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DISCLAIMER

1. Though adequate care has been taken in the preparation of this *Request for Proposal* Document, the Bidder should satisfy himself that the Document is complete in all respects. Intimation of discrepancy, if any, should be given to the Project Nodal Officer at the address given in the Acknowledgement. If no intimation is received by this office, it shall be deemed that the Bidder is satisfied that the *Request for Proposal* (RFP) Document is complete in all respects
2. Neither Punjab Infrastructure Development Board, (PIDB), nor its employees or consultants make any representation or warranty as to the accuracy, reliability or completeness of the information in this RFP and it is not possible for PIDB to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. Certain prospective bidders may have a better knowledge of the Project than others. Each prospective bidder should conduct his/her own investigation and analysis; and check the accuracy, reliability and completeness of the information in this RFP and obtain independent advice from appropriate sources
3. Neither Punjab Infrastructure Development Board, (PIDB) nor its employees or consultants will have any liability to any prospective bidder or any other person under the law of contract, tort, the principles of restitution or unjust enrichment or otherwise for any loss, expense or damage, which may arise from or be incurred or suffered in connection with anything contained in this RFP, any matter deemed to form this RFP, the award of the Project, the information and any other information supplied by or on behalf of PIDB or their employees, consultants or otherwise arising in any way from the selection process for the Project
4. PIDB reserves the right to reject any or all of the Bids submitted in response of this RFP at any stage without assigning any reasons whatsoever
5. PIDB reserves the right to change any or all of the provisions of this RFP. Such changes would be intimated to all parties procuring this RFP and responding to the *Acknowledgement*

ACKNOWLEDGEMENT OF RFP DOCUMENT
AND
NOTIFICATION OF INTENT TO BID

“The undersigned hereby acknowledges receipt of the RFP documents from Punjab Infrastructure Development Board, (PIDB) and gives notice of it’s intended to submit a Proposal. The undersigned confirms that the Bidder is in possession of the entire RFP document for Development of International Convention cum Exhibition Centre and Five Star Hotel, **Mohali on Design-Build-Operate-Transfer (D.B.O.T) Basis**”

Note:

This form should be returned by letter or tele-fax within 7 (seven) days of the receipt of these RFP documents.

The form should be addressed to attention of

Managing Director

Punjab Infrastructure Development Board

SCO 33-34-35, Sector 34 A

Chandigarh – 160022

Tel. No.: 0172 2665410

Fax No.: 0172 2665596

Email: mdpidb@glide.net.in

.....

Name of the Bidder.

.....

Signature of the designated person.

.....

Name of the designated person.

.....

Date of receipt of RFP documents.

ATTENDANCE AT THE PRE-PROPOSAL CONFERENCE

Punjab Infrastructure Development Board, (PIDB) proposes to hold a pre-proposal conference on November 23, 2010, in the Conference Hall of PIDB at S.C.O 33-34-35, Sector 34-A, Chandigarh.

The undersigned hereby conforms that the Bidder [.....] will attend the pre - proposal conference.

The number of representatives expected to attend the pre-proposal conference is [.....]. The name (s) likely to attend/represent the shortlisted are follows:

1.
2.

(Not more than two individuals from each Bidder)

The undersigned hereby acknowledges that he/she understands that if the Bidder does not attend the Pre-Proposal Conference, PIDB is not obliged to respond to inquiries from the Bidder after the date of the pre-Proposal conference, at its own discretion

Note:

This form should be returned by letter or tele-fax with the original signature to the address of Communication given in the RFP.

.....
Name of the Bidder.

.....
Signature of the Designated Person.

.....
Name of the Designated Person.

.....
Date of receipt of RFP documents.

.....

*Time and venue to be notified

1. BACKGROUND

1.1. Overview of Punjab - Area Profile

Punjab, a state in North-west India, bordering the Pakistani in the west, Jammu and Kashmir to the north, Himachal Pradesh to the northeast, Haryana to the south, Chandigarh to the southeast and Rajasthan to the southwest. The total area of the state is 50,362 sq km (19,445 sq miles). The state of Punjab also called the land of five rivers apart from being one of the most productive regions of India has an integrated cultural history which is a treasure trove for any avid tourist. This land of great gurus boasts of ancient and historical monuments.



There is no dearth of breathtaking palaces, as the imposing Quila Mubarak will tell us. Museums galore and so are the religious places with the Golden Temple offering succor to the mind of any one visiting. The sanctuaries in Punjab, known for migratory birds, can provide pleasure to any wildlife freak. This state borders Pakistan with two main posts from where we can peep into the land that was once an integral part of Punjab.

2. DEMOGRAPHY

The total population of Punjab as per 2001 census is 2,43,58,999, of which males form 1,29,85,045 and females 1,13,73,954. Punjab witnessed a population growth of 20.12% over the last decade. Punjab has a reasonable literacy rate at 69.7% in 2001. The male accounting for a higher literacy rate (75.2%) compared to the female (63.4%).

3. MOHALI: AN OVERVIEW

Chandigarh was planned for a population of half a million to be developed in two phases. The rapid growth and development of Chandigarh resulted in additional demand and exerted pressures on its services and utilities and gave birth to two townships i.e. Mohali now called Sahibzada Ajit Singh Nagar (SAS Nagar) in Punjab and Panchkula in Haryana as satellite towns. Mohali city is located to the west of

Chandigarh. It is almost a continuation of Chandigarh. It surrounds Chandigarh from three sides. Mohali is now emerging as a preferred destination not only for the IT industry but also for housing and urban infrastructure related investments because of its better accessibility. The improvements in Infrastructure, development of parks and open spaces, satisfactory law and order condition over the past many years have helped Mohali in emerging as an independent town. It has become an important commercial and institutional hub, which houses regional offices of companies and institutions catering to several States. It has also become an important investment destination for Indian and multinational Companies.

