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - b.** upon occurrence of an Other Event, all Force Majeure Costs attributable to such Other Event, and not exceeding the Insurance Cover for such Other Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Concessional Authority to the Concessionaire; and
 - c.** upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Concessional Authority to the Concessionaire.

- d. Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Development & Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of revenues from sale of food, resort's revenue, Project Infrastructure and Associated Services or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

Save and except as expressly provided in this Article, 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.

(b) Extension of time/period

- i. Upon occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth for fulfilment of the Conditions Precedent as per Article 3 for achieving the Financial Close, shall be extended by a period equal in length to the duration of the Force Majeure Event.
- ii. At any time after the Appointed Date, if any Force Majeure Event occurs:
 - a. before Project COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
 - b. after Project COD, whereupon the Concessionaire is unable to provide the Project Facilities and services despite making best efforts or it is directed by the Concessions Authority or any Governmental Instrumentality to suspend the aforesaid services during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period equal in length to the period during which the Concessionaire was prevented from providing the aforesaid services on account thereof; provided that in the event of reduction in Project Facilities and services on account of partial suspension of services which cause the Gross Revenue to decline below 75% (seventy five per cent) of the average daily Gross Revenue for the corresponding period over the preceding 2 (two) years, the Concessions Authority shall extend the Concession Period in proportion to the loss of such Gross Revenue due to Force Majeure. For the avoidance of doubt, loss of 25% (twenty five per cent) in Gross Revenue for 4 (four) days as compared to the average daily Gross Revenue for the corresponding period during the preceding 2 (two) years shall entitle the Concessionaire to the extension of 1 (one) day in the Concession Period.

14.10 Termination Due to Force Majeure Event

If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (one hundred and twenty) Days, the Parties may mutually decide to terminate this Concession Agreement or continue this

Concession Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty) Days be entitled to terminate the Agreement in which event, the provisions of Articles 16 and 17 shall, to the extent expressly made applicable, apply.

15 ARTICLE 15: EVENTS OF DEFAULT

15.1 Events of Default

Event of Default means the Concessionaire Event of Default or the Concessioneing Authority Event of Default or both as the context may admit or require.

(a) The Concessionaire Event of Default

The Concessionaire Event of Default means any of the following events unless such an event has occurred as a consequence of the Concessioneing Authority Event of Default or a Force Majeure Event:

- (i) the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Concession Agreement;
- (ii) Construction at the Project Site is abandoned for a more than 90 (ninety) Days during the Construction Phase;
- (iii) a delay of more than 180 (one hundred and eighty) Days from any Milestone Date in achieving any of the performance obligations set forth for the relevant Milestone Date or the achieving Completion Certificate is delayed for more than 180 (one hundred and eighty) Days from the Project Schedule;
- (iv) Delay in any payment due and payable to Concessioneing Authority (in form of Concession Fee and Revenue Share) for more than (5) (five) times in the aggregate during the Concession Period;
- (v) the Concessionaire's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;
- (vi) Failure to enter into Operation and Maintenance (O&M) contract before Appointed Date and a default under the O&M Contract (if any), which has or is likely to affect the Project/the Project Facilities and Services, materially;
- (vii) any representation made or warranties given by the Concessionaire under this Concession Agreement is found to be false or misleading;
- (viii) the Concessionaire passing a resolution for voluntary winding up;
- (ix) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- (x) occurrence of default under the Financing Documents pursuant to which the Senior Lenders exercise their rights to substitute the Concessionaire in accordance with the provisions of the Substitution Agreement;
- (xi) levy of an execution or distraint on the Concessionaire's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or distraint remaining in force for a period

exceeding 90 (ninety) Days

- (xii) the Performance Guarantee is not maintained in terms of the provisions hereof and this default has occurred after any additional cure period granted by the Concessioneing Authority in its sole discretion, if any,;
- (xiii) the Concessionaire abandons or expresses its intention to revoke/terminate this Concession Agreement without being entitled to do so as is expressly provided in the Agreement;
- (xiv) a change in shareholding such that the beneficial interest of the Bidder/Consortium in the Concessionaire reduces below the limits set in Article 11.2 and/or Management Control of the Concessionaire has occurred in contravention of the provisions of Article 11 hereof;
- (xv) amalgamation of the Concessionaire with any other company or reconstruction or transfer of the whole or part of the Concessionaire's undertaking [other than transfer of assets in the ordinary course of business] in contravention with the provisions of Article 11 hereof; and
- (xvi) the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Concession Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Concession Agreement.

(b) The Concessioneing Authority Event of Default

- (i) the Concessioneing Authority's failure to perform or discharge its obligations in accordance with the provisions of this Concession Agreement unless such failure has occurred as a consequence of any Concessionaire Event of Default or a Force Majeure Event.
- (ii) any representation made or warranties given by the Concessioneing Authority under this Concession Agreement is found to be false or misleading.

15.2 Parties Rights

- (a) Upon the occurrence of the Concessionaire Event of Default, the Concessioneing Authority shall without prejudice to any other rights and remedies available to it under this Concession Agreement be entitled to terminate this Concession Agreement.
- (b) Upon the occurrence of the Concessioneing Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Concession Agreement be entitled to terminate this Concession Agreement.

Provided that before proceeding to terminate this Concession Agreement, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under this Concession Agreement and the circumstances in which the same has occurred.

15.3 Consultation Notice

Either Party exercising its right under Article 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties and the Senior Lenders to consider possible measures of curing or otherwise dealing with the underlying Event of Default (“**Consultation Notice**”).

15.4 Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) Days or such extended period as the Parties may agree (“**Remedial Period**”) the Parties shall, in consultation with the Senior Lenders, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is a Concessionaire Event of Default, the Concessioneing Authority shall in consultation with the Senior Lenders endeavour to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances:

the change of management or control/ownership of the Concessionaire;

- (a) the replacement of the Concessionaire by a new Concessionaire (“**Selectee**”) proposed by the Senior Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such replacement which shall include :
 - (i) the criteria for selection of the Selectee;
 - (ii) the transfer of rights and obligations of the Concessionaire surviving under this Concession Agreement to the Selectee;
 - (iii) handing over/ transfer of the Project Site, the Project’s Assets and the Project Facilities and Services to the Selectee;
 - (iv) acceptance by the Selectee of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Senior Lenders’ charge on the Concessionaire’s assets;
 - (v) acceptance by the Selectee of any amounts due to the Concessioneing Authority from the Concessionaire under this Concession Agreement; and
 - (vi) payment of consideration for the Concessionaire’s assets comprised in the Project Facilities and Services and the manner of appropriation thereof.

15.5 Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this Concession Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned

or suffered on account of the underlying failure/breach.

15.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Senior Lenders agree upon any of the measures set out in Article 15.4, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

15.7 Termination due to Events of Default

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties and the Senior Lenders have agreed upon any of the measures in accordance with Article 15.4, the Party who has issued the Consultation Notice shall have the right to terminate this Concession Agreement, in which event, the provisions of Article 16 and 17 shall, to the extent expressly made applicable, apply.

15.8 Concessioneing Authority's Rights of Step-in

Upon a Termination Notice being issued due to a Concessionaire Event of Default, the Concessioneing Authority may, at its discretion:

- (a) re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;
- (b) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Facilities and Services;
- (c) step in and succeed upon election by Concessioneing Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Concessioneing Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Contracts.

Provided, that in such circumstances, the Concessioneing Authority shall assume the obligations of the Concessionaire with respect to the Senior Lenders during such Remedial Period out of the current revenues. Provided further, the Concessionaire acknowledges that any payments made by the Concessioneing Authority during the Remedial Period shall be adjusted against compensation payable by the Concessioneing Authority to the Concessionaire in terms of the provisions of this Concession Agreement.

16 ARTICLE 16: TERMINATION OF THE CONCESSION/AGREEMENT

16.1 Termination Procedure

The Party entitled to terminate this Concession Agreement either on account of a Force Majeure Event or on account of an Event of Default having Material Adverse Effect shall do so by issue of a notice in writing (“**Termination Notice**”) to the other Party and simultaneously deliver a copy thereof to the Senior Lenders. The Termination Notice shall be of not less than 90 (ninety) Days and not ordinarily be more than 180 (one hundred and eighty) Days, (“**Termination Period**”) and at the expiry of the Termination Period, this Concession Agreement shall stand terminated without any further notice.

16.2 Obligations during Termination Period

During Termination Period, the Parties shall, subject where applicable to the provisions of this Article 16, continue to perform such of their respective obligations under this Concession Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities and Services to the users, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

16.3 Requisition

Except where the Termination Notice is issued prior to Financial Close being achieved by the Concessionaire, when the Concession has not come into effect the Concessionaire has no right hereunder and no compensation is payable by the Concessioneing Authority, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, or otherwise 6 (six) months prior to the expiry of the Concession Period, the Concessioneing Authority shall by a notice in writing (“**Requisition**”) call upon the Concessionaire to furnish the following information to enable the Concessioneing Authority to estimate the likely compensation payable by the Concessioneing Authority to the Concessionaire and/or to finalise the items of Concessionaire’s assets comprised in the Project Facilities and Services to be handed over to/taken over by the Concessioneing Authority.

- (a) except in cases where no Financial Close has been achieved, the particulars of Debt Due supported by Senior Lenders’ certificate;
- (b) data or records [to be specified by Concessioneing Authority] regarding the operation and maintenance of the Project Facilities and Services;
- (c) specifications regarding the Concessionaire’s assets comprised in the Project Facilities and Services; and
- (d) any other information or records [to be specified by Concessioneing Authority at its discretion] regarding Concessionaire, its business, the Project/Project Facilities and Services, assets and liabilities.

The Concessionaire shall within a period of 30 (thirty) Days of receipt of Requisition

furnish the particulars called for by the Concessions Authority.

16.4 Condition Survey

- (a) The Concessionaire agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Concession Period, as the case may be, it shall conduct or cause to be conducted under the Concessions Authority's supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Project's Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Concession Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of the concessions Authority shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth take over of the same by the Concessions Authority on the Transfer Date.
- (b) If, as a result of the condition survey, the Concessions Authority shall observe/notice that the Project Site and/or the Project's Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements therefor under this Concession Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.
- (c) In the event the Concessionaire fails to comply with the provisions of this Concession Agreement, the Concessions Authority may itself cause the condition survey and inventory of Project's Assets and the Project Facilities and Services to be conducted. The Concessions Authority shall be compensated by the Concessionaire for any costs incurred in conducting such survey and preparation of inventory as also in putting the Project Facilities and Services in good working condition.

16.5 Consequences of Termination

Without prejudice to any other consequences or requirements under this Concession Agreement or under any law:

- (a) the Concessionaire shall transfer all the assets and rights upon expiry of the Concession Period by efflux of time or termination of the Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 18;
- (b) the Concessions Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to the Concessions Authority by the Concessionaire.

Notwithstanding anything contained in this Concession Agreement, except for ensuring the deposit of the compensation payable to the Concessionaire in accordance with Article 17 in the Escrow Account, the Concessions Authority shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire

in connection with the Project, and the handback of the Project Site/Port Assets/Project Facilities & Services by the Concessionaire to the Concessions Authority shall be free from any such obligation.

17 ARTICLE 17: COMPENSATION

17.1 Compensation

(a) Termination due to Force Majeure Event

- (i) If the termination is due to a Non Political Event, compensation payable to the Concessionaire shall be the lower of the Book Value or the Debt Due LESS any amount due to the Concessioneing Authority by the Concessionaire under this Concession Agreement LESS all insurance claims received or admitted.
- (ii) If the termination is due to an Other Event, compensation payable to the Concessionaire shall be the higher of the Book Value or the Debt Due LESS any amount due to the Concessioneing Authority by the Concessionaire under this Concession Agreement LESS all insurance claims received or admitted. Provided, the Book Value or the Debt Due, as the case may be shall not exceed the Total Project Cost.
- (iii) If termination is due to a Political Event, compensation payable to the Concessionaire shall be the same as that stipulated for termination due to a Concessioneing Authority Event of Default under Article 17.1 (c).

Provided, no compensation shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 12 of this Concession Agreement.

(b) Termination due to Concessionaire Event of Default

If the termination is after the Appointed Date, due to a Concessionaire Event of Default, the compensation payable by the Concessioneing Authority to the Concessionaire shall be the lowest of:

- (i) the Book Value;
- (ii) 90% (ninety percent) of Debt Due;
- (iii) the Total Project Cost;

Provided, no compensation shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 12 of this Concession Agreement.

(c) Termination due to Concessioneing Authority Event of Default

If the termination is due to a Concessioneing Authority Event of Default, the compensation payable by the Concessioneing Authority shall be equal to the aggregate of (i) Debt Due plus (ii) 150% (one hundred and fifty percent) Equity.

17.2 No Compensation on Expiry of Concession Period

In the event of expiry of Concession by efflux of time (the Concession having

run its full course), the Concessionaire shall hand over/ transfer peaceful possession of the Project Site, Project's Assets and the Project Facilities and Services free of cost and Encumbrance.

17.3 Transfer Fee and Charges

Transfer costs, stamp duties, notary fees and taxes, if applicable, for the transfer of the Project Facilities and Services consequent to the expiry or termination of this Concession Agreement shall be borne by:

the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire Event of Default;

- (a) the Concessioneing Authority in the event of termination due to an Concessioneing Authority Event of Default or Political Event; and
- (b) by both parties equally in case of termination due to Change in Law or Non Political Event or Other Event.

17.4 Payment of Compensation to Senior Lenders

The Concessionaire hereby irrevocably authorises the Concessioneing Authority to pay to the Senior Lenders or at their instruction to any designated bank account in India the compensation payable to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Concessioneing Authority shall stand duly discharged of its obligations regarding payment of compensation under this Concession Agreement and the charge created by the Concessionaire in favour of the Senior Lenders on any of its assets taken over by the Concessioneing Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of compensation by Concessioneing Authority in accordance with this Article 17.4 shall be a valid discharge to the Concessioneing Authority in respect of Concessioneing Authority's obligation regarding payment of compensation to the Concessionaire under this Concession Agreement.

Provided notwithstanding anything inconsistent contained in this Concession Agreement, the Concessionaire/the Senior Lenders as the case may be shall be entitled to remove at its/ their cost all such moveables which are not taken over by the Concessioneing Authority and to deal with the same in accordance with their respective rights under law.

Provided further, if there are no amounts outstanding under the Financing Documents and a certificate to that effect issued by the Senior Lenders is furnished by the Concessionaire to the Concessioneing Authority, the compensation shall be paid by the Concessioneing Authority to the Concessionaire directly.

17.5 Delayed Payment of Compensation

If for any reasons, other than those attributable to the Concessionaire, the Concessioneing Authority fails to pay the compensation on the Transfer Date, the Concessioneing

Authority shall be liable to pay interest @ 10 year GSEC plus 6% (six percent) per annum thereon from the Transfer Date till payment thereof. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of compensation in accordance with this Concession Agreement.

17.6 Delayed Transfer of Assets

If for any reasons other than those attributable to the Concessioneing Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 16.5 read with Article 18, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of the Concessioneing Authority, (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessioneing Authority until completion of the relative transfer formalities and (b) account for and pay to the Concessioneing Authority the Project Revenue minus operating costs and statutory dues, from such operations. In the event of failure to do so, the Concessionaire shall be liable to pay to the Concessioneing Authority, for every Day of delay, liquidated damages computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the Transfer Date. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Article 17.6 shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Concessioneing Authority in accordance with the requirements thereof under this Concession Agreement.

In case the transfer of assets by the Concessionaire to the Concessioneing Authority is delayed for reasons attributable to the Concessioneing Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Services but as agent of the Concessioneing Authority. Provided however, the Concessionaire shall be liable to pay Premium in accordance with Article 9.2.

17.7 Remedies Cumulative

The exercise of right by either Party to terminate this Concession Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

17.8 Extension of Concession Period

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire may, at any time no earlier than 5 (five) years, but no later than 2 (two) years prior to the completion of the Concession Period, by a notice issued to the Authority in accordance with the proviso of Article 2.2 (c) require an extension of the Concession Period as specified therein. Upon expiry of the extended Concession Period

hereunder, the Resort and the Project Infrastructure shall vest in the Authority under and in accordance with the provisions of this Agreement, and no Termination Payment shall be due and payable to the Concessionaire for and in respect of the transfer of the Resort and the Project Infrastructure to the Authority hereunder. Provided that in the event of an extension hereunder, the provisions of this Agreement, save and except the provisions for extension under Article

2.2 (c) and this Article 17.8, shall apply mutatis mutandis to the extended Concession Period.

17.9 Compensation for breach of Agreement

(a) Compensation for default by the Concessionaire

Subject to the provisions of Article 17.9 (d), in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Concessions Authority by way of compensation, all direct costs suffered or incurred by the Concessions Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Article 17.9 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Concessions Authority.

(b) Compensation for default by the Concessions Authority

Subject to the provisions of Article 17.9 (d), in the event of the Concessions Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss on account of revenues from the project and Associated Services, debt repayment obligations, or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant i.e. through calculation of the NPV of the net cash flow.

(c) Compensation to be in addition

Compensation payable under this Article 30 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

(d) Mitigation of costs and damage

The non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising outof or as a result of breach of the Agreement by the other Party.

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18 ARTICLE 18: TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

18.1 General Scope of Transfer/Payment

The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Concession Agreement on the Transfer Date in entirety. Without prejudice to the generality of this provision and the provisions of Article 16, the transactions to be consummated and the formalities to be completed by the Parties on the Transfer Date shall be as set out in Articles 18.2 and 18.3.