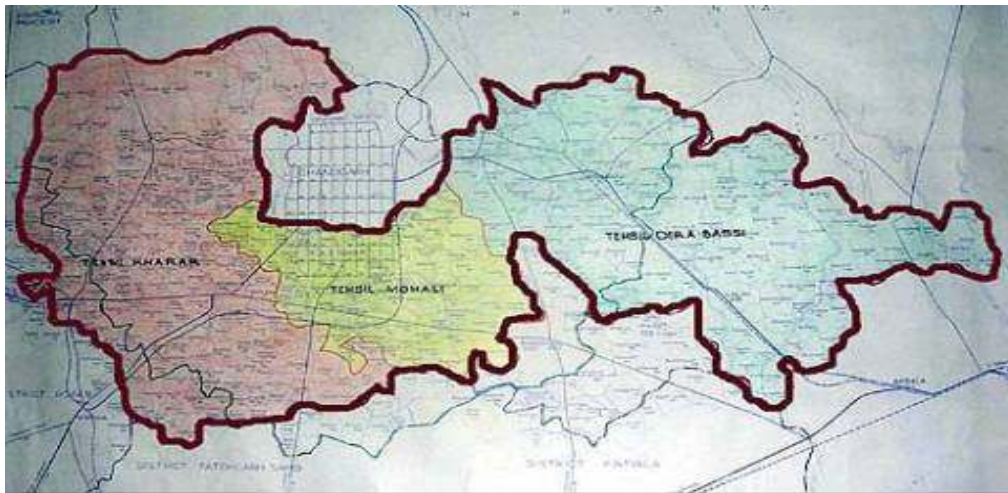


Figure 1- SAS Nagar Mohali District

As per the Master Plan, developed by International Consultant JURONG, SINGAPORE, Mohali City extends up to 114 sectors synchronizing it with Chandigarh's sector design. GMADA has earmarked Sector - 62 as Commercial City Centre, which is just 5 kms from Chandigarh's City centre. PUDA Bhawan, Fortis Heart Hospital etc. are located in City Centre. The City is undergoing rapid Infrastructural, Commercial, Residential & Institutional Development. This region has been targeted by an increasing number of IT companies for outsourcing & investment opportunities due to presence of Software Technology Parks of India (STPI) in Mohali.

3.1. Infrastructure Installations in Mohali include:

3.1.1. **International Airport:** The existing International Airport, Chandigarh is being upgraded with an investment of \$4.5billion in Mohali City, for which

MoA has already been signed between Airports Authority of India (AAI) & GMADA. International operations are expected to start soon.

- 3.1.2. **PCA Stadium:** Built in 1992 by the Punjab Cricket Association (PCA), the stadium is a State-Of-The-Art international level sports facility complete with separate practice grounds. The stadium has international standard facilities such as swimming pool, health club, tennis court, library, restaurants etc.
- 3.1.3. **Quark City:** An SEZ created by US based Quark for \$500mn, is a 46 acre campus complete with a residential complex, shopping centre, entertainment, medical and educational hub.
- 3.1.4. **Knowledge City:** The Knowledge City will house prestigious Institutes like, Institute of Scientific Education & Research (125 acres), Nano-Science and Technology Institute (INST) (35 acres), National Agri-food Bio Technology Institute (N.A.B.I.) (35 acres), Bio-processing and Bio - Tech Park (15 acres) and a Management Institute (70 acres). The Knowledge City is located in sector 81 of SAS Nagar. The land for these institutes has already being transferred at Government level.
- 3.1.5. **Offices of Corporate groups:** Offices of Ranbaxy, Dell, Quark, Phillips, Airtel, Spice, Convergys, Swaraj Mazda, Godrej Group, PTL and ICI Paints are housed here.
- 3.1.6. **Residential and Commercial Complexes:** Developed by National / International level developers like Emaar MGF, DLF, Unitech, Parsvanath, TDI, Ansals, Pearls Group, Westend, Global Malls etc.
- 3.1.7. **Golf Course:** A Golf Course in sector 91 and 93 along the rivulets of Patiala ki Rao is on the anvil, covering approx. 293 acres of land in Mohali. The project has been approved to be made in Public Private Participation and has been referred to PIDB. This will add one more sporting venture to the existing sports facilities in the Mohali district.

4. TOURISM IN CHANDIGARH TRICITY AREA:

A survey of tourist's arrivals (both Domestic & Foreign) had been conducted by the Department of Tourism of States / UTs. The figures of domestic and foreign tourist's arrivals in various State/UTs for the Year 2008 have been estimated on the basis of figures available, and are presented in the following tables:

| Arrival of Tourist in Chandigarh (in Lacs) | | | | | | | |
|--|-------------------|-------------------|-------------------|-------------------|------------------|------------------|------------------|
| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
| Chandigarh | Domestic /Foreign | Domestic/ Foreign | Domestic/ Foreign | Domestic /Foreign | Domestic/Foreign | Domestic/Foreign | Domestic/Foreign |
| | 497336 | 568654 | 584316 | 638000 | 730000 | 954726 | 960912 |

As may be seen from table above there has been a continuous increase in domestic tourist visits. The tourist arrival figures have doubled in 2008 compared to 2002

Other prime Tourist destinations are the Sukhna Lake, the Rock Garden, the Mohali Cricket Stadium, the Zoological Park near Zirakpur (Mohali), Bhakra Nangal Dam etc...

As of now there are more than 30 hotels in the Tricity and the total number of rooms available is 1500(app.). This does not even cater to the foreign tourists stay requirements in the Tricity. This shows that there is a huge potential for the Hotels & Resorts sector in the Chandigarh Tricity area.

4.1. Hotels in the Tri City:

In Chandigarh, occupancy rates have witnessed remarkable growth, in the last 3 years, both in terms of numbers and occupancy levels. Hotel occupancy during peak season in 2007-08 was approx. 100% with an average annual occupancy being quite high at 85%.

Some of the reasons for this level of demand for hospitality developments in the region are as follows:

- Chandigarh Technology Park has generated the initial thrust for growth of the IT/ITES sector in the region, which has, in turn, pushed demand for hospitality developments.
- Overall growth of the local and state economy has induced higher levels of business tourist inflow, which has, again, contributed to the demand for hospitality developments,
- Being the regional headquarters for a number of economic activities, even at the North India level, it is natural that most companies with expansion plans are likely to hold meets and conventions at Chandigarh, with the concomitant increase in demand for hospitality developments

- Chandigarh Airport has introduced more flights, connecting more cities than 2007-2008, which has allowed for higher influx of tourists reflecting in higher occupancy of hotels.

4.2. **Conference & Banqueting in Tricity:**

Economic activities in the Chandigarh region are observing positive trends with number of corporates setting up their base in the city. This factor has influenced medium to large scale seminars/ conferences in the city. Since Chandigarh region does not have a dedicated convention center for such activity, regional hospitality developments have offered such facilities. Most of the 3 Star and above accredited hospitality developments have conference and banquet facilities which accommodates on an average 150-300 people per event. It has been indicated by operators of these hospitality developments that these facilities have an average annual occupancy of 65% with occupancy levels going as high as 85% to 90% in the peak season and dipping to approx. 30% to 35% in the lean season. It may be noted, that most of the hospitality developments offering such facilities are centered in Chandigarh with established and reputed hotels observing high occupancy rates. Most of these conference / banquet space have temporary partitions to accommodate small or huge gatherings as per the requirement of the event. Average cost per person for conference facility ranges between INR 300 to INR 350 per person including meals and non-alcoholic beverages except for hotels like Hotel Taj Chandigarh and Hotel Mount View where the rate ranges between INR 575 to 1,100 per person, all exclusive of taxes as applicable.

4.3 **Retail Trends in Tricity:**

Chandigarh has always been “the best choice” for the shoppers from Punjab, Haryana, and Himachal Pradesh with sector 17 being the major hub of retail activities of the city. This market is the most popular one across the country for its maintenance, activities and highest number of footfalls.

Mohali can be termed as a planned extension of Chandigarh city. Mohali anticipates a growing tourist potential and movement of IT companies of global repute to Chandigarh / Mohali. Apart from this, the city of Mohali has a very good accessibility and catchment for the development of retail malls. And hence the occupancy rates are quite high (approx. 80%) in this region.

4.4 **Proposed Project - Five Star Hotel cum International Convention & Exhibition Centre:**

The Greater Mohali Area Development Authority (GMADA) proposes to develop a International Convention cum Exhibition Centre and Five Star Hotel on a piece of land located at City Centre, sector 62-S.A.S Nagar in Mohali City, which is an upcoming destination for large investments in infrastructure sector in the State. The GMADA through Punjab Infrastructure Development Board (PIDB) is keen for attracting private sector investments for development of the Project under an appropriate Public Private Partnership (PPP) model, where in Private sector participant shall be selected to design, finance, construct, market, operate, manage and maintain the facility for the concession period.

4.5 **Proposed Project Site:**

The site is a rectangular plot of an area of 10 Acres and is presently vacant. The site for the proposed project is located 4 kms from the Sub City Centre, sector 34 and 5.5 kms from the CBD, sector 17, Chandigarh. It has a very prime location along Himalaya Marg, the primary traffic artery of the Chandigarh - Mohali agglomeration. Himalaya Marg connects the project site with all the major landmarks within the city and carries a considerable volume of traffic.



Figure 1- Proposed Site for the Project

Approach to the Site:

The Approach to the site is from 60 mtwide road connecting it to Chandigarh City. The Site enjoys excellent connectivity and accessibility being located at the intersection of Himalaya Marg and sector road between sectors 51 & 62. Given the excellent quality, wide road networks, the Project site can be accessed with considerable ease from almost all major landmarks within the city in a driving time of 15 to 20 minutes.



Figure 2- Approach Road to the Site

Onsite Features of the Site:

The site has a plain terrain and is landscaped adjacent to the Road side. The site has a Green Buffer being developed on all four sides.



O

The site is located **Figure 3- On-site Features** between sector 51 and sector 62 and is in close proximity to PUDA Bhavan. The Project site enjoys excellent frontage on both the sector roads between sectors 51 & 62, with a frontage of approx. 1200 ft on Himalaya Marg that has a 60 mt ROW, and approx. 500 ft on sector road between sectors 51 and 62 that has a 36 mt ROW. Access roads are proposed on the remaining two sides of the site, with the potential advantage of accessibility from all sides of the project site.