18.2 Concessionaire's Obligations

The Concessionaire shall;

- (a) hand over peaceful possession of the Project Site, Project's Assets, the Project and the Project Facilities and Services free of Encumbrance;
- (b) transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Concessions Authority in accordance with this Concession Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
- (c) hand over to the Concessions Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project Facilities and Services;
- (d) transfer technology and up-to-date know-how relating to operation and maintenance of the Project's Assets and/or the Project Facilities and Services;
- (e) transfer or cause to be transferred to the Concessions Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Concessions Authority; and (iii) those the Concessions Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessions Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favor of the Concessions Authority without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned and/or are not required to be transferred/assigned to the Concessions Authority;
- (f) at its cost, transfer to the Concessions Authority all such Applicable Permits which the Concessions Authority may require and which can be legally transferred. Provided if the termination is on account of Concessions Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessions Authority;
- (g) at its cost, remove within 90 (ninety) days from expiry of the Concession Period, from the Project Site/Project's Assets, any moveable assets that are not taken over by or not to be transferred to the Concessions Authority in terms of the provisions of this Concession Agreement.

18.3 Concessione Authority's Obligations

Except in the event of expiry of the Concession by efflux of time, the Concessione Authority shall pay compensation payable to the Concessionaire in accordance with Article 17.1 of this Concession Agreement, to the Senior Lenders, or deposit the same in the Escrow Account or on the written instructions of the Senior Lendersto any designated bank account in India, or to the Concessionaire, as the case may be. The Concessionaire confirms that upon such payment being made, the Concessione Authority shall stand duly discharged of its obligations regarding payment of compensation under this Concession Agreement and the charge created by theConcessionaire in favour of the Senior Lenders on any of the assets shall stand satisfied and all such assets shallon and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of compensation by Concessione Authority in accordance with this Article 18.3 shall be a valid discharge to the Concessione Authority in respect of Concessione Authority's obligation regarding payment of compensation to the Concessionaire under this Concession Agreement.

18.4 Risk

Until transfer in accordance with this Article 18, the Project's Assets and the Project Facilities and Services shallremain at the sole risk of the Concessionaire except for any loss or damage caused to or suffered by the Concessionaire due to any act or omission or negligence on the part of the Concessione Authority under this Concession Agreement.

18.5 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Concessione Authority shall, without unreasonable delay, thereupon issue a certificate substantially (the "**Vesting Certificate**"), which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project Site,Project Assets, Facilities and Services, and their vesting in the Concessione Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Concessione Authority or its nominee on, or in respect of, the the Project Site, Project Assets, Facilities and Services on the footing that all DivestmentRequirements have been complied with by the Concessionaire.

19 ARTICLE 19: DISPUTE RESOLUTION

19.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Concessioneing Authority and the Concessionaire in connection with Operation & Maintenance, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Concession Agreement, whether before or after the termination of this Concession Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

19.2 Assistance of Expert

The parties, may, in appropriate cases agree to refer the matter to an Expert appointed by them with mutual consent. The cost of obtaining the service of the Expert shall be shared equally.

19.3 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Director General, Lighthouses & Lightships and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 37.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 19.4

19.4 Arbitration

19.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 19.3, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 19.4.2. 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 Act. The venue of such arbitration shall be New Delhi, and the language of arbitration proceedings shall be English.

19.4.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the

event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

19.4.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 19 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

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

19.5 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 19.4 be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

19.6 In the event where, the Concessions Authority has challenged the arbitral award, resultant of which the amount of the arbitral award has not been paid, 75% of such award will be paid by the Concessions Authority to the Concessionaire against a bank guarantee only for the 75% of such award and not for its interest component. With respect to the interest payable to the Government, the Concessionaire, should the subsequent court order require refund of the said 75%, payment of the same will be as per court order.

20 ARTICLE 20: REPRESENTATIONS AND WARRANTIES

20.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessioneing Authority that:

- (a) it is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Concession Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Concession Agreement;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Concession Agreement;
- (d) this Concession Agreement constitutes the legal, valid and binding obligation of the Concessionaire, enforceable against it in accordance with the terms hereof;
- (e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Concession Agreement;
- (f) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Concession Agreement;
- (g) 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 its memorandum of association and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Concession Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Concession Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Concession Agreement;
- (j) all its rights and interests in the Project/Project Facilities and Services shall pass to and vest in the Concessioneing Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Concessioneing Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any

person, save and except as expressly provided in this Concession Agreement;

- (k) no representation or warranty by it contained herein or in any other document furnished by it to the Concessioneing Authority including the Bid or to any Government Authority in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (l) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Concession Agreement or for influencing or attempting to influence any officer or employee of the Concessioneing Authority in connection therewith;
- (m) agrees that the execution, delivery and performance by it of this Concession Agreement and all other agreements, contracts, documents and writings relating to this Concession Agreement constitute private and commercial acts and not public or governmental acts; and
- (n) consent generally in respect of the enforcement of any judgement against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.

20.2 Representation and Warranties of the Concessioneing Authority

The Concessioneing Authority represents and warrants to the Concessionaire that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Concession Agreement;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Concession Agreement;
- (d) this Concession Agreement constitutes the legal, valid and binding obligation of the Concessioneing Authority, enforceable against it in accordance with the terms hereof; and
- (e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Concession Agreement.

20.3 Disclosure

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

21 ARTICLE 21: MISCELLANEOUS PROVISIONS

21.1 Datum

The datum to which all levels shall be referred for the purpose of the Project is the Chart Datum (0.000) which is ____m below mean sea level.

21.2 Survival of Obligations

Any cause of action which may have occurred in favour of either Party or any right which is vested in either Party under any of the provisions of this Concession Agreement during the Concession Period as the case may be as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the Concession Period by efflux of time or otherwise in accordance with the provisions of this Concession Agreement shall survive the expiry of the Concession Period/ termination of this Concession Agreement.

21.3 Articles to survive Termination

The provisions of Articles 16 to 21 shall, to the fullest extent necessary to give effect thereto, survive the Concession Period/the termination of this Concession Agreement and the obligations of Parties to be performed/discharged following the termination/early determination of this Concession Agreement shall accordingly be performed/discharged by the Parties.

21.4 Joint Responsibility

In the event that any damage is caused partly due to the negligence or default or omission on the part of the Concessioneing Authority and partly due to the negligence or default or omission on the part of the Concessionaire, each Party shall be liable to the other Party only in the proportion to its respective degree of negligence or default or omission, as the case may be.

21.5 Several Obligations

Nothing contained in this Concession Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the provisions of this Concession Agreement.

21.6 Severability

If for any reason whatsoever any provision or any part(s) of this Concession Agreement is held or shall be declared to be void or illegal or invalid under present or future laws or regulations effective and applicable during the Concession Period, by any competent arbitral tribunal or court, and if such provisions shall be fully separable and this Concession shall be constructed as if such provision or such part(s) of this Concession

Agreement never comprised part of this Concession Agreement and the remaining provisions of this Concession Agreement shall remain in full force and effect and shall not be affected by such void or illegal or invalid provision or by its severance from this Concession Agreement.

21.7 Notices

Unless otherwise stated, notices to be given under this Concession Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Concession Agreement shall be in writing and shall

be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessions Authority:

DIRECTOR GENERAL

Fax no:

Email:

The Concessionaire:

The MANAGING DIRECTOR

_____Ltd

Fax no:

Email:

or such other address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

21.8 Waiver

No waiver of any term or condition or of the breach thereof by any Party shall be valid

unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Article 21.7 of this Concession Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Concession Agreement.

21.9 Amendments, Modifications or Alterations.

No amendments, modifications or alterations of or any additions to the terms and conditions of this Concession Agreement shall be valid unless the same be in writing and agreed to by the Parties.

21.10 Governing Law

This Concession Agreement shall be governed by and construed in accordance with the laws of the Republic of India and courts having territorial jurisdiction over the Project shall have jurisdiction over all matters relating to or arising out of this Concession Agreement.

21.11 Entire Agreement

This Concession Agreement and the Appendices together constitute a complete and exclusive statement of the terms of the agreement between the Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Concession Agreement unless specifically retained in this Concession Agreement and the Appendices, by reference or otherwise, are abrogated and withdrawn.

21.12 Stamp Duty and Registration

All charges towards stamp duty and registration of this Agreement and/or any other agreements required to be executed in relation to the Project will be borne by the Concessionaire.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement on the dates indicated next to their signatures below:

Common Seal of the Concessioneing Authority is affixed pursuant to its resolution dated of the Board in the presence of Mr. ___ who has signed this Concession Agreement in token thereof.

Signed and Delivered by the Concessionaire by the hand of its authorized representative Mr. ___ pursuant to Resolution dated ___ of its Board of Directors.

APPENDIX 1: PROJECT SITE

1. The Authority proposes to promote tourism at Lighthouses on Public Private Partnership (PPP) across select locations in the Country for which it envisages to develop allied tourism infrastructure components and upkeep the existing lighthouses precincts and its surrounding areas as a Tourist Destination integrated with the Maritime Landmark and Heritage Precinct. One such location identified by the Authority is the Muttom Point Lighthouse, located about 32 Km from Kanyakumari (off Eraniel – Muttom Road along the coast) in District Kanyakumari, Tamil Nadu

Project Site: The Authority has envisaged the **Development of Tourism Projects Muttom Point Lighthouse**, (hereinafter referred to as the “**Project**”) situated at located about 32 Km from Kanyakumari (off Eraniel – Muttom Road along the coast) in the State of Tamil Nadu in an extent admeasuring approximately **22.50 acres** (excluding existing building / structures thereon) out of the total land extent of **39.98 acres** with the Authority (hereinafter referred to as the “**Project Site**”)

2. **General Profile:** The Lighthouse land is a rocky terrain having gentle slope towards the sea side. The site is approachable from the main road. A Lighthouse Museum has already been established by the Authority.

Zoning of Project Site:

3. **Layout of Project Site:** The Layout shown below of The Project Site is indicative, the actual demarcation may differ as per site condition. The Concessionaire shall at its own cost clearly demarcate the area of Projects site and shall conduct the operation of tourist activities on permitted area only.



It is expressly clarified that, Concessionaire shall not have any exclusive rights on the entire Lighthouse complex under this Concession Agreement and all such rights shall always remain vested with Concessioneing Authority. The Concessionaire is merely a development and O&M service provider the entire Project Site. However, for carrying

out its commercial activities and generating revenue thereon; Concessionaire shall have exclusive license of use for the permitted areas as described below:

The Concessionaire shall have exclusive license to use the area as under –

- i. 4,300 sqm maximum built-up area is permitted for development of 47 key Resort.
- ii. 900 sqm area for Reception cum Admin Block with Recreational center
- iii. 1000 sqm built up area for Restaurant cum Food Court cum Bar
- iv. 200 sqm built up area for Coffee Shop
- v. 1000 sqm built up area for Rejuvenation or Ayurvedic Spa block
- vi. Operation and Management of the Authority's museum including manpower, infrastructure such as guide, queuing, crowd management, information pertaining to operation time, non-working days/hours , briefing / debriefing to visitors etc including maintenance of building
- vii. 48000 sqm open area for Landscape including plantation, lighting, pathways, parking.
- viii. 20000 sqm open area for future development.
- ix. 15700 sqm for on site utilities like Water Tank, Bio Toilet, Septic Tank , Waste Disposal Treatment , Modular Waste Composter.

Access & Constraints to Project Site: The site is located about 32 km distance from Kanyakumari (off Eraniel-Muttom road along the coast in the district of Kanyakumari in Tamilnadu. It is also approachable from Thiruvananthapuram at a distance of 75 km.

APPENDIX 2: PROJECT SITE'S ASSETS

1. Lighthouses premises:

The lighthouse premises are located at the southern most side of the plot consisting of 20m high Lighthouse Tower built in the year 1910. Along with Office room , power house , staff quarter , Inspection Quarter . Recently DGLL has developed a Lighthouse Museum which is open for public viewing at the prescribed time and days.

APPENDIX 3: SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the ----- day of ----- (Month) (Year)

at.....

AMONGST,

Director General of Lighthouses & Lightships and having its Administrative Office at Deep Bhawan, A-13, Sector-24, Noida - 201301 (hereinafter referred to as “the Concessioneing Authority”) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

AND

M/s. XXXX 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 assigns),
AND

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at -----

----- hereinafter referred to as “**the Senior Lender**”.OR

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at-----

----- acting for and on behalf of the Senior Lenders listed in Schedule A hereto (hereinafter referred as “**the Senior Lender’s Representative**”.

WHEREAS,

- a) The Concessioneing Authority for implementing a Project envisaging

_____by private sector participation (hereinafterreferred to as **“the Project”**), has by the Concession Agreement dated ----- entered into between the Concessioneing Authority and the Concessionaire (hereinafter referred to as **“the Concession Agreement”**) has granted to the Concessionaire the Concession to implement the Project in terms of the provisions set out thereunder;

- b) With a view to facilitate financing of the Project by the Concessionaire, the Concessioneing Authority and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Senior Lender/s/Senior Lenders’ Representative.

NOW, THEREFORE, THIS CONCESSION AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” means this Concession Agreement and includes any amendment or modification made to this Concession Agreement in accordance with the provisions hereof.

“Financial Assistance” means the financial assistance set forth in **Schedule A** hereto, agreed to be provided by the Senior Lender(s) to the Concessionaire for financing the Project.

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in servicing debt there under by the Concessionaire for a minimum period of 3 (three) months.

“Senior Lender(s)” means the financial institutions/banks whose name(s) and addresses are set out in Schedule A hereto and shall include the financial institutions/banks who may replace the same by way of a refinance/subrogation, as may be notified by the Senior Lenders’ Representative to the Concessionaire, from time to time.

“Residual Concession Period” means the period which shall be the remainder of the Concession Period computed from the date of issuance of Termination Notice in terms of the Concession Agreement.

“Selectee” means a Person proposed by the Senior Lender/Senior Lender’s Representative pursuant to this Concession Agreement and approved by the Concessioning Authority for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Concession Agreement.

“Suspension Period” means the Termination Period as defined in the Concession Agreement at the end of which all formalities connected with substitution of the Concessionaire by the Selectee including handing over of Project Site/Project Facilities and Services, in accordance with this Concession Agreement are completed and the substitution has become effective.

1.2 Capitalized terms used in this Concession Agreement but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

ARTICLE 2: ASSIGNMENT

2.1 Assignment of rights and title

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

ARTICLE 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 Senior Lenders shall be entitled to substitute the Concessionaire by a Selectee under and in accordance with the provisions of this Concession Agreement and the Concession Agreement.
- 3.1.2 The Concessioneing Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Selectee selected by the Senior Lenders in accordance with this Concession Agreement (For the avoidance of doubt, the Senior Lenders shall not be entitled to operate and maintain the Project/Project Facilities and Services).

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Senior Lenders/Senior Lenders' Representative may issue a notice to the Concessionaire (the **"Notice of Financial Default"**) along with particulars thereof, and send a copy to the Concessioneing 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 Concession Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Senior Lenders/Senior Lenders' Representative may, without prejudice to any of its rights or remedies under this Concession Agreement or the Financing Documents, substitute the Concessionaire by a Selectee in accordance with the provisions of this Concession Agreement.
- 3.2.3 At any time after the Senior Lenders/Senior Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessioneing Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project/Project Facilities and Services, and upon receipt of such notice, the Concessioneing Authority shall suspend the rights of the Concessionaire. Provided, such suspension shall be revoked upon substitution of the Concessionaire by a Selectee, and in the event such substitution is not completed within 180 (one hundred and eighty) Days from the date of such suspension, the Concessioneing 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 Senior Lenders/Senior Lenders' Representative and the Concessionaire, the Concessioneing 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 Concessioneing Authority shall by a notice inform the Senior Lenders/Senior Lenders' Representative of its intention to issue a

Termination Notice and grant 15 (fifteen) Days' time to the Senior Lenders/Senior Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Selectee.

3.3.2 In the event that the Senior Lenders/ Senior Lenders' Representative makes a representation to the Concessioneing Authority within the period of 15 (fifteen) Days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Selectee, the Senior Lenders/ Senior Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Selectee in accordance with the provisions of this Concession Agreement within a period of 180 (one hundred and eighty) Days from the date of such representation, and the Concessioneing Authority shall either withhold termination and/or suspend the rights of the Concessionaire for the aforesaid period of 180 (one hundred and eighty) Days; provided that upon written request from the Senior Lenders/ Senior Lenders' Representative and the Concessionaire, the Concessioneing 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 Concessioneing Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioneing Authority under Clause 3.3.2, as the case may be, the Senior Lenders/Senior Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders from potential Selectees for substituting the Concessionaire and taking on the rights and obligations under the Concession Agreement.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Selectee shall be required to fulfil the eligibility criteria that were laid down by the Concessioneing Authority for shortlisting the Concessionaires for award of the Concession; provided that the Senior Lenders/ Senior Lenders' Representative may represent to the Concessioneing Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessioneing 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 Selectee, the Senior Lenders/Senior Lenders' Representative shall request the Concessioneing Authority to:

(a) accede to transfer to the Selectee the rights and obligations of the Concessionaire under the Concession Agreement; and

(b) novate the Concession Agreement to the Selectee such that the Selectee replaces the Concessionaire and becomes entitled/obligated to all the rights and obligations of the

Concessionaire, for the residual Concession Period.