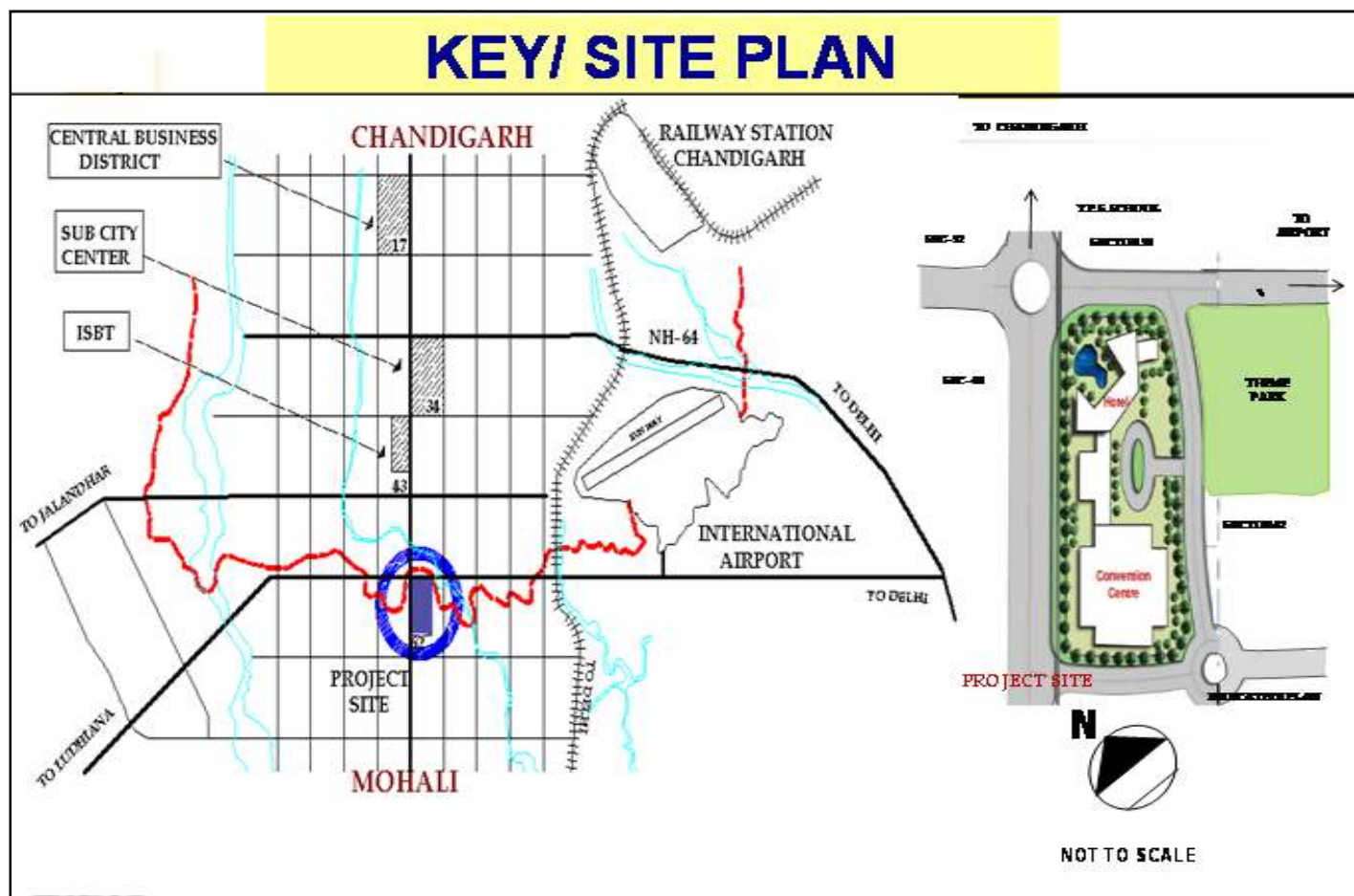
Figure 9: Site view from Rotary

Site Connectivity:*Table - Distance to Key Locations*

| Landmark | Approximate distance from the Project Site |
|--|---|
| Chandigarh Railway station | 12 kms |
| Sector 17 - ISBT and CBD | 5.5 kms |
| Sector 43 Bus Stand | 2.0 kms |
| Chandigarh Airport | |
| via Tribune Chowk | 11.6 kms |
| via Sector 43 rotary | 7 kms |
| via sector road between sectors 51 62 (likely to become important in future. | 7.2 kms |
| Sector 34 - Sub CBD | 4 kms |
| Panchkula | 15. kms |
| Mohali Railway Station | 6.0 kms |
| PCA Stadium | 1.5 kms |

Overall, the site enjoys excellent connectivity with the rest of the region, with low travel times and distances from major city - level landmarks. The site also has an excellent visibility & accessibility. This is likely to be a major contributor to the success of proposed development at the Project Site.

4.6. Site Plan:



4.7. Policy and Regulatory Framework and Zoning Plans:

1. Development Authority

This area falls under a special urban development authority named Greater Mohali Area Development Authority (GMADA), the nodal agency responsible for planning and development of Mohali city. The bye-laws and development control regulations applicable for this site are laid as under SAS Master Plan.

2. Regulatory Framework

Refer to Annexure 2 of Section 1 of RFP document.

3. Zoning Plans and Development Controls

Refer to Annexure 2 of Section 1 of RFP document.

4. Special Package of Incentives for Mega Projects notified under Industrial Policy 2003

A copy of the Special Package of Incentives for Mega Projects notified under Industrial Policy 2003 is enclosed at Annexure 6 of Section 1 of RFP document. If,

entitled under the provisions of the said Policy the Concessionaire may make an application to the Competent Authorities for availing the Special Package of Incentives which may be granted by the Empowered Committee, at its discretion, by treating the Project as a Mega Project. However, the Concession Authority or Punjab Infrastructure Development Board (PIDB) shall not be responsible for entertaining or processing any such application.

Refer to Annexure 6 of Section 1 of RFP document.

4.8. Project Components Envisaged:

Refer to Annexure 1 of Section 1 of RFP document.

5. PROJECT DEVELOPMENT

5.1. Key players in Project Development

Greater Mohali Area Development Authority (GMADA):

GMADA through PIDB has expressed a desire for the Project to be implemented through a Public Private Partnership (PPP) model where a Concessionaire selected through competitive bidding process would enter into a Concession Agreement with GMADA to Design, Finance, Construct, Market, Operate, Manage and Maintain the Project facilities over the pre-agreed Concession Period.

Punjab Infrastructure Development Board (PIDB):

Punjab Infrastructure Development Board (PIDB) is the Government of Punjab agency for implementation of projects on Public Private Partnership (PPP) format. Greater Mohali Area Development Authority (GMADA) through the Punjab Infrastructure Development Board (PIDB) intends to develop a Five Star Hotel cum International Convention & Exhibition Centre under Public Private Partnership format. PIDB has appointed M/s IL&FS IDC to undertake the project development activities.

6. Implementation Framework

Project shall be implemented on Design, Build, Operate and Transfer (DBOT) basis where the private operator shall design, engineer, finance, construct, market, operate, maintain and manage the facility during the concession period. At the end of the concession period, the facility shall be transferred to GMADA.

Benefits to Bidders

- i. Project site leased to Concessionaire at nominal rates by Concessioneing Authority.
- ii. Right to earn revenues from proposed International Convention cum Exhibition Centre & Five Star Hotel facility.
- iii. Right to earn revenues from other Food & Beverage outlets such as Coffee Shops, Restaurants, Lounge Bar.
- iv. Right to earn revenues from other Project Components like Commercial - as permitted in the RFP document.

Role of Concessionaire

The role of the Concessionaire shall comprise of the following:

- Development of International Convention cum Exhibition Centre & Five Star Hotel.
- Designing, engineering, financing, construction, marketing, operation, maintenance and management of the International Convention cum Exhibition Centre and Five Star Hotel during the Concession Period.
- To get and retain Accreditation as a Five (5) Star Hotel Facility during the Concession Period.
- Preparation and submission of Detailed Project Report (DPR) including designing, engineering of Project Facility , conforming to Bye-Laws and other requirements mentioned in the Request for Proposal (RFP) document.
- Procure all the required clearances/approvals/Environmental Clearances required for commencement of construction and operations of Project Facility including approval of all necessary drawings and designs for the construction of Project Facility.
- Execution of construction works of the Project Facility based on the DPR/detailed design reviewed/approved by the Engineer/Design Approval Committee.
- Operation and Maintenance work of the Project Facility for the duration of the Concession Period.
- Collect user charges/ tariffs /rentals from the users of the Project Facility and commercial spaces permitted under the Project.
- Provide full power back ups for Project Facility.
- Inform concerned authorities such as Police, Ambulance, etc. in case of emergency.
- Hand over the Project Facility along with assets at the end of the Concession Period.

Role of GMADA / Concessioneing Authority:

- i. GMADA shall lease the encumbrance free land to the Concessionaire for the Concession Period.
- ii. Signing a Concession Agreement with the Concessionaire for performing the obligation of the Concession Agreement for a concession period.

Annexure 1**DEVELOPMENT BRIEF:**

The responsibility of the bidder shall include all activities that are required to be undertaken in order to comply with the Minimum Development Obligation, Land Use and the Applicable Development Control. The Project Facility would need to be planned, designed and constructed in accordance with the Specifications & Standards and Maintenance & Performance Standards provided in this section of the RFP.

1.1. Project Scope :

This project is conceived as a combined development with 3 main elements, an International Convention Centre, Exhibition facility and Five Star Hotel along with approved commercial space. A site of 10 acres has been considered for the development of the Project Facilities.

The Scope of the Project shall include Development, Design, Financing, Construction, Completion, Marketing, Commissioning, Operation, Maintenance and Management of these Project facilities at the Project Site for the Concession Period of 50 years as per the terms and conditions stipulated in the Concession Agreement.