3.4.4 If the Concessioneing Authority has any objection to the transfer of Concession in favour of the Selectee in accordance with this Concession Agreement, it shall within 7 (seven) Days from the date of proposal made by the Senior Lenders/Senior Lenders' Representative, give a reasoned order after hearing the Senior Lenders/Senior Lenders' Representative. If no such

objection is raised by the Concessioneing Authority, the Selectee shall be deemed to have been accepted. The Concessioneing Authority thereupon shall novate the Concession Agreement within 7 (seven) Days of its acceptance/deemed acceptance of the Selectee; provided that in the event of such objection by the Concessioneing Authority, the Senior Lenders' Representative may propose another Selectee whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Selectee in place of the Concessionaire.

3.5 Selection to be binding

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

ARTICLE 4: TRANSACTION DOCUMENTS

4.1 Substitution of Selectee in Transaction Documents

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

ARTICLE 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 Senior Lenders/Senior Lenders' Representative may by a notice in writing require the Concessioneing Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessioneing Authority shall terminate the Concession in accordance with the Concession Agreement.

5.2 Termination when no Selectee is selected

In the event that no Selectee acceptable to the Concessioneing Authority is selected and recommended by the Senior Lenders/Senior 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 Concessioneing Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Concessioneing Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Senior Lenders are 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.

ARTICLE 6: DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

6.1.1 This Concession 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 Senior Lenders, under the Financing Documents.

ARTICLE 7: INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Concessioneing Authority and the Senior Lenders/Senior 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 Concession Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 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 Concession Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of its lawful functions by the Concessioneing Authority.
- 7.1.3 The Senior Lenders/Senior 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 Senior Lenders/Senior Lenders' Representative to fulfil its obligations under this Concession 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 Senior Lenders/Senior Lenders' Representative.

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.

ARTICLE 8: GENERAL

8.1 General

- (i) The Parties hereto expressly represent and warrant that they are duly empowered to

sign and execute this Concession Agreement.

- (ii) Notices under this Concession Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by registered post acknowledgement due and delivered to the other parties.
- (iii) The expressions “Concessioneing Authority”, the “Concessionaire”, the “Senior Lender” and the “Senior Lenders’ Representative”, “Selectee” herein used shall unless there be anything repugnant to the subject or context include the respective successors and assigns.
- (iv) This Concession Agreement shall not be affected by re-organisation of any Senior Lender, the Concessionaire or Concessioneing Authority, “Selectee” and the successor in interest of the Senior Lender or Concessioneing Authority shall have the benefit of this Concession Agreement.
- (v) Failing amicable settlement and/or settlement with the assistance of Expert, the dispute or differences or claims as the case may be, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three Arbitrators, one each to be appointed by the Concessioneing Authority and the Senior Lenders/Senior Lender’s Representative and the third to be appointed by the two arbitrators. If any Party entitled to do so, fails to appoint a second Arbitrator within 30 (thirty) Days of from the receipt of the request for such appointment, then the single Arbitrator appointed in accordance with this provision shall adjudicate the disputes as Sole Arbitrator.
- (vi) This Concession Agreement and rights and obligations of the Parties hereunder shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The courts having territorial jurisdiction over the Project alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.
- (vii) The consultation, recommendation or approval of the Senior Lenders’ Representative under this Concession Agreement shall always be deemed as consultation, recommendation or approval of every concerned Senior Lender and each such Senior Lender shall be bound by the same.
- (viii) This Concession Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- (ix) The Concessionaire agrees and acknowledges that it shall not be necessary for the Senior Lender(s) or the Senior Lenders’ Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Concession Agreement.
- (x) No amendment, variation or modification to this Concession Agreement shall be valid and effectual unless made in writing and executed by the duly authorized representatives of all the Parties hereto.
- (xi) All stamp duties or other imposts and charges as are applicable on this Concession

Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid, irrespective of the Senior Lenders making such payment for the time being, shall be borne by and be to the account of the Concessionaire.

- (xii) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Concession Agreement, the Concession Agreement and this Concession Agreement shall be read together and construed harmoniously. The terms of this Concession Agreement shall prevail in the event of any inconsistency with the Concession Agreement.

SCHEDULE A: PARTICULARS OF FINANCIAL ASSISTANCE.

Name and Address of the Lender	Nature and Amount of Financing Assistance

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS
HEREUNTO ON THE DAY, MONTH AND YEAR HEREIN ABOVE MENTIONED.

SIGNED AND DELIVERED ON BEHALF OF

..... LIMITED BY : _____

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF GOVERNMENT OF INDIA

BY : __

Name :

Title :

SIGNED AND DELIVERED ON BEHALF OF

----- ON BEHALF OF THE SENIOR LENDERS SET FORTH IN
SCHEDULE I BY : __

Name :

APPENDIX 4: SCOPE OF WORKS

1. General Obligations under Scope of works

The Objective of the Project broadly aims to develop the Project Site as a major tourist destination up to the International standard. The General Obligations under Scope of works shall include but not limited to following:

- 1.1. The Concessionaire shall manage the Project Site in such a manner that the Project Facilities and Services provided to the tourists are of the premium quality to suit the taste and requirement of an International level tourist destination.
- 1.2. The Project Site shall be operated and maintained to the satisfaction of the Concessioning Authority all the time.
- 1.3. The Concessionaire shall engage and deploy well qualified and experienced staff/agencies for Operation & Maintenance works of all the Project Facilities and Services. Concessionaire shall ensure that staff responsible for activities which involves safety risks shall be well trained and certified to conduct such activity. Concessionaire shall be all time fully responsible for safety and security of the tourists and its personnel. All the staff and sub-contractor personnel present in Project Site, shall wear neat standard uniform all the time.
- 1.4. Post commencement of operations, the liability of keeping all the Project Assets and properties with care, which includes structures, Pathways, Garden, furniture, fixtures, equipment etc. Except the cases as provided in this Concession Agreement, Concessionaire shall maintain, repair, replace or reinstate as required at its own cost all the time during the Concession Period.
- 1.5. The Free movement of the tourists shall not be restricted at any time during Concession Period. Concessioning Authority may, at its own discretion, permit the Concessionaire to restrict the free access on partial areas of the Project Site for any major maintenance or any specific event. The written permission from the Concessioning Authority is mandatory for any such instances.
- 1.6. The Concessionaire shall maintain the daily tourist records and furnish to the Concessioning Authority on monthly basis.
- 1.7. The level of services will be verified and certified by the Concessioning Authority on periodical basis. If any modification/ improvement will be required, the same will be intimated to the Concessionaire. The Concessionaire will be bound to adopt the same.
- 1.8. Any cost, expenses and charges towards providing the Project Facilities and Services including any other incidental charges shall be borne by the Concessionaire.
- 1.9. The Concessionaires shall note that Concessioning Authority will not have any sort of service contract for the periodic servicing, repairs and maintenance for any of the assets of the Project Site. The Concessionaire shall arrange for the same at its own cost.

- 1.10. The Concessionaire shall obtain all Applicable Permit/ Licenses/ Approvals required to conduct / operate the services and activities which suits their business plan at their own cost.
- 1.11. The statutory requirement/permissions/NOC of any other department or statutory bodies such as Police, Health and Quarantine, Drug and Narcotics, Security, Port, Navy, Tourism, Panchayat, District administration etc. shall be obtained by the Concessionaire.
- 1.12. The Concessionaire shall make its arrangements as per the anticipated number of tourists visiting to the Project Site. Concessioneing Authority shall not be responsible for any increase/decrease in the number of visitors to the Project Site.

2. Development of Resort

- 2.1. The Concessionaire shall have option to develop & operate a Resort in the Region 8 as shown in the layout within the maximum permitted built-up area of 4300 sqm. The entire development, operation & maintenance cost and expenses shall be borne by Concessionaire.
- 2.2. The Concessionaire shall be responsible to apply, obtain and comply with all applicable permits, permissions, licenses and approvals from the Concern Authorities in relation to development and operation of Resort under applicable laws. The Concessioneing Authority shall provide necessary support and NOCs for obtaining such approvals, on fulfillment of necessary requirements. For CRZ clearance, provisions of Appendix 8, sub-clause 3 shall apply.
- 2.3. The development plan, design and drawings shall be duly consented by the Independent Engineer and Concessioneing Authority prior to construction. It may be noted that such consent from the Concessioneing Authority shall not be deemed as checked and approved on all aspects. The Concessionaire shall all time responsible that the construction and operation of Resort shall confirm to applicable norms and regulations related to construction and safety provisions.
- 2.4. The Concessionaire shall ensure that design of the Resort shall confirm to the green building concepts and adequate measures shall be taken for energy efficiency and sustainable development of the Resort.
- 2.5. The fixture, appliances and other amenities of the Resort shall be of international standards and shall offer premium leisure facilities to the tourist staying. The Independent Engineer / Concessioneing Authority may anytime inspect and instruct to the Concessionaire to provide standard facilities as per premium hospitality industry practices. Non-fulfillment of such instructions shall mean non-performance of Concessionaire's obligations under provision of this Concession Agreement.
- 2.6. The Concessionaire shall ensure deployment of well qualified, trained and experienced personnel for design, construction, operation and maintenance of the Resort.
- 2.7. The development of Resort shall confirm to Standards and Specifications as

prescribed in this Concession Agreement and shall meet minimum requirements of a 3 star category hotel as per prevailing guidelines of Ministry of Tourism.

3. Minimum Development Obligations (MDO) of the Concessionaire

Following minimum Project Facilities and Services shall be provided, operated and maintained by the Concessionaire throughout the Concession period:

4. Development of Resort

4.1. The Concessionaire shall have option to develop & operate a Resort in the Region 8 as shown in the layout within the maximum permitted built-up area of 4300 sqm. The entire development, operation & maintenance cost and expenses shall be borne by Concessionaire.

4.2. Reception cum Admin Block with Recreational Center

4.2.1. Reception, Information & Help Desk

- a) Concessionaire shall provide, operate and maintain Reception and Information Desk through wooden kiosk and counter. The facility shall provide all the required information about the activity details, timings, user charges, map of Lighthouse complex and activity areas, complain register etc.
- b) It shall all time be equipped with emergency public announcement system, medical post with nursing staff & emergency medical & life support equipment and fire & safety equipment along with qualified personnel.
- c) Restaurant cum Food Court cum Bar, Coffee shop The Concessionaire shall provide, operate and maintain Cafeteria and eatery joints on temporary structures / kiosk of at least 1200 sqm area at appropriate location in the Region or as directed by Concessioneing Authority.
- d) The Concessionaire shall provide wooden kiosk, benches and chairs, tables etc in the food court area near by the cafeteria / eatery joints for the tourists. The food court area shall be of minimum 100 sqm area.

4.3. Landscaping Landscaping - An area admeasuring 48000 sqm including plantation, lighting, pathways, parking shall be maintained

4.3.1. On site utilities - Water Tank, Bio Toilet, Septic tank, Waste Disposal Treatment, Modular Waste Composter

4.3.2. The Lighthouse Museum

- a) The Concessionaire shall operate and manage Lighthouse situated in a separate building
- b) The Concessionaire shall provide manpower, infrastructure such as guide, queuing, crowd management, information pertaining to operation time, non-working days/ hours, briefing/ debriefing to visitors including maintenance of the building

4.3.3. The Operation & Maintenance office

- a) The Concessionaire shall operate its O&M office through the Admin block. It shall ensure availability of minimum number of O&M staff all the time throughout the Concession Period. The Concessionaire shall all time ensure that O&M staff deployed on the Project Site are well qualified, trained and experienced for the job.
- b) The requirement of office space related to the Project for the Concessioning Authority and Independent Engineer shall be met with by the Concessionaire by providing cabins and necessary furniture etc, if required or as directed by Concessioning Authority from time to time
- c) The Concessionaire shall develop standard operating procedures (SOP) for all the activities related to Operations and Maintenance of the Project Site. The Concessionaire shall establish a robust complaint redressal system in the Project Site. The logs related to complaints registered and timely compliances shall be documented on monthly basis.

4.4. Common user facilities

4.4.1. Power supply system:

- a) The Concessionaire shall be all time responsible for providing and maintaining uninterrupted power supply in the Project Site at its own cost throughout the Concession Period. Due to present unavailability of permanent power supply system in the Project Site, Concessionaire is suggested to design the entire power supply system of the Project Site in most energy efficient

manner considering the sustainability, environment friendly factors.

- b) The Concessionaire shall provide, operate and maintain Diesel Generators Sets (DG Sets) of required numbers and capacity according to the consumption demand of the Resort and Project Facilities and Services in general, to ensure uninterrupted power supply in the Project site all the time.
- c) The Concessionaire shall also install, operate and maintain solar panel based power plant of at least 150 KW capacity to maximum utilization of renewable energy sources.
- d) The Concessionaire is also encouraged to explore other eco-friendly energy options in order to provide sustainable development in the Project Site.

4.4.2. Water supply system:

- a) The Concessionaire shall be all time responsible for providing and maintaining uninterrupted water supply in the Project Site to meet all the water requirements for various purposes such as Drinking water, F&B, cleaning, toilet, resort, garden and landscape etc. at its own cost throughout the Concession Period. Due to unavailability of permanent water supply sources stem in the Project Site, Concessionaire is suggested to design the entire water supply system of the Project Site in most efficient manner considering the sustainability, environment friendly factors.
- b) The Concessionaire may install desalination plant of required capacity as assessed by the Concessionaire to meet its water demand throughout the Concession Period.
- c) The Concessionaire shall construct water treatment plant & sewage treatment plant of required capacity for treatment and reuse of waste waters and minimizing wastage of water.
- d) The necessary piping and pumping network system shall be provided, operated and maintained by the Concessionaire as and where required.
- e) The Concessionaire shall be permitted use the existing water tank, as well as the new water tank on completion which is being constructed by the Concessioneing Authority. The Concessionaire shall be all time responsible for maintenance of these water retaining facilities and for providing any additional water retaining facility as per the requirement.
- f) The Concessionaire shall be permitted to preserve and use existing wells and the reservoir present at the Project Site to fulfill its water demand. The Concessionaire shall be all time responsible for maintenance of these water retaining facilities. The Concessionaire shall also be responsible for maintenance of rain water harvesting system provided by Concessioneing Authority. The Concessionaire shall make its best effort to preserve maximum amount of rain water.
- g) The Concessionaire shall carry out tests from the authorized laboratories

for testing of water suitability/quality and submit results & reports quarterly to the Independent Engineer and Concessioneing Authority.

4.4.3. Solid waste management system:

- a) The Concessionaire shall provide, operate and maintain efficient and sustainable solid waste management system involving all the processes such as segregation at source, segregation at yard, reuse, recycle, treatment and disposal etc.
- b) The waste generated on the Project Site shall at not be disposed into the sea water. Occurrenceof any such case shall be treated as non-performance of Concessionaire obligations under this Concession Agreement.
- c) Concessioneing Authority has already identify waste composting area for the de-composting ofwaste generating in the Project Site. However non-bio degradable material if generated, the same should be taken out of the Island by the Concessionaire at its own cost.

4.4.4. Lightings: The Concessionaire shall provide, install, operate and maintain the lightings and illumination of Project Site, especially the activity areas. Any replacement of fixtures during the Concession Period shall be responsibility of Concessionaire. The Concessionaire is suggested to use sustainable methods of providing lightings such as LED fixtures, solar powered lights etc.

4.4.5. Planters for Decorations: The Concessionaire shall provide and maintain adequate numbers of planters for decoration at suitable locations on Project site or as directed by Independent Engineer/ Concessioneing Authority.

4.4.6. Garden furniture: The Concessionaire shall provide and maintain adequate sets of garden furniture at suitable locations on Project site or as directed by Independent Engineer / Concessioneing Authority.

4.4.7. Dust bins – adequate number of dust bins (separate and color coded for different types of wastes)shall be provided by Concessionaire in adequate places in the Project Site and shall be maintained as per Performance Standards.

4.5. For avoidance of doubt, the locations, numbers, area or any other specifications related to above ProjectFacilities and Services shall be subject to directions and approvals of Concessioneing Authority on time to time as per the needs and requirements of tourists. The Concessionaire shall provide the facilities and services all the time in Concession Period as directed by the Concessioneing Authority.

5. Maintenance of Project Facilities & Services

The Project Facilities and Services to be provided, operated and maintained by the Concessionaire shall include but not limited to followings. All the cost and expenditure for such services shall be borne by the Concessionaire.