1.2. Project Components:

The project shall include development of International Convention cum Exhibition Centre and Five Star Hotel as per Norms and Guidelines provided by Ministry of Tourism, Government of India (GoI) & FHRAI and applicable Local By-laws. The bidder would be given the option to plan and design the Project Facilities conforming to the applicable Building Bye-Laws and regulations/ norms / standards for respective project components including arranging approval from the competent authority. The natures of the Project Facilities (Minimum and Optional) that shall be allowed are represented in the following table:

| Sl. No. | Project Facilities | Facilities |
|----------------|---|--|
| 1. | Minimum Development Obligations / Essential Facilities | 1. Convention & Exhibition Centre a. 4000 pax single multipurpose hall with removable partitions and retractable seating, if required including 1000 delegate Plenary Hall |

| | | |
|--|--|---|
| | | <p>b. 1 Hall of 250 pax capacity, 2 Halls of 100 pax capacity, 4 Halls of 40 pax capacity each with seating arrangement, provisions for Board Rooms and 2 Nos.(two) VVIP rooms.</p> <p>c. Other basic facilities such as Reception, Information counters, public facilities, eating stalls, as per the requirement & norms. Reception area with a minimum of 8 Terminals to be provided. Provision for additional Terminals if required-.</p> <p>d. Facility to interpret 6 languages and wireless IR receivers of minimum 1000 Nos.</p> <p>e. Convention & Exhibition Center shall be maintained by the Hotel Chain operating the Hotel.</p> <p>2. Five Star Hotel</p> <p>a. Minimum number of rooms shall be 200 (provision to be made in the building design for further expansion).</p> <p>b. Coffee Shop of 100 seating capacity</p> <p>c. Specialty Restaurant of 100 seating capacity</p> <p>d. Lounge / Bar of 100 seating capacity</p> <p>e. Executive Health Club which includes Gymnasium, Swimming Pool, Spa & Health Club, Indoor & Outdoor recreation Facilities.</p> <p>Food-Beverages & Other ancillary facilities as per the standards and requirements meeting the Ministry of Tourism Guidelines, FHRAI guidelines.</p> <p>Parking: Provision of Car parking should be made as per Local Building Bye-Laws and applicable parking norms as mentioned in Development Controls. However minimum of 800 ECS shall be provided by the concessionaire considering the applicable Punjab Government By laws.</p> <p>3. Support Facilities & infrastructure like internal road network, parking areas, security, air conditioning, water supply and rain - water harvesting, Power, sewage treatment, solid waste management, landscaping and other services required for the complex.</p> |
|--|--|---|

| | | |
|----|----------------------------|---|
| 2. | Optional Facilities | <p>1) International Convention and Exhibition center (ICE):</p> <p>a) Restaurants and cafeteria can be constructed as optional facility in ICE</p> |
| | | <p>2) Five Star Hotel:</p> <p>a) Service apartments as optional facility can be constructed along with the Five Star Hotel. Service apartments shall be maintained by the Hotel Chain operating the Five Star Hotel</p> |
| | | <p>3) Commercial Area</p> <p>a. Maximum permitted built up Commercial Area/Space shall be 10% of the actual constructed area of Five Star Hotel. This area i.e. (10% commercial area) shall not count the area constructed for Convention, Exhibition, Parking and basement facility for the project.</p> <p>b. The allowed commercial area shall be maintained by the hotel chain operating the Five Star Hotel.</p> <p>c. Commercial Area / Space would essentially mean Retail shopping, Branded showrooms, Anchor stores, and Entertainment complex/zone and office/business spaces within Commercial complex only.</p> <p>d. Specialty Restaurants, Lounge/Bar, Health club, SPA, Gym, Indoor and outdoor recreation facility shall not be counted in the permissible commercial space.</p> <p>e. The applicable Commercial Area/Spaces in the Five Star Hotels (showrooms/shops) shall be counted toward the approved commercial space for the project.</p> <p>f. Event specific Commercial Facilities (Temporary) such as Food stalls, Souvenir stalls etc shall not be the part of the Commercial Area/Space.</p> <p>b) Open Exhibition areas, Commercial Area /Space permitted under Five Star Hotel Category, Food & Beverage outlets such as Multi cuisine Restaurants & additional facilities shall be constructed, as per requirement, in synergy with the Minimum Development Obligations / Essential Facilities.</p> |

Minimum facilities to be constructed within 30 (Thirty) months from the Date of Compliance

During the Concession Period, the Concessionaire shall have the option to increase the capacity of the International Convention cum Exhibition Centre and Five Star Hotel by carrying out additional construction in synergy with the existing facility with prior approval from Concessioneing Authority. The concessionaire can also add the project components in synergy with the Project Facilities based on the approval given by Concessioneing Authority.

1.3. Project Site :

The Site is designated for mixed use (Hotel / Convention Centre) under the Development Control Regulation of GMADA as laid zoning plan of Site. The total area proposed for the project is 10 Acres with 2.50 FAR and 40% ground coverage for project facility.

1.4. Project Implementation Plan:

The developer shall complete the construction work in respect of the essential facilities which constitute of Minimum Development Obligation / Essential Facilities within a period of 30 months (two and a half) years from the Compliance Date, which may be extended with the approval of Concessioneing Authority under the provisions of the Concession Agreement.

Annexure 2

DEVELOPMENT CONTROL

The development of project site shall be in accordance with the Development Control Regulation as per the S.A.S Nagar Master Plan.

1. Ground Coverage, FAR, Height Controls :

1.1. Building Regulations to be adhered to are given below:

- i. Five Star Hotel cum International Convention & Exhibition Centre will be built on a plot of 10 Acres
- ii. The Land use is Mixed (Hotel/Convention Centre) purpose (as per GMADA Bye-Laws)

1.2. Hotel FAR

- i. The FAR allowed is 2.50 (as per Zoning Plan of GMADA)
- ii. The maximum permissible Ground Coverage is 40% of the Plot Area.

1.2.1. Basement

- i. No restriction on the number of basement and height of basement.
- ii. Extended basement to be allowed after leaving the specified setbacks as per the Control Plan.
- iii. Basement shall not be considered while calculating FAR.

1.3. Setbacks

- i. As per Zoning Plan of sector 62.

1.4. Building Height

- i. The allowed height for the building shall be subjected to Airport Authority Clearance. Concessionaire shall apply to the competent authority for the necessary approvals.

1.5. Type of Building Permitted

- i. International Convention, Exhibition Centre and Five Star Hotel.