- 5.1. The Project Site, Project Site's Assets, Project Facilities and Services shall be maintained by the Concessionaire throughout the Concession Period and as directed by Concessioneing Authority from time to time to modify it as per their requirements.
- 5.2. Maintenance of existing and new structure - The Concessionaire shall maintain the existing structuresand newly constructed or to be erected new structures up to the standard to meet the taste of tourist asper international level/standards.
- 5.3. Maintenance of Pathways - The Concessionaire shall maintain the existing and newly constructed footpath, pathway, trekking path, hard paved area etc. up to the standard and satisfaction of the MumbaiPort. If required necessary repairs and replacement to the existing footpath, trekking path or any pathways, steps etc. shall be carried out by the Concessionaire at their cost to reinstate.
- 5.4. Maintenance of Garden & Landscape - The Concessionaire shall maintain the landscape area, hardscape area including gardens having flower beds and shall develop wherever free space available or as directed by Concessioneing Authority, up to the standard including providing saplings, manure, red earth, pesticides, insecticides, fertilizers etc. required for maintenance of the same. The Concessionaire shall arrange adequate water for the same.
- 5.5. Maintenance of furniture - Concessionaire shall make its own arrangements of necessary furniture forgarden, food court, office, restaurants and any other places, and ensure availability in good condition throughout the Concession Period, at its own cost and expenses.
- 5.6. Maintenance of Services – The Concessionaire shall maintain all type of existing services provided bythe Concessioneing Authority in the Project to keep it in proper working condition. The repairs and replacement if any during Concession Period shall be carried out by the Concessionaire at their cost. If any modification/upgradation necessary as per requirement of Concessionaire and / or as desire by Concessioneing Authority, the same shall be carried out by the Concessionaire at their cost with prior intimation and approval of Mumbai Port.
- 5.7. Housekeeping Services- Concessionaire shall carry out the housekeeping of entire area which includesexisting structures, newly created structures, footpath, trekking path, toilet blocks, kitchen etc. at theircost with adequate provision to make it hygienic by supplying/ replace/ providing all the toiletries, deodorant, freshener, etc. to suit the taste of tourist as per the international standard. Including sweeping and washing the areas on regular basis to keep the ambience proper.
- 5.8. Maintenance of firefighting system – Concessionaire shall provide and maintain adequate number of fire extinguishers in proper condition to meet any eventualities. If any repairs and replacement are required, the same should carried out by Concessionaire at its own cost. The Concessionaire shall deploy trained staff / persons in adequate number for the services and activities conducted in the island to handle the fire equipment. Also a stand by arrangement of sea water pumping in case of any eventualities shall be made by the Concessionaire.
- 5.9. Security Services- the Concessionaire shall be all time responsible for providing

security services on the Project Site for 24x7 days during the Concession Period. The Concessionaire shall provide security check and the frisking booth separately for ladies and Gents with all-time presence of trained security guards. If necessary, Concessionaire shall make suitable arrangements for the CISF/ Security/ Police departments' personnel. Concessioneing Authority shall extend necessary support on obtaining the same.

- 5.10. Medical/ First Aid services- The Concessionaire shall provide and maintain the necessary medical aid and medicines to meet the emergency requirement of the tourists and Staff. The Concessionaire shall maintain adequate no. of first aid kits and tools, life support equipment with qualified and trained medical / nursing staffs. The Concessionaire shall have tie-up with the Doctors and hospitals at Kanyakumari, Nagercoil and Thiruvananthapuram to attend the emergency cases of the Project Site.

6. Revenue Generation through User Charges

- 6.1. The Concessionaire shall collect User Charges In accordance with the provisions of Article 8 of the Concession Agreement. The sources of revenue generation for the concessionaire with the prior Approval from Concessioneing Authority would include:
- a) Hospitality Services
 - b) Associated Services
 - c) License fee from sub-licensing commercial space through lease and license agreement (only at permitted area)
 - d) Any other commercial activity with prior approval of Concessioneing Authority and any other relevant Authorities.
- 6.2. Concessionaire shall not charge any Entry fee from the tourists and local fishermen for visiting the Island.
- 6.3. Concessionaire shall implement a unified payment mechanism for the tourists / users availing facilities and services at the Project Site by way of pre-paid coupons / RFID smart cards. The Concessionaire shall also ensure all time availability of online booking mechanism and online payment mechanism in the Project Website. The core objective of the mechanism shall be to achieve 100% cashless transactions in entire Project Site. Users should have option to get a rechargeable and refundable pre- paid smart card at the reception desk by payment of cash or digital mode. Otherwise, all the payment desks should only accept digital payments by way of UPI, credit cards / debit cards / digital wallets or any other mode of digital payment as approved by Reserve Bank of India. All the Gross Revenue sources, online / digital payment gateways shall be linked to the Escrow Account only. These provisions also apply to the Affiliate or any third party to whom the Concessionaire has contracted whole or part of Hospitality Services, Associated Services and Island Services. The Concessionaire shall submit overall mechanism of payment receipt and recording Gross Revenue to the satisfaction of Concessioneing Authority. Any deviation from the approved payment mechanism shall be

considered as breach of the Agreement.

7. Specification & Standards

- 7.1. The Scope of works and provided Project Facilities & Services shall confirm to the Specifications and Standards as specified in this Concession Agreement.
- 7.2. The Specifications and Standards applicable to the Scope of works and Project Facilities & Services shall conform to the National Building Code of India, relevant specifications and standards specified by the Bureau of Standards and Good Industry Practice.
- 7.3. In the absence of any specific provision in this Concession Agreement, the following standards shall apply in order of priority:
 - a) National Building Code
 - b) Bureau of Indian Standards (BIS); and
 - c) International guidelines including Griha/LEED/Green Globe.
 - d) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Concessioneing Authority.
- 7.4. The latest version of the specified codes and standards which were notified published at least 60 (sixty) days prior to the Bid Date in respect of this Concession Agreement shall apply.
- 7.5. The Concessionaire shall carry out Construction Works, etc duly complying with the provisions of all relevant latest Indian Standards and in case certain item of works not covered by the Indian Standards, provisions of ISO/IEC/OISD standards, etc shall be complied.
- 7.6. The Development of Resort shall of minimum standards of 3 star category hotel as per the guidelines of Ministry of Tourism, Govt of India.
- 7.7. The Concessionaire shall meet the requirements of Management Quality System (IS/ISO – 9001: 2000) and shall also obtain accreditation for the Project Site. In addition, the Concessionaire shall comply with all relevant statutory regulations, codes, practices and guidelines.
- 7.8. Operations & Maintenance Standards: Repairs, Maintenance and Replacement
 - 7.8.1. The Concessionaire at its own cost promptly and diligently maintain, replace or restore any of the Project Facilities and Services or part thereof which may be lost, damaged, destroyed or worn out.
 - 7.8.2. While carrying out the repairing, maintaining and replacing the project facilities, the Concessionaire acknowledges and accepts that it is holding and maintaining the concession or assets, project facilities in trust for eventual transfer to the Concessioneing Authority on termination of the agreement and therefore, will not do any act as a result of which the value of Project Site's

Assets and Project Facilities and Services is diminished.

- 7.8.3. The Concessionaire shall, at all times during the Concession Period, at its own risk, cost, charges and expenses, performance and pay for maintenance repairs, renewals and replacement of various type of assets and equipment in the concessionaire premises and /or the project or any parts thereof, whether due to use and operations or due to deterioration of materials and /or parts, so that on the expiry or termination of Concession, the same shall except normal wear and tear be in good working condition as it were at the time of commencement of the Concession.
- 7.8.4. While carrying out the repair, maintenance and replacement of the project facilities, the Concessionaire shall carry out the work in accordance with the manufacturer's recommendations and the relevant latest Indian Standards or in its absence ISO/OISD Standards. In the event that the concessionaire, by necessity or otherwise need to follow any other country standard and it shall be equal or superior to the standard specified above.
- 7.8.5. The repairs and maintenance shall generally conform to the following specifications:

Maintenance Standards	
ISO 4308-1-2003	Maintenance of lifting appliances
ISO 4309-2004	Cranes wire rope care, maintenance and discard
IS 13367: Part 1 : 1992	Safe use of cranes – Code of Practice Part 1 General
BS 7121-2-2003	Code of Practice for safe use of cranes, inspection, testing & examination
BS 7121-4-1997	Code of Practice for safe use of cranes (Lorry Loaders)
BS 7121-5-2006	Code of Practice for safe use of cranes
Painting	
IS 144 : 1950	Ready mixed paint, brushing, petrol resisting, air-drying, for interior painting of tanks and container, red oxide (colour unspecified)

IS 145 : 1950	Ready mixed paint, slushing, petrol resisting, air-drying for interior painting of tanks and containers, red oxide (colour unspecified)
IS 146 : 1950	Specification for ready mixed paint, brushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 147 : 1950	Specification for ready mixed paint, slushing, petrol resisting, stoving, for interior painting of tanks and containers, red oxide (colour unspecified)
IS 164 : 1981	Specification for Ready mixed paint for road marking (first revision)
IS 1419 : 1989	Antifouling paint, brushing for ship's bottom and hulls-Specification (second revision)
IS 6714 : 1989	Ready mixed paint, finishing, non-slip, deck – Specification (first revision)
IS 6948 : 1973	Specification for Ready mixed paint, undercoat, synthetic for ships
IS 6951 : 1973	Specification for Ready mixed paint, finishing, exterior for ships
IS 1477 : Part I : 1971	Code of Practice for Painting of Ferrous Metals in Buildings - Part I : Pretreatment
IS 1477 : Part 2 : 1971	Code of practice for painting of ferrous metals in buildings: Part2 Painting
IS 9954 : 1981	Pictorial Surface Preparation Standards for Painting of Steel Surfaces

7.9. Safety Standards

The Concessionaire shall ensure compliance with the safety standards set out under Applicable Law/international conventions, as relevant, from time to time including those required under the following:

- a) The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989.
- b) The Explosives Act, 1884 alongwith The Explosive Substance Act, 1983 & The Explosive Rules, 1983
- c) Guidelines by Fire Advisor, CCE & DG FASLI, Government of India

- d) National Fire Codes (National Fire Protection Association – USA)
- e) Drill Manual for the Fire Services of India.
- f) International Safety Guide for Oil Tankers & Terminals.
- g) ISPS (International Ship & Port Facility Security) Code (2003 Edition)
- h) MARPOL CONVENTION
- i) International Maritime Dangerous Goods Code.

APPENDIX 5: PROJECT SCHEDULE

1. Project Schedule

- 1.1. Concessionaire shall complete the works related to development of Resort and Minimum Development Obligations under provisions of Scope of works of this Concession Agreement within period of 24 months from Appointed Date (“Development Period”).

Milestones	Permissible Time Period for completion
1. Completion of Minimum Development Obligations (MDO)	Within 24 months from Appointed Date

- 1.2. During Development Period, the Concessionaire shall comply with the requirements set forth in this Appendix 5 for each of the Project Milestones and Permissible Time Period for completion (the “Project Schedule”). Within 15 (fifteen) days of the date of each Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.
- 1.3. Any delay in completion beyond the permissible for the reasons not attributable to Concessioning Authority, the Concessionaire shall be liable to pay liquidated damages in accordance with the clause 6.9 of this Concession Agreement.

APPENDIX 6: DESIGN & DRAWINGS

1. Design & Drawings

In compliance of the obligations set forth in Article 6.1 of this Concession Agreement, the Concessionaire shall furnish to the Independent Engineer and Concessioneing Authority, free of cost, all Drawings listed below:

- a) Plan & Layout of the entire Project Site
- b) Plan, Layout, Detailed Design, structural and architectural drawing of the Resort
- c) Plan, Layout, Detailed Design, structural and architectural drawing of all other buildings and plants such as desalination plant, water treatment plant, sewage treatment plant and structures in accordance to the Scope of works;
- d) All structural drawings of the buildings and structures constructed by the Concessionaire;
- e) Firefighting system of the Resort and the entire Project Site;
- f) Electric system of the Resort and the entire Project Site;
- g) Water supply system of the Resort and the entire Project Site;
- h) Storm water drainage and sewage system of the entire Project Site;
- i) Environment management plan, waste management plan of the entire Project Site.

The Designs and Drawings shall be in line with the Technical Proposal submitted by the Concessionaire during Bid Stage. Such Technical Proposal, duly approved by Concessioneing Authority shall deemed to be part of this Concession Agreement. Any modification during execution or operation stage shall be with prior approval of Concessioneing Authority.

APPENDIX 7: TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Role and functions of the Independent Engineer

The Independent Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation of the Project.

The role and functions of the Independent Engineer shall include the following:

- (a) review of the Designs and Drawings;
- (b) review, inspection and monitoring of Development, Operation & Maintenance works;
- (c) conducting Inspection and necessary tests on completion of construction and issuing Completion/Provisional Certificate;
- (d) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (e) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (f) assisting the Parties in resolution of disputes as regards the Designs & drawings; and
- (g) undertaking all other duties and functions as envisaged under the Agreement.

2. Review by Independent Engineer

- (a) The Independent Engineer shall undertake a detailed review of the Designs & Drawings to be furnished by the Concessionaire along with supporting data. The Independent Engineer shall complete such review and send its comments in accordance with the Concession Agreement. In particular, such comments shall specify the conformity or otherwise of such Designs & Drawings with the Scope of works, Construction Standards and Safety Standards.
- (b) The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments. The Independent Engineer shall take into account comments and suggestions of the Concessioning Authority, if any while furnishing the comments.
- (c) The Independent Engineer shall review the monthly progress reports as regards the Construction Works.
- (d) The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Construction Standards and Safety Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the

lapses, defects or deficiencies observed by it in the Construction Works.

- (e) The Independent Engineer may inspect the Construction Works more than once in a month if any lapses, defects or deficiencies require such inspections.
- (f) For determining that the Construction Works conform to Standards and Specifications, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- (g) The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- (h) In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Construction Standards.
- (i) In the event that the Concessionaire fails to adhere to the Project Schedule and complete the Construction Works on the specified Milestone Dates, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) Days the steps proposed to be taken to expedite progress, and the period within which the Project shall be completed. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Concessions Authority and the Concessionaire forthwith.
- (j) If at any time during the Development Period, the Independent Engineer determines that it is not safe to carry on Construction Works for any reason whatsoever including if the Concessionaire has not made adequate arrangements for the safety of workers or other third parties or that any work is being carried out in a manner that threatens such safety, it shall make a recommendation to the Concessions Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- (k) Upon remedial measures being taken by the Concessionaire for securing the safety of suspended works, the Independent Engineer shall inspect the safety measures for adequacy and recommend whether or not such suspension may be revoked by the Concessions Authority.
- (l) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of time for completion, to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority and the Concessionaire of the same.

- (m) The Independent Engineer shall carry out, or cause to be carried out Inspection and necessary tests (“the Tests”) and issue a Completion Certificate or Provisional Certificate, as the case may be, in accordance with the provisions of the Agreement.

APPENDIX 8: PERMITS AND CLEARANCES TO BE PROCURED BY THE CONCESSIONAIRE AND / OR CONCESSIONING AUTHORITY

1. The Concessionaire shall, as required under Applicable Laws, obtain all the Applicable Permits on or before the Award of Concession which includes but not limited to:
 - (a) Consent to establish and operate under the provisions of the Water (Prevention and Control of Pollution) Act, 1974;
 - (b) Consent to establish and operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981; and
 - (c) License to store and serve alcohol in the Island (if permitted under Applicable Laws & Regulations)
 - (d) Fire NOC from local governing Authority;
 - (e) Shop & Establishment certificate from local governing Authority;
 - (f) FSSAI from FDA Govt of Tamilnadu;
 - (g) The Concessionaire shall obtain all other required Applicable Permits, license, approvals and permissions from the relevant local authorities, as per Applicable Laws, for Management, Operation & Maintenance of the Kanhoji Angre Island as Tourist Destination.
 - (h) The development and maintenance of the Resort and Project Facilities shall be in compliance to the Environmental/ CRZ Clearance obtained for the project (as applicable).
2. The Concessioning Authority shall, as required under Applicable Laws, obtain the following Applicable Permits on or before the Award of Concession:
 - (a) CRZ & Environmental Clearance for the Project in respect of providing, operating and maintaining Minimum Development Obligations and Project Facilities and Services.

APPENDIX 9: PERFORMANCE GUARANTEE (PROFORMA OF BANK GUARANTEE)

THIS DEED OF GUARANTEE executed on this the ---- day of ----- at ----- by -----

----- (Name of the Bank) having its Head/Registered office at -----

----- hereinafter referred to as **“the Guarantor”** which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns;

In favour of Directorate General of Lighthouses and Lightships having its administrative Office at Deep Bhawan, A-13, Tulsi Marg, Sector-24, Noida - 201301 (hereinafter referred to as **“DGLL”** or **“the Concessioneing Authority”**) which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- a) The Directorate General of Lighthouses and Lightships vide its Request for Proposal dated [*] (**“the RFP”**), invited bids for implementation of a project “Development of Tourism Project on PPP basis at Mahabalipuram Lighthouse , Tamilnadu (hereinafter referred to as **“the Project”**);
- b) After evaluation of the bids received in response to the RFP, the Board accepted the bid of the Successful Bidder _____. (**“the Successful Bidder”**) and issued the Letter of Award No _____ dated _____ (**“LOA”**) to the Successful Bidder requiring, inter alia, the execution of the Concession Agreement, (**“the Concession Agreement”**) the draft whereof was provided in the Bid documents;
- c) Pursuant to the LOA the Successful Bidder has promoted and incorporated a special purpose vehicle / company _____ (**“the Concessionaire”**), to enter into the Concession Agreement for undertaking, inter alia, the work with respect to the Project referred to in Recital (a) above and to perform and discharge all its obligations thereunder.
- d) In terms of the LOA and the Concession Agreement, the Concessionaire is required to furnish to the Board, a Performance Guarantee being an unconditional and irrevocable Bank Guarantee from a Scheduled Bank for a sum of Rs. X/- (Rupees X only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement during the Operation & Maintenance Phase.
- e) At the request of the Concessionaire, and for valid consideration the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement during the Concession Period as defined in the Concession Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalized terms used herein but not defined shall have the meaning assigned to them

respectively in the Concession Agreement.