1.6. Maximum Commercial Space/area allowed: shall be 10% of the actual constructed area of Five Star Hotel which shall not include the parking area and basement area

1.7. Parking Norms: Concessionaire shall make provision for minimum of 800 ECS car parking, while adhering to the applicable norms

- i. Commercial Facility - 3 ECS per 100 sq mt.
- ii. Hotel Facility - 1 ECS per 100 sq mt
- iii. Banquette facility - 3 ECS per 100 sq mt
- iv. Convention/ Exhibition Facility - 1.5 ECS per 100 sq mt

Note: The one ECS shall be counted as below:-

- a. 23 Sq.mts for open parking.
 - b. 28 Sq.mts for parking in the stilts or ground floor.
 - c. 32 Sq.mts for parking in the basement
- Standalone Parking
- v. For Multilevel Parking the building area will not be counted towards the FAR calculation, but will be counted in the Ground Coverage calculation.
- 1.8.** Entries /Exits for Hotel/Convention /Commercial/ Service Area.
- i. The main entrance for the project shall be given from sector dividing road through service road. Other entrances shall be as per the zoning plan of sector -62.

Note: Refer Zoning Plan / GMADA Building Bye – Laws / National Building Code Bye – Laws for details.

Annexure 3

SPECIFICATION AND STANDARDS

1. Preamble:

The following specifications and standards cover only some of the minimum requirements for the development. The Developer shall design, finance, construct, operate, maintain and manage the proposed International Convention cum Exhibition Centre and Five Star Hotel and allied facilities strictly conforming to the relevant Indian standards, the best industry practices and internationally acceptable norms. Whether the requirements are explicitly stated or not in the RFP documents, the Bidders must note that GMADA envisages a world class facility in all respects and expects a truly international quality and standards from the selected Developer, as the binding contractual obligation.

2. Site Development related specifications:

- i. The developer should provide landscaping, internal road network and parking areas within the site.
- ii. The internal paving to be a combination of black top road, concrete paving blocks, interlocking paving blocks, landscaped garden and green areas
- iii. All internal roads for vehicular traffic should be at least 6 m wide two lane and 4 mt wide single lane.
- iv. Rain / storm water shall be drained with a network of Reinforced Cement Concrete (RCC) drains
- v. The internal road network and parking area should be designed and built in such a way that the vehicles destined to the proposed International Convention & Exhibition Centre (ICE) are not parked on the public roads leading to the International Convention & Exhibition Centre (ICE).

3. Civil and Structural Requirements

- i. The buildings shall be designed in accordance with the latest Indian Standard Codes and shall be designed to resist wind and seismic forces.
- ii. RCC structures shall be designed as per IS 456: 2000
- iii. Steel structures shall be designed in accordance with the provisions of IS 800:1984. Structural steel shall conform to IS 2062:2006. Tubular sections would conform to IS - 4923. Structural joints shall conform to IS 4000:1992.
- iv. Developer is advised to carry out its own tests and investigations related to soil condition, strata, bearing capacity and other characteristics.

4. Multi-purpose/ Plenary Hall Specifications:

(i) Retractable Seating

Retractable seating if required shall be provided in the Multi-Purpose Conference Hall of 1000 capacity. The minimum specifications for retractable seating are as follows:

- (a) Power Assist for System Operations
- (b) Semi-Automatic for Chair operation

The provision shall be made in accordance with relevant standards for building, materials and fire safety.

(ii) Equipment and Audio Visual System

(a) Provision for Simultaneous Interpretation Systems (SIS) shall be made in the Multi-Purpose Conference Hall of seating capacity of 1000 delegates. Minimum requirements for SIS are an interpreter's control unit, and 1 tabletop transmitter per target language, 1 receiver and headphone, or headset per participant. The booths can either be fixed or mobile. Provision shall be made for upto 6 language interpretation booths with 1000 Nos. (minimum) of Wireless IR Receivers with headphones for reception of simultaneous language interpretation. The equipments can be radio or infrared frequency equipment. The developer shall comply with the relevant international standards for all the equipments. *Table 1* provides a list of equipment.

Table 1

Interpretation Equipment: Hi-Tech Conference Room

| | |
|---------------------------------------|---|
| Interpreter's Control Unit | |
| | Interpreters Headphones |
| | Microphones |
| | Amplifiers |
| | Control consoles |
| | Fixed/ Mobile Booth |
| | Risers, Video Monitors, and other equipment |
| Equipment for the Participants | |

| | |
|--|---|
| | 1 top transmitter per target language |
| | 1 Receiver and headphone or Headset per participant |

- (b) Sound Reinforcement system for the entire hall suitable for Speech / Light music, seminars, lectures, presentations etc.
- (c) Rear projection Screens & LCD Projector for detailed presentations of all formats of video from presentations to motion picture.
- (d) Auto dome CCD Cameras for capturing live video of the stage proceedings and project on the main screen display.
- (e) Video Distribution of the proceedings of the Hall to the entire Convention Centre through various Plasmas & TV placed at selected locations / rooms.
- (f) State-of-art Digital Congress Network, equipped with Chairman and Delegate microphone units enables conferences and discussion seminars.
- (g) DVD Recorders enable recording & Storage of all the interpreted languages or floor language along with video directly on the DVDRs.
- (h) Wired microphones for Podium or stage applications.
- (i) Upto 10 Wireless microphones, either handheld tie-clip for wire-free application of microphone source.
- (j) 16 Channel Microphone mixing console to manage various I/P sources from the control room.
- (k) DVD Players, VCRs, Music Sources.
- (l) Provisions for Inputs from various I/O devices like laptops, documents cameras, slide projectors, etc. through the interface plates in the floor boxes.
- (m) Provisions for various inputs / Outputs from above the truss for more LCD Projectors, motorized screens etc. through interface modules placed above the bars.
- (n) Touch Screen control / monitoring of the AV equipment in the entire convention hall enable the use of multiple equipment at the touch of a single button
- (o) Ceiling Speaker (Rated power-100W, 650x400x322mm, wt: 24KG)

5. Exhibition Hall Specifications:

(i) Floor Loading

The Floor Loading should be 20,000 kg per square meter.

(ii) Operable Walls

The larger halls should be able to be partitioned into smaller single independent halls by operable walls.

(iii) Telephone/ Data-lines

(a) One to four extensions per service pit, with over 100 available in total per hall, accessed by service pits on a 6 meter x 6 meter (20 feet x 20 feet grid).

(b) Four outlets per pit on a 6 meter x 6 meter (20 feet x 20 feet) grid.

(c) Single-mode and multi-mode fiber backbone to BD/FD.