2. The Guarantor hereby irrevocably and unconditionally guarantees the due execution and punctual performance by M/s.__(“the Concessionaire”) of all its obligations under the Concession Agreement during the Concession Period as defined in the Concession Agreement.
3. The Guarantor shall, without demur or protest, pay to the DGLL sums not exceeding in aggregate Rs. X Lakh(RupeesX only) within five (5) calendar Days of receipt of a written demand therefor from the Board stating that the Concessionaire has failed to meet its performance obligations under the Concession Agreement during the Operation & Maintenance Phase. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by the Board and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person before any court, tribunal, expert, arbitrator or similar proceedings. The Guarantor’s obligations hereunder shall subsist until all such demands of the Board are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Guarantor by the Board shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Concession Agreement. The Concessioneing Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Guarantor to pay the amount under the Guarantee.
4. In order to give effect to this Guarantee, the Board shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted by the Board or postponement/non exercise/ delayed exercise of any of its rights by the Board or any indulgence shown by the Board to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non-exercise or delayed exercise by the Board of any of the Board’s rights or any indulgence shown by the Board; provided nothing contained herein shall enlarge the Guarantor’s obligation hereunder.
5. This Guarantee shall be unconditional and irrevocable and shall remain valid and in full force and effect for initial period of one year and shall be renewed 30 days prior to expiry of each year, for additional term of one year until Scheduled Completion Date (“**validity period**”) and will have a claim period of one year from expiry of validity period unless discharged/released earlier by the Board in accordance with the provisions of the Concession Agreement. The Guarantor’s liability in aggregate shall be limited to a sum of Rs. [●] (Rupees [●] only).
6. This Guarantee shall not be affected by any change in the constitution or winding up, insolvency, bankruptcy, dissolution or liquidation of the Concessionaire/ the Guarantor or any absorption, merger or amalgamation of the Concessionaire/ the Guarantor with any other Person.
7. Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

8. The Guarantor hereby irrevocably and unconditionally undertakes, agrees and acknowledges that its obligations as a Guarantor hereunder:
- (a) shall not be affected by the existence of or release or variation of any other guarantee or security for any of the obligations of the Concessionaire under the Concession Agreement;
 - (b) shall not be affected by any failure by the Concessioneing Authority to perform any of its obligations under the Agreement;
 - (c) shall not be affected by any failure or delay in payment of any fee or other amount payable to the Guarantor in respect hereof;
 - (d) shall not be affected by any exercise or non-exercise of any right, remedy, power or privilege of any person under or in respect of any payment obligations of the Concessionaire under the Concession Agreement;
 - (e) shall not be affected by any failure, omission or delay on the Concessioneing Authority's part to enforce, assert or to exercise any right, power or remedy conferred on the Concessioneing Authority in this Guarantee;
 - (f) shall not be affected by any act, omission, matter or thing which, but for this clause would reduce, release or prejudice the Guarantor from any of the obligations under this Guarantee or prejudice or diminish the obligations in whole or in part.
9. The obligations, covenants, agreements and duties herein shall not be subject to any counterclaims, crossclaims, set offs, deductions, withholdings, diminutions, abatements, recoupments, suspensions, deferments, reductions or defence for any reason whatsoever and the Guarantor, shall have no right to terminate this Guarantee or to be released, relieved or discharged from any of its obligations, covenants, agreements and duties hereunder for any reason whatsoever.
10. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under.
11. This Guarantee shall be governed by and construed in accordance with the laws of India. The Guarantor hereby irrevocably submits to the exclusive jurisdiction of the Court of Delhi for the purposes of any suit, action, or other proceeding arising out of this Guarantee, or the subject matter hereof, brought by the Concessioneing Authority or its successors or assigns. To the extent permitted by Applicable Law, the Guarantor or its successors or assigns hereby waive, and shall not assert, by way of motion, as defence, or otherwise, in any such suit, action, or proceeding any claim that such suit, action, or proceedings is brought in an inconvenient forum, or that the value of such suit, action, or proceeding is improper, or that the subject matter hereof may not be enforced in or by such court.

**IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS
HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE
WRITTEN.**

SIGNED AND DELIVERED by

_____Bank by the hand of Shri_____its

_____and authorized official.

APPENDIX 10: CERTIFICATE OF COMPLETION CERTIFICATE

1. I, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated [●], for the Project “Development of Tourism Project on PPP basis at Muttom Point Lighthouse, Tamilnadu through [(Name of Concessionaire)]”, hereby certify that the Development and Construction works as well as provisions of Project Facilities and Services in accordance to the Scope of works as specified in Appendix 4 of the Agreement have been successfully completed and the Inspection and necessary tests have been successfully undertaken to determine compliance of the Project with the provisions of the Concession Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all the Development and Construction works as well as provisions of Project Facilities and Services in accordance to the Scope of works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

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

(Signature) (Name) (Designation)

(Address)

PROVISIONAL CERTIFICATE

1. I, [●] (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated [●], for the Project “Development of Tourism Project on PPP basis at Muttom Point Lighthouse, Tamilnadu through [(Name of Concessionaire)], hereby certify that the Inspection and necessary tests have been undertaken to determine compliance of the Project with the provisions of the Agreement.
2. The Development and Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended to the Provisional Certificate, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Concession Agreement. I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.
3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the [●] day of [●] 20[●].

ACCEPTED, SIGNED, SEALED AND SIGNED, SEALED AND DELIVERED

DELIVERED For and on behalf of For and on behalf of INDEPENDENT

CONCESSIONAIRE by: ENGINEER by:

(Signature) (Signature)

(Name and Designation) (Name and Designation)

(Address) (Address)

APPENDIX 11: PERSONNEL AND LABOUR REQUIREMENT

Deleted

APPENDIX 12: USER CHARGEES

Deleted

APPENDIX 13: RATES APPLICABLE IN RESPECT OF LAND, UTILITIES AND SERVICES

The Latest Scale of Rates notified by State Government shall be considered for applicable rates in respect of land, utilities and services.

APPENDIX 14: MINIMUM GUARANTEED REVENUE

Deleted

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APPENDIX 15: PERFORMANCE STANDARDS

1. Operation & Maintenance Requirements

- 1.1. The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In particular, the Concessionaire shall, at all times during the Concession Period, conform to the Operation & Maintenance Requirements set forth in the Concession Agreement and shall maintain the minimum performance standards at resort in line with the standard hotels of 3 star and above category.
- 1.2. The Concessionaire shall repair or rectify any defect or deficiency within the reasonable time as per the good industry practice or as notified by Concessioning Authority / Independent Engineer.
- 1.3. In case of failure of Concessionaire to comply within the given / reasonable time limits, Concessionaire shall submit the reasons for the same in its monthly report. If the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time considering the practical aspects of the difficulty to comply on case to case basis. Authority shall provide reasonable additional time for carrying out such repair and rectification works. Any failure of Concessionaire to repair or rectify any such defects and deficiencies beyond 3 written notices shall constitute a breach of the Agreement and Concessionaire shall be liable to pay damages to Concessioning Authority in accordance with the Clause 7.3 of Concession Agreement.
- 1.4. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Operation & Maintenance Requirements.

2. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Appendix 15, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

3. Inspection by the Concessionaire

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

4. Divestment Requirements

All defects and deficiencies specified in this Appendix 15 shall be repaired and rectified by the Concessionaire so that the Project conforms to the Operation & Maintenance Requirements on the TransferDate.

5. Other Operation & Maintenance Requirements

The Concessionaire shall at all times procure that:

- a) the hours of availability of all Project Facilities and Services provided confirming to Good IndustryPractice and are posted on the Project website;
- b) all the hospitality services, as may be required in accordance with Good Industry Practice and Applicable

Laws, are available 24 (twenty four) hours a day;

- c) the rooms are clean, hygienic and ensure pleasant and healthy environment for its Users;
- d) all recreational facilities and infrastructure services are in working condition and are readily available foruse to its users/guests.
- e) proper room service is provided to maintain cleanliness & hygiene of Project Site;
- f) there is adequate lighting within the Project in conformity with the Specifications and Standards;
- g) hospitality services are carried out in a manner that it conforms to the environment standards prescribed under Applicable Laws and Applicable Permits and does not adversely affect the marine life or leads to pollution in any way of the Project Site ; and
- h) Project website for e-bookings, all information systems, all lifts, public address systems and lighting systems function efficiently and their availability is not less than [98%] in a month.

6. Safety Requirements

6.1. Guiding principles

- 6.1.1. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 6.1.2. Safety Requirements apply to all phases of construction, development, management, operation andmaintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 6.1.3. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in

Annexure - II of this Appendix 15.

6.2. Obligations of the Concessionaire

The Concessionaire shall abide by the following:

- (a) Applicable Laws and Applicable Permits;
- (b) provisions of this Concession Agreement;
- (c) relevant Standards/Guidelines contained in nationally accepted codes; and
- (d) Good Industry Practice.

6.3. Safety measures during Concession Period

- 6.3.1. The Concessionaire shall develop, implement and administer a safety program for the Resort and Project Facilities & Services, staff, Users and other persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Concession Agreement.
- 6.3.2. The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarized and submitted to the Authority at the conclusion of every quarter.
- 6.3.3. The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in three copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 3.1 of this Appendix 15 for averting or minimizing such accidents in future.

6.4. Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of clause 2 of this Appendix 15, shall be borne by the Concessionaire.

Annexure - II Safety Guidelines

- 1. System integrity:** In the design of the Resort and Project Facilities and Services, particular care shall be taken to minimize the likely incidence of failure.
- 2. Safety management:** A safety statement shall be prepared by the Concessionaire once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Engineer / Concessioning Authority within 15 (fifteen) days of the close of every year.
- 3. Emergency:** A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the “**Disaster Management Manual**”) to be prepared and published by the Concessionaire prior to commencement of Operation & Maintenance. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the Independent Engineer / Concessioning Authority no later than 30 (thirty) days prior to commencement of Operation & Maintenance.
- 4. Fire safety**
 - 4.1. To prevent fire in the Project, the Concessionaire shall use fire resistant materials in the overall operations thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.
 - 4.2. To deal with incidents of fire, the Concessionaire shall provide a hydrant based fire-fighting system in conformity with the provisions of Standards & Specifications and Good Industry Practice.
- 5. Surveillance and Safety Manual:** The Concessionaire shall, no later than 30 (sixty) days prior to commencement of Operation & Maintenance, evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection.
- 6. Watch and Ward:** The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety of the Project and all persons affected by it.

APPENDIX 16: 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 Senior Lenders' Representative)] and having its registered office at [●] acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Concession Agreement (hereinafter referred to as the **“Senior Lenders' Representative”** which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes and permitted assigns);
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 permitted assigns); and
4. Directorate General of Lighthouses and Lightships having its administrative Office at Deep Bhawan, A-13, Tulsi Marg, Sector-24, Noida -201301

_____, hereinafter referred to as

“the Concessioneing Authority” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

WHEREAS:

- (A) The Concessioneing Authority has entered into a Concession Agreement dated [●] with the Concessionaire (the **“Concession Agreement”**) for undertaking the Project (as defined in the Concession Agreement) on build, operate and transfer (BOT) basis. The Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- (B) 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 Concession 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;

“Budget” means the budget for Operation & Maintenance/implementation expenses relating to the Project/Project Facilities and Services and O&M Expenses submitted by the

Concessionaire in accordance with the provisions contained herein;

“Concession Agreement” means the Concession Agreement referred to in Recital (A) above and shall include any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Escrow Account” means an escrow account established in terms of and under this Concession Agreement, and shall include any sub accounts thereof;

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

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

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

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

“Quarter” means, any three month period from 1st April to 30th June, 1st July to 30th September, 1st October to 31st December or 1st January to 31st March.

1.2 Interpretation

- 1.2.1 References to Senior Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Senior Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Concession Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Concession 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 Articles are, unless stated otherwise, references to Articles of this Concession Agreement.
- 1.2.4 The rules of interpretation stated in Articles 1.3, 1.4 and 1.5 of the Concession Agreement shall apply, *mutatis mutandis*, to this Concession Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby settles in trust with the Escrow Bank a sum of Rs. 100 (Rupees Hundred Only) appoints the Escrow Bank to act as trustee for the Concessioning Authority, the Senior Lenders, the Senior Lenders' Representative and the Concessionaire in connection herewith and authorises 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 Concessioning Authority, the Senior Lenders, the Senior Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Concession Agreement. No person other than the Concessioning Authority, the Senior Senior Lenders/Senior Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Concession Agreement.

2.2 Acceptance of 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 Concession Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Concession Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Concessioning Authority with the Escrow Bank. In performing its functions and duties under this Concession Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Concessioning Authority, the Senior Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Concession Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) Days from the date of this Concession Agreement, and in any case prior to the Appointed 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 Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Concession 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 Concessionaire shall submit to the Escrow Bank a Budget within 7 (seven) Days of the commencement of each Financial Year. Till the pendency of the financing Documents, such Budget shall be approved by the Senior Lenders/Senior Lenders Representative and thereafter by the Concessioning Authority.

- 2.3.4 The Escrow Bank and the Concessionaire shall, after consultation with the Senior 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 Concession Agreement and such mandates, terms and conditions, or procedures, this Concession 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 operating and maintaining expenses and shall be appropriated from the Escrow Account in accordance with Article 4.1.1 (c).

2.5 Rights of the parties

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

The Parties expressly agree that at least 15 (fifteen) days prior to expiry of validity period of the Performance Guarantee i.e. until Scheduled Completion Date ("validity period"), a substitute Performance Guarantee for the same amount of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs only shall be deemed to be created under Article 4.4 of the Concession Agreement for the entire remaining Concession Period after COD (the "Deemed Performance COD"). The Deemed Performance Guarantee after COD shall be unconditional and irrevocable and shall be in the form of the first and exclusive charge on amount of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs only in the Escrow Account for the payments accrued or payments that have become due and payable, as the case may be, by the Concessionaire to the Authority under the Concession Agreement and over which the Authority shall have the first and exclusive charge, including to the exclusion of the Senior Lenders, and the Authority shall be entitled to appropriate any amount therefrom. The Parties hereby agree that Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to withdraw and appropriate such amounts due and payable due and payable to the Authority under the Concession Agreement to the extent of amount of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs only from the Deemed Performance Guarantee after COD as damages for Concessionaire Default and/or failure to pay any amounts which are due and payable by the Concessionaire to the Authority under and in accordance with the provisions of Concession Agreement.

It is clarified that upon such encashment and appropriation of the Performance Guarantee after COD, the Concessionaire shall be liable to restore and replenish the Deemed Performance Guarantee after COD to the full amount in case of each encashment of the same by the Concessions Authority. This shall be done within 30 (thirty) Days of

any such part encashment failing which the Authority shall be entitled to terminate the Concession Agreement in accordance with provisions thereof.

For avoidance of doubt, no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire to the Authority under and in accordance with the provisions of Concession Agreement shall be liable to appropriation hereunder.

2.6 Substitution of the Concessionaire

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

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

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 Senior Lenders;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues from or in respect of the Project/Project Facilities and Services accruing to the Concessionaire including termination payments; and
- (e) all proceeds received pursuant to any insurance claims.

For avoidance of doubt, all amounts received by the Concessionaire in respect of the Project/Project Facilities and Services excepting any amounts in respect of cesses and duties collected by it from the users on behalf of the Concessions Authority or such other authority in accordance with the Concession Agreement or pursuant to any other instructions in respect thereof shall be deposited in 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 Senior Lenders' Representative and the Concessionaire may by written instructions determine, 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 in a month :

- (a) all taxes due and payable by the Concessionaire;
- (b) towards Concession Fee;
- (c) all Operation & Maintenance/implementation expenses relating to the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;
- (d) all expenses relating to operations and management of the Project/Project Facilities and

Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;

- (e) towards its debt service obligations under the Financing Documents;
- (f) towards Premium and other sums payable to the Concessioneing Authority, liquidated damages and towards amounts payable under Deemed Performance Guarantee after COD , if any;
- (g) towards any reserve requirements in accordance with the Financing Documents; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the escrow account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter.

- 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 Senior Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Article 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Senior Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination:

- (i) 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 for and in respect of the Resort;
 - (b) Outstanding Concession Fee;
 - (c) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Concessionaire including amounts payable under Deemed Performance Guarantee after COD;
 - (d) 90% (ninety per cent) of Debt Due less Insurance Cover, excluding

Subordinated Debt;

- (e) retention and payments relating to the liability for defects and deficiencies;
- (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 Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-Article (i) of this Article 9.6 until a Vesting Certificate has been issued by the Concessions Authority under the provisions of Article 18.

- (ii) The provisions of this Article and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 9.6 (b) (i) have been discharged.

4.3 Withdrawals upon end of Concession Period

All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 17 of the Concession Agreement shall be appropriated in the following order of priority:

- (i) towards taxes and statutory dues payable by the Concessionaire;
- (ii) compensation to Senior Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
- (iii) all amounts due to the Concessioneing Authority including towards amounts payable under Deemed Performance Guarantee after COD as per the provisions of the Concession Agreement (if any); and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Concession Agreement;

and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Concessioneing Authority and the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Concessioneing Authority.

4.4 Application of insurance proceeds

Notwithstanding anything in this Concession Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reOperation & Maintenance, reinstatement, replacement, improvement, delivery or installation of the Project/Project facilities and Services, 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 Concession Agreement, in case the Escrow Bank receives a notice in writing from the Concession Authority that the rights of the Concessionaire are suspended in accordance with the Concession Agreement or a Termination Notice is issued, the Escrow Bank shall until such notice is withdrawn, act only on the instructions of the Concessioneing Authority.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Concession Agreement shall, until used or applied in accordance with this Concession 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 Senior Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Senior Lenders' Representative of the balances in the Escrow Account 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 Senior 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 Senior 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 Concessioneing Authority or the Senior Lenders'

Representative:

- (a) the Concessionaire commits breach of this Concession Agreement by failing to deposit /cause the deposit of any receipts into the Escrow Account;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Concession Agreement; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Concession Agreement.

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 Concession 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 Senior Lenders, or any of its obligations to the Concessions Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Concession 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 Concessions Authority and the Senior Lenders' Representative, terminate this Concession Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Senior Lenders' Representative and arrangements are made satisfactory to the Senior 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 Concession 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 Senior Lenders' 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 Article 4.2, and upon confirmation of receipt of such payments, close the Escrow Account 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 Senior 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 Escrow Account, creation of sub-accounts pursuant to Clause 4.1.1 and for matters not covered under this Concession Agreement such as the rights and obligations of Senior Lenders, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of Financing Documents, 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 Concession Agreement and in the event of any conflict or inconsistency between provisions of this Concession Agreement and such supplementary escrow agreement, the provisions of this Concession 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 Senior Lenders, acting through the Senior 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 Concession 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 fulfill any of its obligations under this Concession Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Concession 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 fulfill its obligations under this Concession 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. MISCELLANEOUS PROVISIONS

10.1 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 at Delhi shall have jurisdiction over all matters arising out of or relating to this Concession Agreement.

10.2 Waiver of sovereign immunity

The Concessing Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Concession 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 Concession Agreement or any transaction contemplated by this Concession Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessing 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).

10.3 Priority of agreements

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

10.4 Alteration of terms

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

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision 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 or obligations under this Concession Agreement shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (b) shall not affect the validity or enforceability of this Concession Agreement in any manner.

10.5.2 Neither the failure by any 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 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.

10.6 No third party beneficiaries

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

10.7 Survival

10.7.1 Termination of this Concession 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 Concession 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.

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

10.8 Severability

If for any reason whatever 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 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

Concession Agreement or otherwise.

10.9 Successors and assigns

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

10.10 Notices

Unless otherwise stated, notices to be given under this Concession Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Concession Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessioneing Authority:DIRECTOR GENERAL

Lighthouses and Lightships

Fax No: _____ Email: _____

The Concessionaire:

The MANAGING DIRECTOR

_____Ltd

Fax No. _____

Email: _____

The Senior Lenders/Senior Lenders representative:

_____Ltd

Fax No. _____

Email: _____

The Escrow Bank:

_____Ltd

Fax No. _____

Email: _____

or such other address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

10.11 Language

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

10.12 Authorized 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 authorised representative by similar notice.

10.13 Original Document

This Concession Agreement may be executed in four 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 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 SENIOR LENDERS by the Senior Lenders' Representative:

(Signature)

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

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

(Signature)

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

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioneing Authority by: (Signature)(Name)

(Designation) (Address) (Fax No.)In the presence of:

1.

2.

APPENDIX 17: BASE CASE FINANCIAL MODEL (BCFM)

The Concessionaire shall submit the Base Case Financial Model (BCFM), developed with the appropriate financial and technical inputs. Such BCFM would essentially include;

- (i) Estimated Project Cost of Concessionaire,
- (ii) Operation and Maintenance expenses
- (iii) Concession Fee and payable to the Concessioneing Authority,
- (iv) Annual estimated Project revenue for the Concession Period and Revenue Share to Concessioneing Authority,
- (v) Equity contribution,
- (vi) Anticipated Number of tourists visiting Project Site and availing various tourist facilities as estimated by Concessionaire,
- (vii) Discounted net present value of the cash flows,
- (viii) Equity IRR,
- (ix) Debt equity ratio, and
- (x) Debt service ratio.

Above Financing Plan would be submitted by the concessionaire and to be approved by the Concessioneing Authority at the time of Financial Close.

Note: Such format of the Financing Plan shall also identify the respective threshold limit of the above parameters and the basis of further projections and the detailed requirements that would need to be stratified with respect to each line item.

APPENDIX 18: MONITORING ARRANGEMENT

Directorate General of Lighthouses & Lightships

Initial Stage Monitoring Report of the Project “Development of Tourism Projects on PPP basis at MuttomPoint Lighthouse, Tamilnadu” for the month ended.....

Compliance of Obligations of the Concessionaire

SNo.	Obligations of the Concessionaire	Whether any action required (Yes/ No)	If yes, give details of action taken*
1	Providing and maintaining the Performance Guarantee (Clause 4.1)		
2	Compliance of Conditions Precedent (Clause 3.1(a))		
(a)	Informing Concessioneing Authority about fulfillment of Conditions Precedent (Clause 3.2)		
3	In case Conditions Precedents are not complied within the specified time, details of extension of time availed (Clause 3.5)		
4	Submission of Drawings to the Independent Engineer & Concessioneing Authority (Clause 6.2 and)		
5	Arrangement of financial and other resources as per Financing Plan as evidenced by Escrow Account (Clause 6.4(a))		
6	Carry out works in compliance with the Operation & Maintenance Standards (clause - 6.4 (b))		
7	Obtain Applicable Permits and comply with Applicable Laws. - 6.4 (d)		
8	Providing access to DGLL representatives for inspections for ascertaining compliance of requirements (Clause 6.4(e))		
9	Submission of Monthly Progress Reports to Concessioneing Authority (Clause 6.4(f))		
10	Removal of Defects/ deficiencies as observed by Concessioneing Authority (Clause 6.4(f))		

16	Procurement of Security Clearance – 12.1 (f) (ii)		
17	Pay Concession Fee & Revenue Share annually – 9.1 (a) and 9.2		
18	Pay Liquidated Damages to Concessioning Authority, if applicable. – 6.9		
19	Maintenance of Insurance as per clause 12.1(c)		
20	In case of Execution of substitution agreement, whether notice has been issued by the concessionaire to the port as per clause 12.3 (b)		
21	Whether equity Holding requirements are met by lead member/ members of the Bidder consortium as per clause 11.2		

Directorate General of Lighthouses & Lightships

Monitoring Report of the Project “Development of Tourism Projects on PPP basis at Muttom Point Lighthouse , Tamilnadu for the month ended.....

Compliance of Obligations of the Concessionaire

Sl. No.	Obligations of the Concessionaire	Whether any action required (Yes/ No)	If yes, give details of action taken*
1	Prompt commencement of operations after “Ready for Operation” declaration (Clause 7.1(a)(i)(a))		
2	Operation of Project Facilities as per “Project Requirement”(Clause 7.1(a) (i)(c))		
3	Achieving Performance Standards(Clause 7.1(a) (i) (d))		
4	Compliance of O&M and Safety Standards(Clause 7.1(a) (i)(e))		
5	Rapid & Effective response in the event of accident/emergency(Clause 7.1(a) (i)(f))		
6	Replacement and repair of project facilities in a timely manner(Clause 7.1(a) (i)(g))		
7	Manage & Operate Project Facilities on “First Come First Served “ basis		
8	Maintenance of Proper Records relating to Revenue and operation of Project Facilities (Clause 7.1(a) (i) and 9.4)		
9	Obtaining, Maintenance of Applicable Permits and Compliance of Applicable laws (Clause 7.1(a) (i) (j))		
10	Prevention of encroachment / unauthorized use of Project Facilities (Clause 7.1(a) (i)(l))		
11	Repair & Maintain all Project Facilities as per Agreement provisions & Good Industry Practice at all times during the Concession Agreement. 7.1(a)(ii)		
12	Repair, Replace or Restore the damaged Project Facilities at its own costs. 7.1(a)(iv)		
13	Obtaining prior written permission of Concessioneering authority for removal of assets clause 7.1(a)(v)		

14	Replacement of equipment/ assets as per Good Industry Practice(Clause 7.1(a) (iii))		
15	Compliance with Monthly Reporting Requirements (Clause 7.1(a) (viii))		
16	Cooperation to experts appointed by concession authority inaccess for inspection for safety audit once in a year (Clause 7.1(a)(vii))		
17	Cooperation to port representatives for inspection and review of operations also to compliance with requirements of Agreement (Clause 7.1(a)(vii))		
18	Installation & Operation of specified computer system and Network as specified by Concession Authority (Clause 7.1(a) (ix))		
19	Ensuring the prescribed Security Arrangements conforming toISPS code(Clause 7.1(a) (x))		
20	Employment of personnel of foreign origin only after requisiteapprovals from Government of India (Clause 7.1(a) (xi))		
21	Employ qualified and skilled personnel.7.1(a)(xi)		
23	To recover User Charges from users of the project facilities as approved by Concessioneing Authority and deposit in Escrow Account (Clause 8.1)		
24	If requested by CA, collect the Cess and charges from the userson behalf of Concessioneing Authority (Clause 8.2)		
25	Make timely payments to Concessioneing Authority viz. Revenue share& Concession Fee (Clause 9.1(a) & 9.2 (b))		
26	To operate Escrow Account as per priority of payments as perclause 9.5(a)		
27	Meeting any claim/ action/ suit etc. alleging loss/ destruction ofgoods (Clause 7.1(a)(xiii))		
28	Inform Concessioneing Authority if any Direct or indirect changeof management of concessionaire as per clause 11.2		

29	Payment of all taxes/ duties/ levies etc., to the Government Authorities (Clause 12.1(b))		
30	Purchasing and Maintaining of Insurance requirements in accordance with the Agreement and Good Industry Practice (Clause 12.1(c))		
31	Providing copies of insurance policies to the DGLL (Clause 12.1(c)(iii))		
32	Utilization of money received under insurance policies as per terms of Agreement (Clause 12.1(c) (iv))		
34	Ensuring conduct of Conditional Survey by an expert appointed by mutual consent and compliance of remedies thereof before expiry of concession period. (Clause 12.1(g))		
35	Submit bank guarantee two years prior to expiry of concession period for repairs if any for condition survey (Clause 12.1 (g) ii)		
36	Issue of consultation notice and compliance of remedial process in case of Event of Default on the part of Port (Clause 15)		

Directorate General of Lighthouses and Lightships

Monitoring Report of the Project “Development of Tourism Projects on PPP basis at Muttom Point Lighthouse, Tamilnadu for the month ended.....

Monthly Key Performance Indicators (KPI)

No	Operation & Maintenance Performance Standards	Indicative norms	Actual during the month	Shortfall, if any	Action taken to remedy shortfall
1					
2					
3					
4					
5					

APPENDIX 19: MODEL TRIPARTITE AGREEMENT

MODEL TRIPARTITE AGREEMENT

BETWEEN PROJECT AUTHORITY, CONCESSIONAIRE AND INFRASTRUCTURE DEBT FUND

This Tripartite Agreement¹ is made at [*] on the [*****] day of [*****], 20[**] by and between

- (i) [Directorate General of Lighthouses and Lightships having its administrative Office at Deep Bhawan, A-13, Tulsi Marg, Sector-24, Noida -201301 [*] (hereinafter referred to as the “**Concessioneing Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);
- (ii) The [***** Infrastructure Debt Fund], a company registered under the Companies Act, 1956, acting through

*****, and having its registered office at ***** (hereinafter referred to as the “**Debt Fund**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

And

[***** Limited], a company registered under the Companies Act, 1956, acting through *****, duly authorised by the resolution passed at the meeting of its Board of Directors held on *****, 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 administrators, successors and assigns)

WHEREAS:

- (A) The Concessioneing Authority and the Concessionaire had entered into a Concession Agreement (as defined hereinafter), a true copy of which is annexed hereto and marked as Annexure-I, for development of ***** (the “**Project**”);
- (B) The Project entered into commercial operation or any substitute thereof on ***** (the “**Appointed Date**”) in accordance with the provisions of the Concession Agreement;
- (C) Following the occurrence of the Appointed Date, the Concessionaire has been operating the Project in accordance with the terms and conditions of the Concession

Agreement;

- (D) The Concessionaire had raised debt from the Senior Lenders for financing the Project and had utilised the same for the purposes of the Project under the Concession Agreement;
- (E) The Concessionaire has been discharging its debt service obligations, including the repayment of principal and interest, in accordance with the provisions of the Financing Documents;
- (F) The debt service obligations have not been rescheduled, waived or postponed in any manner during the past one year from the date hereof, and the Concessionaire is not in default of its debt service obligations under the Financing Documents; and
- (G) The Concessionaire has decided to refinance all or part of its outstanding debt and has requested the Debt Fund to invest in its bonds, the proceeds of which shall be paid to the Senior Lenders as specified in Annexure III.

Now, therefore, the Parties hereby agree and this agreement witnessed - as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1. For the purposes of this Agreement, the following terms shall have the meaning hereinafter respectively assigned to them:

“**Agreement**” means this Tripartite Agreement, and amendments if any thereto;

“**Bonds**” means the securities issued by the Concessionaire in consideration of the amounts paid for the investment thereof;

“**Concession Agreement**” means the executed Concession Agreement dated [date on which the Concession Agreement has been signed] for the Project, entered into between the Concessioneing Authority and the Concessionaire, and shall include all Schedules thereof and any amendments thereto made in accordance with the provisions contained in this behalf therein;

“**Financing Documents**” means financing documents under the Concession Agreement and documents executed on the date [...date of signing of the financing documents] for the Project and shall include all Schedules thereof and any amendments thereto made in accordance with the provisions contained in this behalf therein.

“**Senior Lenders**” means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes a trustee for the holders of debentures/ or other debt instruments issued by the Concessionaire to finance the Project.

“**Senior Lenders’ Representative**” shall have the same meaning as ascribed to it in the Financing Document, provided that, this would include the Trustees for any bonds issued by the Concessionaire. In absence of one such person/ entity having the authority to sign, Senior Lenders Representative shall mean all the Senior Lenders, and/or the Trustees for any bonds issued by the Concessionaire.

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

1.2. The words and expressions beginning with or in capital letters used in this Agreement and not defined herein but defined in the Concession Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Concession Agreement.

1.3. Interpretation

1.3.1. In this Agreement, unless the context otherwise requires,

- a. references to any legislation or any provision thereof, or any rules, regulations, bylaws or notifications thereunder, shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b. references to “development” include, unless the context otherwise requires,

construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “develop” shall be construed accordingly;

- c. “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- d. save and except as otherwise provided in this Agreement, 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; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Debt Fund hereunder or pursuant hereto in any manner whatsoever;
- e. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party in this behalf and not otherwise;
- f. the Recitals and Annexes to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement; and
- g. time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.3.2. Any word or expression used in this Agreement shall, be construed as per the definition given in the General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

2. ISSUE OF BONDS

- 2.1. The Parties agree that the Concessionaire may, in accordance with the provisions of this Agreement, issue Bonds for the amounts subscribed by the Debt Fund; provided that the total value of such Bonds shall not exceed 94% (ninety four per cent) of compensation payment from the Concessional Authority on day of signing this Tripartite Agreement (as specified in Annexure II);
- 2.2. Upon investment in Bonds pursuant to Paragraph 2.1, the Debt Fund shall be deemed to be a Senior Lender and shall thereupon be entitled to all the rights and privileges of a Senior Lender under the Concession Agreement.
- 2.3. The tenor of the Bonds, in accordance with the provisions of this Agreement shall be such that at least 50% (fifty per cent) and 75% (seventy five per cent) of the total nominal value thereof shall be fully redeemed by the Concessionaire no later than the expiry of 75% (seventy five per cent) and 85% (eighty five per cent) of the Concession Period respectively and the balance, if any, shall be redeemed no later than 2 (two) years prior to the expiry of the Concession Period.
- 2.4. Subject to the clause 2.3 of this Agreement, the tenure, rate of interest and other

commercial terms of the Bonds shall be determined by mutual agreement between the Debt Fund and the Concessionaire.

- 2.5. The Bonds shall be in such denomination as the Debt Fund and the Concessionaire may determine, but not less than Rs [10,000 (Rupees ten thousand)] in any case.
- 2.6. Subject to the provisions of Paragraph 4.1, the Debt Fund and the Concessionaire may, with prior written approval of the Concessioneing Authority, which approval the Concessioneing Authority may in its sole discretion deny, allocate and bear the foreign exchange risks for and in respect of any foreign-exchange denominated Bonds, in such manner as they may mutually agree.[For the avoidance of doubt, the Parties expressly agree that if the foreign exchange risk for any or all Bonds is borne by the Concessionaire. The compensation to be made by the Concessioneing Authority for and in respect of such Bonds shall be adjusted to cover the variation between the nominal value of Bonds and the actual amount payable to the Debt Fund, such that the liability of the Concessionaire for redemption of the Bonds hereunder is fully discharged by the Concessioneing Authority.]
- 2.7. The Parties expressly agree and confirm that repayment of the principal and interest in respect of the Bonds shall have a prior charge over the Senior Lenders on appropriation of compensation under Article [9, 16 and 17] of the Concession Agreement, and only the balance remaining shall be paid to the other Senior Lenders.
- 2.8. Any delay in the repayment of the principal or interest for and in respect of the Bonds shall attract interest at a rate of 3% (three per cent) above the rate of interest applicable for the Bonds.
- 2.9. The Parties agree and confirm that upon execution of this Agreement, the Debt Fund shall, acting through the Senior Lenders' Representatives, be deemed to be a party to the Escrow Agreement and the Substitution Agreement for the Project, and all rights, privileges and obligations of the Senior Lenders shall also vest in the Debt Fund. The Parties further agree and confirm that the provisions of the Concession Agreement and all other agreements, including the Escrow Agreement, Substitution Agreement and Financing Documents, shall be read and construed so as to give effect to the provisions of this Agreement, but without increasing any financial obligations and/ or liabilities of the Concessioneing Authority under the Concession Agreement.
- 2.10. By counter-signing the Tripartite Agreement, the Senior Lenders' Representative, acting on behalf of the Senior Lenders agrees, confirms and undertakes that the paripassu rights, title or interest of the Lenders in compensation, to the extent such rights, title or interest are provided in the Concession Agreement, Substitution Agreement, Escrow Agreement, Financing Documents or any other agreement, shall be subordinate to the rights, title or interest created by the Bonds in favour of the Debt Fund, and accordingly, the compensation shall be applied first for the redemption of Bonds and only the balance remaining, if any, shall be paid into the Escrow Account for meeting other obligations, including the balance Debt Due. For the avoidance of doubt, the Parties expressly agree that the Debt Fund may, in its discretion, exercise all the rights and privileges of the Senior Lenders' Representative under the Concession Agreement, Substitution Agreement, Escrow Agreement and this Agreement. The Parties further agree that save and except the application of compensation for redemption of Bonds in pursuance of this Agreement and subject to the provisions of Paragraph 2.7, the Senior Lenders shall have paripassu charge on the revenues of the Concessionaire in accordance with the provisions of the

Concession Agreement.