(iv) Power

Maximum load should be 1000 amps 3 phase. There should be electrical service pits per hall on a 6 meter x 6 meter grid. Each electrical service pit should have one (1) 32 amp 3 phase neutral and earth switch plug socket. Each hall should have access to one (1) 300 amp and five (5) 125 amp 3 phase neutral and earth linked boxes for electrical load exceeding the service pit outlets capacity. All pits should be linked by a 50 mm conduit in the slab. Service Pit Covers in Halls and the corridors shall be made of metal plate in accordance with safety standards.

6. Acoustics:

(i) The partition between two meeting halls should have a Sound Transmission Coefficient (STC) of 70 dB measured with dual-channel spectrum analyzers as per ISO 140.

(ii) The ideal reverberation time should be around 1.25 seconds in unoccupied state, measured as per ISO 3382.

7. Hotel:

The Hotel shall be provided with all the facilities and amenities in the Five Star category.

8. Exit Facilities in Hotel & ICC:

(i) Door widths shall not be less than 2 mts wide, or

(ii) Sufficient number and locations of exits shall be provided for the total capacity as per the NBC.

9. Air Conditioning:

The International Convention cum Exhibition Centre and Five Star Hotel and other components shall be provided with Air-Conditioning as per the relevant standards and specifications of NBC, BIS and other recognised international standards.

10. Support Facilities for Hotel & ICEC:

The support facilities for international standard Hotels and Convention centres such as the International Convention & Exhibition Centre cum Five Star Hotel at Mohali and others are provided in the feasibility report. These can be used as benchmarks to international standards wherever relevant. However, appropriate provisions in line with the national standards like NBC, BIS, recognized International Standards and the best Industry Practices will have to be made by the Developer based on detailed architectural & structural designs.

11. Signages in Hotel & ICC:

The Developer shall provide signages so as to facilitate necessary information to the visitors regarding amenities and their location. The signage would be provided separately;

- (i) Information Signs,
- (ii) Facility Signs, and
- (iii) Other Signs

12. Parking Area:

- (i) Minimum of 800 ECS have to be provided by the concessionaire
- (ii) Provision of Car parking (in covered/ open/basement), (Conventional / Mechanical) shall be made, as per Local Bye-Laws.
- (iii) The Minimum bay dimensions per car space shall be 5.2 m long and 3.25 m wide for basement parking and above ground parking facilities.
- (iv) Minimum carriageway of pavement for circulation space within parking facilities shall be 4 m if one way and 6m if two way.
- (v) All parking spaces shall be paved to withstand vehicle loads and forces due to frequent acceleration and deceleration of vehicles. Parking bays/lots shall have proper cross slope and drainage. They shall be marked with paint as per Indian Standards to demarcate parking and circulation space.

13. Commercial spaces/area : Concessionaire may also develop commercial space as approved under the project.

14. Supporting Facilities and Amenities:

The developer shall provide all the necessary supporting facilities and amenities conforming to the development controls and meeting the relevant Indian and international standards.

15. Fire fighting Facilities:

The Developer shall provide the required fire fighting equipment and facilities including fire exits, fire proof doors, etc conforming to the relevant standards and the applicable rules and regulations.

16. Facilities for Physically Challenged Persons:

The Developer shall provide all the necessary facilities to the entry/ exit, seating and movement of physically challenged persons including wheel chairs, ramps, specially designed seats, toilets, etc in the centre

Annexure 4**MAINTENANCE AND PERFORMANCE STANDARDS****1. Preamble:**

The following maintenance and performance standards cover only some of the minimum requirements for operation. The Developer shall operate, maintain and manage the proposed International Convention cum Exhibition Centre and Five Star Hotel at Mohali and allied facilities strictly conforming to the relevant Indian standards, the best industry practices and internationally acceptable norms. Whether the requirements are explicitly stated or not in the RFP documents, the Bidders must note GMADA envisages and expects a truly international quality and standard facility in all respects from the selected Developer, as the binding contractual obligation.

2. General:

During the period of operation, the Developer shall maintain all the facilities in accordance with performance standards and maintenance requirements, as mentioned below:

- (i) Perform maintenance on a routine and periodic basis.
- (ii) Provide functional facilities that (a) meet the Hotel & ICC requirements; (b) have an environmentally acceptable atmosphere for users of the facility; (c) ensure safety and security of VVIPs; (d) ensure the safety of the visitors; and, (e) maintain a good environment in the site conducive to all tourism and leisure facilities.
- (iii) Identify potential problems early within the context of the planned maintenance system so that corrective action may be planned and completed in a timely manner.
- (iv) Establish a maintenance list for planned operation and maintenance. Follow an orderly program so that maximum operational efficiency is attained.

3. Maintenance Works:

- (i) The Developer shall perform routine and periodic maintenance activities for the project infrastructure viz, civil, mechanical and electrical works and equipment, furniture for meeting the specified performance standards as per *Table 1* below.

Table 1

Maintenance Requirement

| Description | Required Level | Facility/ Equipment |
|--|---|--|
| Power Supply, Electrical Installations, Electrical | Standby power arrangements shall be made for necessary project facilities like Hotel Convention & Exhibition Center, etc. | Standby power supply by DG sets shall be ready to be operated and should be available 24 hours |

| Description | Required Level | Facility/ Equipment |
|---|---|--|
| Equipments | No loose, open, un-insulated wiring any of the areas. Switch Boards, Electric meters are enclosed in boxes and access to authorized persons only. | |
| Natural and Mechanical Ventilation and Illumination | Shall meet the required Illumination level as specified in the IS Code and NBC. Shall meet the required Ventilation level as specified in the IS Code and NBC. | Any disruption to mechanical ventilation, if provided, shall be rectified within 24 hours. Arrangements for natural ventilation like skylights ventilators, shafts etc. shall be cleaned after every 5 days. |

(ii) Maintenance of Circulation Areas of International Convention, Exhibition Center ,Hotel & Commercial area / Spaces, etc.: Circulation Area maintenance shall include the entire house keeping activities requiring routine and periodic maintenance. Annual maintenance shall be done for accessories like fans, lighting arrangements etc in these areas.

4. Performance Standards: Intent:

- (i) The performance levels define the level at which the proposed facilities are to be maintained and operated. Performance standards are defined for operation and maintenance of the facilities and the site environment.
- (ii) The obligations of the Operator in respect of Maintenance requirements shall include:
 - a) maintaining site environment so as to cause minimum disturbance to the environment,
 - b) ensure that the facilities are operational and rectification of the defects and deficiencies within the minimum time,
 - c) ensure that the fixed parameters provided in this RFP are abided by at any time during the Concession period,
- (iii) Notwithstanding anything contrary to specified in this schedule, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Operator shall be entitled to additional time in conformity with good industry practice. However the Operator shall get prior approval from the Independent Engineer, for such additional requirements of time.