- 2.11. The Debt Fund may, by notice to the Parties, transfer all or any Bonds to any other person, and upon such transfer, the rights and obligations of the Debt Fund shall vest in such person. Provided that no such notice shall be required for transfer of Bonds if they have been listed in any recognized Stock Exchange and such transfer is in accordance with the regulations of the Stock Exchange.
- 2.12. Notwithstanding anything to the contrary contained in this Agreement, the Debt Fund may have the option to extend a term loan to the Concessionaire for an amount not exceeding 50% (fifty per cent) of its total exposure to the Concessionaire and the provisions of this Agreement shall apply mutatis mutandis to such term loan as if it were a Bond.

3. REDEMPTION OF BONDS

- 3.1. The Concessionaire agrees and undertakes that upon completion of the tenor of the Bonds, it shall redeem the same by making full and complete payment of the outstanding principle and the interest thereon.
- 3.2. Notwithstanding anything to the contrary in this Agreement, the Debt Fund may by notice require the Concessionaire to redeem upto 10% (ten per cent) of the value of the Bonds in any financial year and upon notice in this behalf, the Concessionaire shall redeem such Bonds no later than 120 (one hundred and twenty) days from the date of receipt of such notice. It is hereby clarified that statutory dues shall have priority over the rights of all Senior lenders including the Debt Fund.
- 3.3. The Parties expressly agree that the Debt Fund and the Concessionaire may at any time by mutual agreement undertake early redemption of the Bonds and upon full redemption thereof, this Agreement shall cease to be in force.
- 3.4. The Parties expressly agree and confirm that in terms of Article [15, 16 and 17] of the Concession Agreement, the Concessioneing Authority has covenanted that in the event of termination of the Concession Agreement, the Concessioneing Authority shall pay compensation in accordance with the provisions of the Concession Agreement, which shall be applied for redemption of the Bonds in accordance with the provisions of this Agreement. The Parties further agree and confirm that upon termination on account of a Concessionaire Event of Default or Concessioneing Authority Event of Default, the Concessioneing Authority shall pay compensation in accordance with the provisions of the Concession Agreement.
- 3.5. The Parties agree and confirm that in the event of default in Debt Service by the Concessionaire, the Senior Lenders shall have the right to enforce termination of the Concession Agreement in terms of Clause [15.1(a)(xi)] and [17] of the Concession Agreement, which inter alia requires the Concessioneing Authority to pay compensation in accordance with the provisions of the Concession Agreement. [The Parties further agree that in the event the Concessioneing Authority approves the issuance of additional Bonds under the provisions of Paragraph 2.1 of this Agreement, the liability of the Concessioneing Authority shall, notwithstanding the provisions of the Concession Agreement, extend to an amount equal to 100% of the compensation in Concessionaire Event of Default.]

- 3.6. The Concessioneing Authority agrees and undertakes that upon receipt of a notice under and in accordance with the provisions of Clause [3.2] of the Substitution Agreement, it shall, no later than 15 (fifteen) days from the date of receipt of such notice, issue a notice to the Concessionaire requiring it to cure the FinancialDefault and in the event the default is not cured before the expiry of the Remedial Period specified in Clause[15.4] of the Concession Agreement, a Concessionaire Default shall have occurred and the Concessioneing Authority shall issue the Termination Notice forthwith, but no later than 15 (fifteen) days from the date of occurrence of Concessionaire Default, and shall make compensation no later than 15(fifteen) days from thedate of Termination Notice. The Parties expressly agree that the timelines specified in the Paragraph 3.6 ofthis Agreement are not in modification of the Concession Agreement but only in elaboration thereof.
- 3.7. The Parties expressly agree and confirm that the rights of the Debt Fund and the Senior Lenders' Representative to enforce termination of the Concession Agreement in accordance with Paragraph 3.6 maybe exercised individually or jointly, as the case may be, by the Debt Fund and/or the Senior Lenders' Representative.
- 3.8. The Parties expressly agree that the Concessioneing Authority shall, instead of depositing the compensationin the Escrow Account of the Project, redeem the Bonds by making payments due and payable to the DebtFund, and the balance, if any, shall be paid into the Escrow Account. The Parties further agree that the provisions hereof shall in no way be construed to increase the financial liability of the Concessioneing Authority for and in respect of the compensation [save and except as provided in Paragraph 3.5 for and in respect of the additional bonds specified therein].
- 3.9. The Parties agree and confirm that the amounts, if any, paid by the Concessioneing Authority for redemptionof Bonds and the balance compensation, if any, paid as per the Concession Agreement into the Escrow Account shall be deemed to be a valid discharge of its obligations to make compensation under and in accordance with the Concession Agreement.

4. FEES

- 4.1. The Debt Fund shall pay to the Concessioneing Authority, [0.05% (zero point zero five per cent); This fee percentage shall be reviewed after three years or earlier, if required, by the IMGunder Secretary (EA) as approved by the Cabinet.] per annum of the outstanding debt financed by the IDF, by way of a guarantee fee in consideration of the obligations of the Concessioneing Authority hereunder; [provided that the guarantee fee shall be 1% (one per cent) in respect of Bonds for which the foreign exchange risk is to be borne by the Concessionaire] [provided further that the guarantee fee for and in respect of the additional Bonds specified in Paragraph 2.1 shall be 3% (three per cent) per annum of the nominal value thereof].
- 4.2. The guarantee fee specified in Paragraph 4.1 shall be due and payable annually before commencement of the financial year to which it relates. In the event of delay in payment of the guarantee fee, the Debt Fund shall pay interest at the rate of 14% (fourteen per cent) per annum, to be computed on a daily basis and compounded every month for the period of delay; provided, however, that if such delay exceeds the periodof 180 (one hundred and eighty) days this Agreement shall cease to be in force, and upon termination of the Concession Agreement at any time thereafter, the Concessioneing Authority's obligation to pay the compensation to the Debt Fund shall be deemed to be reduced by 20% (twenty

per cent) thereof.

5. REPRESENTATIONS AND WARRANTIES

5.1. Each of the Parties represent, warrant and confirm the following:

- a. This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and obligations enforceable against it in accordance with its terms;
- b. the execution, delivery and performance of this Agreement will not conflict with or result in a breach or constitute default under or accelerate performance required by any of the terms of Memorandum and Articles of Association of any Party or any applicable law or any covenant, contract, arrangement or understanding, or any decree or order of any court to which it is a party or by which it or any of its properties or assets is bound or affected;
- c. all information provided by the Party is true and accurate in all material respect;
- d. there are no actions, suits, proceedings or investigations pending or to its knowledge threatened against it at law or in equity before any court or any other judicial, quasi judicial or other authority or body, the outcome of which may result in a material breach of this Agreement;
- e. the Party has complied with all Applicable Laws and Applicable Permits in all material respects;
- f. the Concessionaire is not in a material breach of the Concession Agreement or of any Project Contract or Financing Documents; and
- g. no representation or warranty contained herein or in the Concession Agreement or any other document furnished by the Party contains or will contain any untrue or misleading statement of material facts or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

5.2. In the event of any occurrence or circumstance coming to the knowledge of the Party making any representation hereunder which renders any of its aforesaid representations or warranties untrue or incorrect at any time during the subsistence of this Agreement, such Party shall immediately notify the other Parties hereto about the same. Such notification shall not have the effect of remedying any such representation or warranty that has been found to be incorrect or untrue.

6. ARBITRATION

6.1. Any Dispute which is not resolved amicably by conciliation shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Paragraph 6.2 of this Agreement. 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 Act. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

- 6.2. In the event of a dispute between two Parties, there shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules. In the event of a dispute involving all the Parties, a single arbitrator shall be appointed in accordance with the Rules.
- 6.3. The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Paragraph 6 shall be final and binding on the Parties as from the date it is made, and the Parties agree and undertake to carry out such Award without delay.
- 6.4. The Parties agree that an Award may be enforced against the Concessionaire, the Concessioneing Authority and/or the Debt Fund, as the case may be, and their respective assets wherever situated.
- 6.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

7. COMING INTO FORCE AND DURATION OF THE AGREEMENT

This Agreement shall come into force and effect on the date hereof and shall remain in force until the redemption of all Bonds.

IN WITNESS WHEREOF, this Agreement has been executed on the day and year first above written. For and on behalf of the Concessioneing **Authority**

Signature :

Name :

Designation :

For and on behalf of the **Debt Fund**

Signature :

Name :

Designation :

For and on behalf of the **Concessionaire**

Signature :

Name :

Designation :

Agreed, Accepted, Countersigned and Witnessed by the Senior Lenders' Representatives for and on behalf of **Senior Lenders** by

Signature : Name : Designation :

ANNEXURE-I

(Refer Recital A)

[Attach True Copy of the Concession Agreement]

ANNEXURE-II

Schedule - I

(Refer Recital G)

No.	Name of Senior Lenders/Bond holders' Trustee with Address	Amount to be refinanced IDF by way of Bonds/Loan (Rs. incrore)	Remarks, if any

Schedule – II

(Quantum of compensation)

As per the definition in the Concession Agreement, the quantum of (i) Book Value, (ii) 90% of Debt Due and (iii) Total Project Cost as on the date of execution of this Agreement, and at the end of each financial year until the end of the concession period is mentioned in the table below:

No.	Book Value	90% of Debt Due	Total Project Cost	Amount of Compensation

(FREE ENGLISH TRANSLATION)

Building Approval No.9.

Muttom Panchayat

Proceedings of Panchayat President
In presence of : Tmt.Ketharin Mercy-

Sub: Issuance of Building Plan approval

Ref: The Director, Directorate of Lighthouses & Lightships, Chennai

Building approval granted in favour of the Director, Directorate of Lighthouses & Lightships, Chennai to construct the buildings as per enclosed approved plan, at survey No.485,587 of Muttom Panchayat, subject to the following terms and conditions.

1. The approval is valid from 2.7.2018 to 1.7.2019.
2. Building should be constructed as per the approved plan only. The approved plan to be displayed at visible area.
3. If you desired to construct any additional construction or any diviation from the approved plan, you should apply to the Panchayat union commissioner along with modified drawing and construction should be commenced after getting the approval from him.
4. Door steps, slope of roof, hand rail should be constructed within the own land. Do not encroach the Panchayat/Government land or streets.
5. Location of rest room should be easily approachable as shown in approved drawing.
6. Arrangement of sewage water line should be carried out properly and it is to be connected with Panchayat sewerage line.
7. Chimney to be provided in the top of kitchen & bath room to expel the smoke and odor gas.
8. Windows, ventilator to be provided for proper ventilation.

As per Health act section 23 & 26, the Panchayat special officer will issue occupancy certificate to the officials who is involved in the inspection of site. Then only you can occupy the building.

As per Panchayat Act, 89, completion of works to be intimated to the Panchayat officials, by letter within 15 days. If the work is not completed in stipulated period, you can apply for renewal of approval with a prescribed fee and any construction work will not be entertained till getting further order. Building should be constructed 5' away from the road or street.

Date 2.7.2018

Challan No.

Encl: Approved Drawings

To
The Director
Dte. Of Lighthouses & Lightships
Chennai.

sd/-
Special officer

Muttom Panchayat

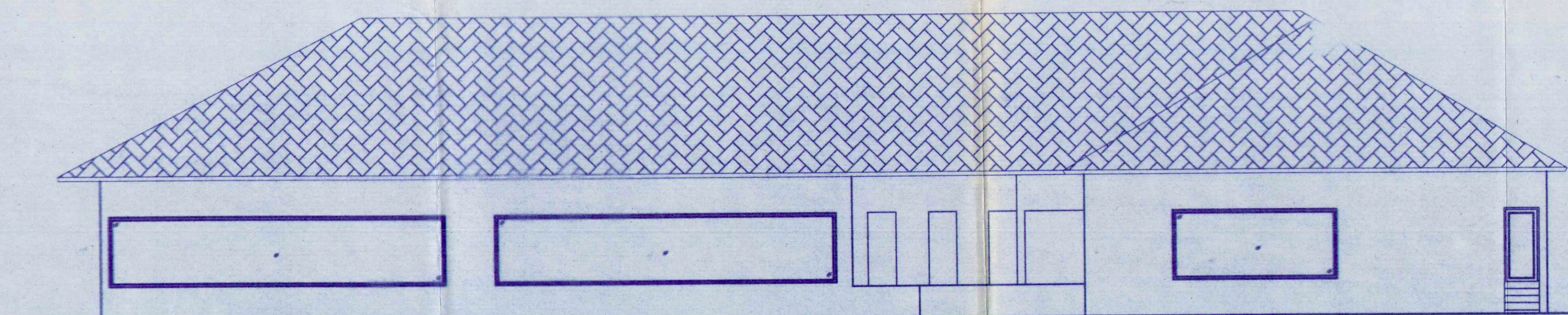
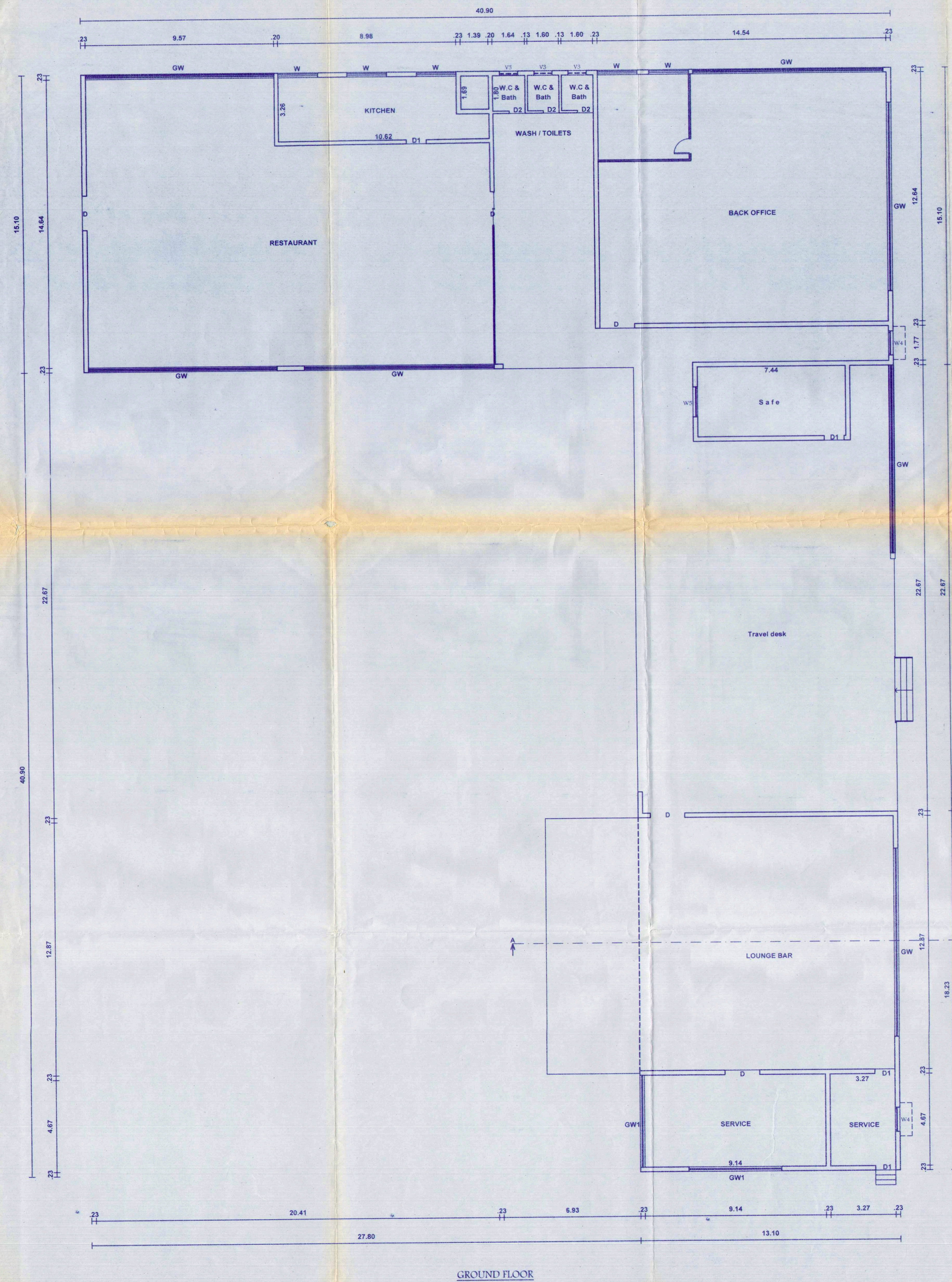
Inspection Report

Inspection Report

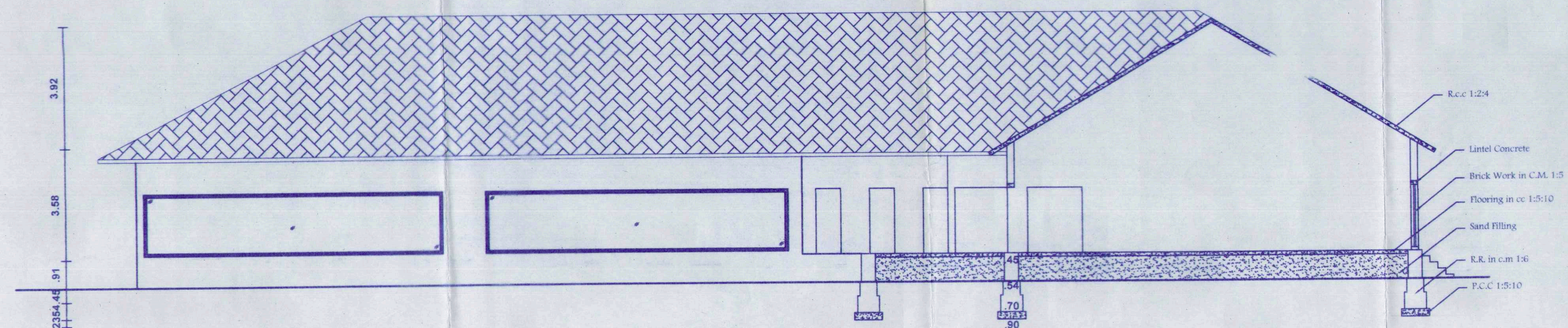
Muttom Panchayat, Muttom Village survey No.487/485 is belongs to he Director, Directorate of Lighthouses & Lightship, Chennai. This land is purely owned to him. This location of land will not disturb transportation, drinking water, electricity.

- | | |
|-----------------------|--|
| 1. Land area | : - |
| 2. Built up area | : $7702.74 \times 650 \times 3\% = 1,50,203$ |
| 3. Inspection charges | : - |
| 4. Rest room facility | : - |
| 5. 0.3% value | : - |
| 6. Extra copy of plan | : - |
| 7. Compound wall | : - |

Special officer
Muttom Panchayat
BDO
Kurunthencode Panchayat Union



ELEVATION



SECTION ON 'AB'

PLAN SHOWING THE PROPOSED CONSTRUCTION OF DEVELOPMENT

OF MUTTAM LIGHT HOUSE IN S.NO: 485 & 487 , KADIYAPATTINAM VILLAGE,

KALKULAM TALUK, KANIYAKUMARI DISTRICT.

RESTAURANT BLOCK

ALL DIMENSIONS ARE IN METRE, SCALE 1:100

AREA DETAILS			
REF.	DESCRIPTION	SQ.M	SQ.FT
□	GROUND FLOOR	1153.31	12411.1

JOINERY DETAILS		
D	Door	1.75 x 2.10
D1	Door	1.00 x 2.10
D2	Door	0.75 x 2.10
GW	Window	9.57 x 2.00
GW1	Window	4.67 x 1.50
W	Window	2.00 x 1.50
W4	Window	1.20 x 1.50
W5	Window	1.50 x 1.50
V3	Ventilator	0.90 x 0.60

Notes:

- Waste Water Used for Garden
- Rain Water Harvesting Details Provided
- Solar System Water tank provided
- Fire Resistance to be provided
- Emergency alarm to be provided
- Drinking water to be provided as per corporation norms
- Rain water harvesting tank to be provided
- Storm water from the plot water tank to be connected to village disposal
- Solar water help to be provided
- 17 traps provided as stipulated to prevent cross breeding of mosquitoes

(An project CMU No. 341 - dated 03.11.2004)

Ar. BRIJESH SHAIJAL. P.K
Design Ashram Consultants LLP #16/76
P.P. Tower, Thurakkal, Manjeri
Reg. No: CA/2004/34237
ARCHITECT
(Registration/License Issued by the
Council of Architecture)

ARCHITECT

OFFICE USE

CONSTRUCTION ENGINEER

Er. M. Muthukumar
B.E.(Civil), M.E.(Structural) F.I.V., A.M.I.E.
MUTHU CONSTRUCTION
Regd. Valuer F-22206
Institution of Engineer (India) AM-1
District Panel Engineer, Tiruk
R.O.C.No. C1/20058/14
11/1A, Sivan West Car Street
Chennai-600 027

B. A. No. 9/20319.....
PLAN APPROVED
 தனி அலுவலர்
 மு. பி. மீ. கணேசன்
 மதுரை மதுரை

குருத்தங்கோடு காராட்டி ஒன்றியம்
Muthu Prabhakaran

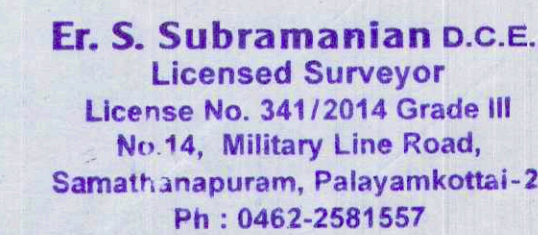
S. Subramaniam
Er. S. Subramanian D.C.E.,
Licensed Surveyor
License No. 341/2014 Grade III
No.14, Military Line Road,
Sama'napuram, Palayamkuttai-2,
Ph : 0462-2581557

STRUCTURAL ENGINEER

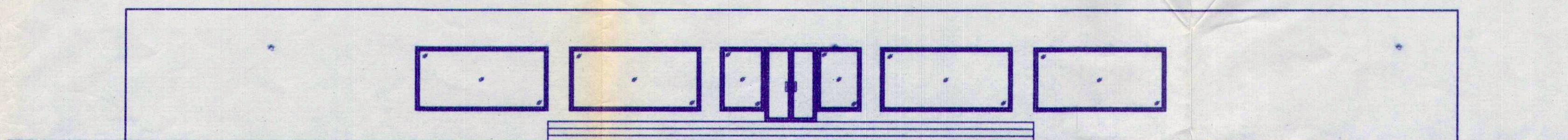
ENGINEER



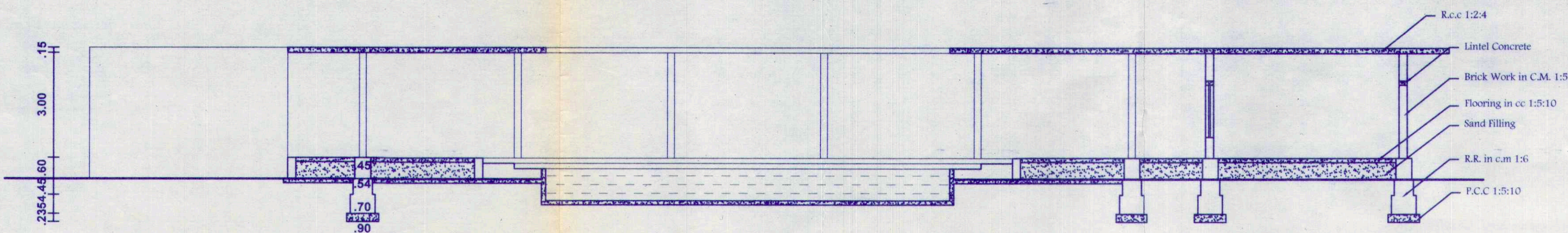
ENGINEER



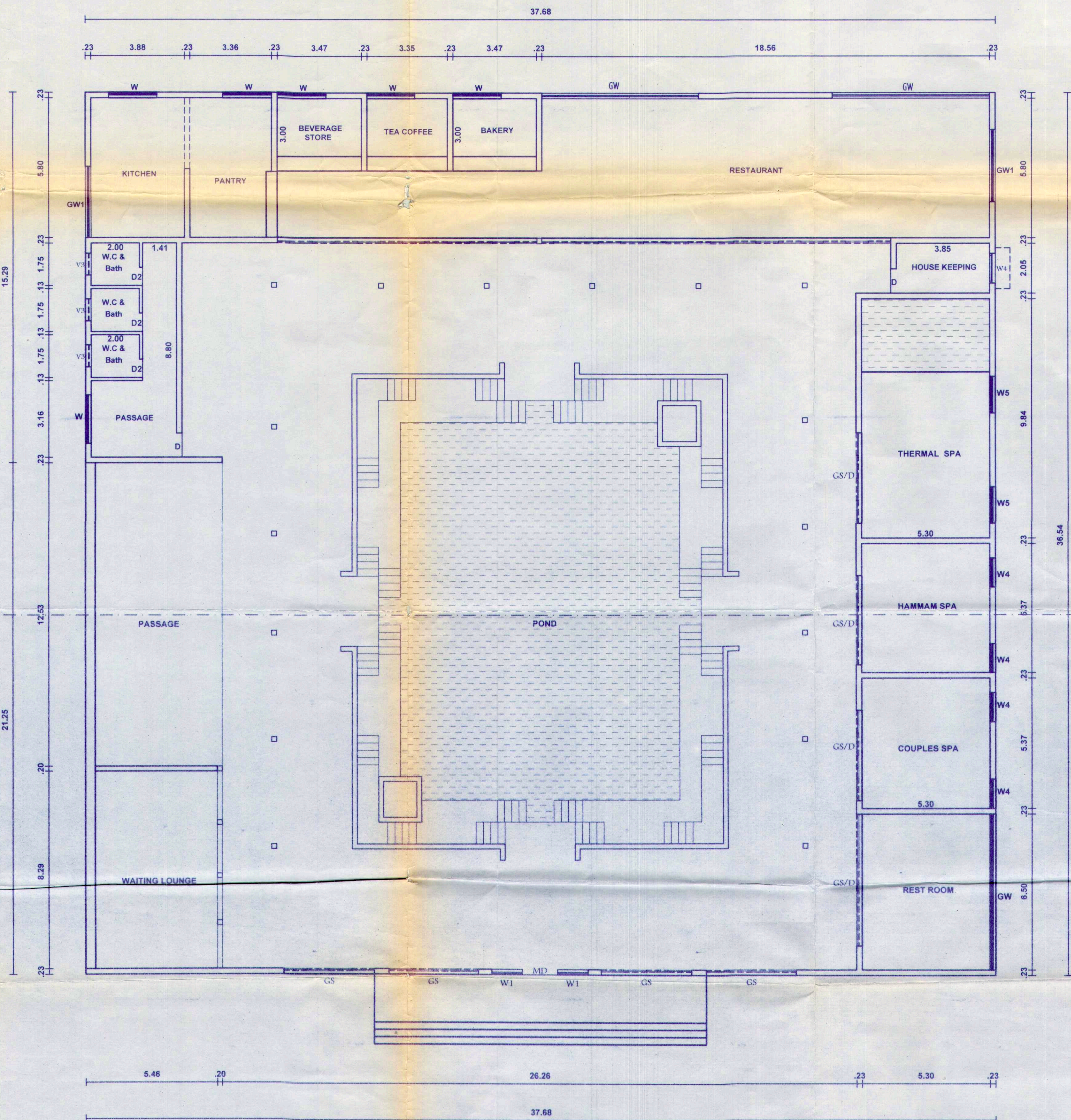
SITE PLAN



ELEVATION



SECTION ON 'AB'



GROUND FLOOR

PLAN SHOWING THE PROPOSED CONSTRUCTION OF DEVELOPMENT

OF MUTTAM LIGHT HOUSE IN S.NO: 485 & 487 , KADIYAPATTINAM VILLAGE,

KALKULAM TALUK, KANIYAKUMARI DISTRICT.

SPA BLOCK

ALL DIMENSIONS ARE IN METRE, SCALE 1:100

AREA DETAILS

REF.	DESCRIPTION	SQ.M	SQ.FT.
1	GROUND FLOOR	1376.82	14815

JOINERY DETAILS

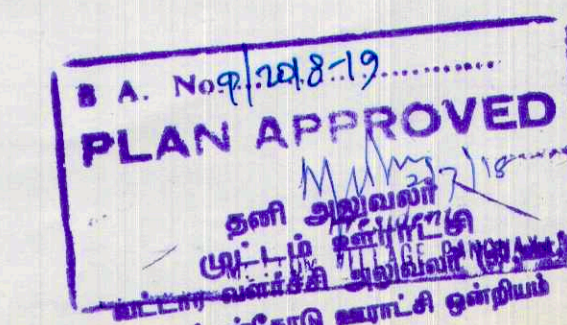
HD	Main Door	1.50 x 2.10
D	Door	1.00 x 2.10
D2	Door	0.75 x 2.10
GW	Window	6.50 x 1.80
GW1	Window	3.00 x 1.80
GS	Window	3.73 x 1.80
W	Window	2.00 x 1.50
W1	Window	1.25 x 1.50
W4	Window	1.20 x 1.50
W5	Window	1.50 x 1.50
V3	Ventilator	0.90 x 0.60

Note:

- Waste Water Used for Garden
- Rain Water harvesting Details Provided
- Solar System Water tank provided
- Fire Resistance to be provided
- Emergency alarm to be provided
- Drinking water to be provided as per corporation norms
- Rain water harvesting tank to be provided
- Waste water from recycled water tank & Trench connected to effluent disposal tank
- Solid waste tub to be provided
- U traps provided in septic tank to prevent curb breeding of mosquitoes
- (As per G.O (MS) No: 341 - dated 03.11.2004)

Ar. BRIJESH CHANAL P.K.
Design Ashram Consultants LLP #16/76
P.P. Tower, Thurakkal, Manjeri
Reg. No: CA/2004/34237
ARCHITECT
(Registration/License Issued by the
Council of Architecture)

ARCHITECT



த.ந.ப.க.ப. 1971 பிரிவு 47-A(2) ன் படி,
கட்டிட அனுமதி இல்லாதவர்கள்
கட்டிட வேலைகளை நிறுத்தி வைக்கப்படும்.
கட்டிட அனுமதி பெறும் வரை கட்டிட வேலைகள்
நிறுத்தி வைக்கப்படும். கட்டிட அனுமதி பெறும் வரை
கட்டிட வேலைகள் நிறுத்தி வைக்கப்படும். கட்டிட அனுமதி
பெறும் வரை கட்டிட வேலைகள் நிறுத்தி வைக்கப்படும்.
நிறுத்தி வைக்கப்படும். கட்டிட அனுமதி பெறும் வரை
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பெறும் வரை கட்டிட வேலைகள் நிறுத்தி வைக்கப்படும்.
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நிறுத்தி வைக்கப்படும். கட்டிட அனுமதி பெறும் வரை
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பெறும் வரை கட்டிட வேலைகள் நிறுத்தி வைக்கப்படும்.

தகர் அனுமதி இல்லாதவர்கள்
கட்டிட வேலைகளை நிறுத்தி வைக்கப்படும்.
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பெறும் வரை கட்டிட வேலைகள் நிறுத்தி வைக்கப்படும்.
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நிறுத்தி வைக்கப்படும். கட்டிட அனுமதி பெறும் வரை
கட்டிட வேலைகள் நிறுத்தி வைக்கப்படும். கட்டிட அனுமதி
பெறும் வரை கட்டிட வேலைகள் நிறுத்தி வைக்கப்படும்.

OFFICE USE

CONSTRUCTION ENGINEER

APPLICANT

Er. M. S. Subramanian
MUTHU CONSTRUCTION
Regd. Valuer F-22206
Institution of Engineer (India) AM-1491876
District Panel Engineer, Tirunelveli
R.O.C. No. CI/20058/14
11/1A, Sivan West Car Street,
Palayamkottai - 627 002.

STRUCTURAL ENGINEER

ENGINEER

Er. S. Subramanian D.C.E.
Licensed Surveyor
License No. 341/2014 Grade III
No.14, Military Line Road,
Samathanapuram, Palayamkottai - 627 002.
Ph : 0462-2581557

Validate

Print

Help

Item Rate BoQ**Tender Inviting Authority: Director General of Lighthouses & Lightships****Development of Tourism Project on PPP Basis at Muttom Point Lighthouse****Contract No: T-201/1/2020-TC**

Name of the Bidder/ Bidding Firm / Company :						
PRICE SCHEDULE (This BOQ template must not be modified/replaced by the bidder and the same should be uploaded after filling the relevent columns, else the bidder is liable to be rejected for this tender. Bidders are allowed to enter the Bidder Name and Values only)						
NUMBER #	TEXT #	NUMBER #	TEXT #	NUMBER #	NUMBER #	TEXT #
Sl. No.	Item Description	Quantity	Units	Revenue Share in terms of percentage of Gross Revenue (%)	TOTAL Revenue Share in terms of percentage of Gross Revenue (%) in Rs. P	Revenue Share in terms of percentage of Gross Revenue (%) In Words
1	2	4	5	13	53	55
1	Heading					
1.01	Revenue Share in terms of percentage of Gross Revenue (Ignore INR in the Proforma)	1.000	percentage		0.00	INR Zero Only
Total in Figures					0.00	INR Zero Only
Quoted Rate in Words		INR Zero Only				