- (iv) Notwithstanding anything to the contrary contained in this schedule, if any defect, deficiency or deterioration in the project poses danger to the life and property of the users thereof, the Developer shall promptly take all reasonable measures for eliminating or minimizing such danger.

5. Routine Maintenance Performance Standards:

Table 2

Performance Standards for Routine Maintenance

| Sl. No | Serviceability Indicator | Required Maintenance Level | Permissible Time Limit for repairs/rectifications |
|--------|---|----------------------------|---|
| A | International Convention & Exhibition Centre cum Five Star Hotel | | |
| 1. | Power Supply, Electrical Installations, Electrical Equipments shall be functional | Nil | Any disruption in power supply shall be rectified in six hours. Standby power supply by DG sets shall be ready to be operated and should be available 24 hours |
| 2. | Natural and Mechanical Ventilation and Illumination for multi storey parking, if any, shall be functional | Nil | Any disruption to mechanical ventilation if provided shall be rectified within 24 hours. Sky- lits, ventilators, shafts etc shall be cleaned after every 5 days |
| 3. | Boundary Wall shall be without any Damage / Breach | Nil | Any damage / breach to the boundary wall shall be rectified within three (3) days after their detection. |
| 4. | There shall be no standing water on pavement surface, no water logging in the centre | Nil | Immediate measures to be taken and water logging should be cleared within four hours. |
| B | Commercial Space | | |

| Sl. No | Serviceability Indicator | Required Maintenance Level | Permissible Time Limit for repairs/rectifications |
|--------|---|---|--|
| 5. | All Toilets, Urinals, bathrooms shall be clean and functional | A minimum of 95% toilets and urinals shall be functional at any given point of time. | Toilets, Urinals, bathrooms shall be demarked with suitable sign boards. These should be kept clean and hygienic and cleaning shall be done at least twice daily. |
| 6. | All drinking water chambers shall be clean and functional | A minimum of 95% drinking water chambers shall be functional at any given point of time | These shall be cleaned daily. Water supply shall be for 24 hours. Drinking water quality in all the seasons shall be as per WHO standards. |
| 7. | Dustbins, spittoons etc. shall be clean and functional | A minimum of 95% Dustbins, spittoons shall be functional at any given point of time | The dustbin shall be emptied after every six hours or earlier if it is full or if creates foul smell in the neighborhood. |
| 8. | All Information Signage and Display Boards shall be visible, legible and functional | Maximum 2% number of damaged signage and boards at any given point of time | These shall be cleaned once in a week. Damaged signage and boards shall be replaced, repaired within seven days of their detection |
| 9. | Seating Arrangements shall not be damaged | Maximum 5% number of damaged seats at any given point of time | Any damaged seat shall be repaired, replaced within seven days of detection. These shall be cleaned daily and checked that they are firmly fixed/grouted to the platform with the base. |
| 10. | Power Supply, Electrical Installations, Electrical Equipments shall be functional | Nil | Timely intervention with Temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required as decided by the Independent Engineer |

| Sl. No | Serviceability Indicator | Required Maintenance Level | Permissible Time Limit for repairs/rectifications |
|--------|--|---|--|
| 11. | Staircases shall be clean and functional | Nil | The staircases shall be cleaned at least twice a day. Damaged handrails, risers or treads shall be repaired within three days after detection. |
| 12. | Illumination (Lighting) shall be functional | To meet the required illumination level as per national standards | The ventilators, sky-lights, etc serving as source of natural ventilation and other luminaries for artificial lighting shall be cleaned once in seven days to maintain the illumination level. |
| C | Buildings such as Offices/ Administration, etc | | |
| 13. | Defects in Electricity gadgetry like bulbs/ lamp shades/ wiring/ etc | Nil | Temporary measures within 4 hours, permanent restoration within 7 days |
| 14. | Defects in all other utilities like water supply/tap/tap connections/pipe/sewage and drainage pipes, tanks & overflow, glasses/ window panes/ all other building furniture | Nil | Timely intervention with Temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required. |
| E | Telecom system/networking | | |
| 15. | Telecommunication and Networking Systems shall be functional | Nil | Temporary measures within 8 hours, and permanent restoration within 3 days |
| G | Fire Fighting Equipments | | |

| Sl. No | Serviceability Indicator | Required Maintenance Level | Permissible Time Limit for repairs/rectifications |
|--------|--|----------------------------|---|
| 16. | Fire Fighting Equipments shall be functional | Nil | Any damage to fire fighting equipments installed in the facilities and in public spaces shall be rectified within 2 days of detection. Fire extinguishers shall be replaced before the end of its expiry date. The water tank meant for fire fighting purpose shall remain flooded with water to its capacity at all the times. |
| H | Water Tank | | |
| 17. | Water Tank shall be clean and functional | Nil | Water tank shall be cleaned and disinfected every month (by usage of approved chemicals) to ensure that no inorganic sedimentation takes place. |

6. Periodic Maintenance Performance Standards:

In order to maintain the quality and operational standards of high quality, the periodic maintenance/renewal activities are proposed for the Project in *Table 3*.

Table 3
Periodic Maintenance/ Renewal Activities

| Sl. | Periodic Renewal Activities | Time Limit for renewal |
|-----|--|-----------------------------|
| 1 | Repainting of furniture, signages delineators, markings etc. | Minimum once in a year |
| 2 | Repainting of Buildings and all other structures. | Minimum once in three years |
| 3 | Repainting of carpentry work like | Minimum once in three years |

| Sl. | Periodic Renewal Activities | Time Limit for renewal |
|-----|--|---|
| | joinery, doors, windows, ventilators, wooden furniture etc in the offices, cabins, booths etc. | |
| 4 | Resurfacing of Pavement | Routine repairs every year and pre-mix carpet every fourth year. In case the pavement is of Rigid type, no periodic renewal would be required except cleaning & filling of joints |
| 5 | Mechanical Equipment | Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual |
| 6 | Electrical Equipment | Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual |

7. Performance Standards for Operation:

Table 4
Performance Standards for Operation

| Sl. | Parameters | Performance Indicators |
|-----|--------------------------------|---|
| 1. | Convention & Exhibition Center | To remain operational 24 hours a day throughout the year. |
| 2. | Hotel | To remain operational 24 hours a day throughout the year. |
| 3. | Parking Area | To remain operational 24 hours a day throughout the year. |
| 4. | Enquiry Offices | To remain operational 16 hours a day throughout the year. |
| 5. | Information System, Displays | To remain operational 24 hours a day throughout the year. |
| 6. | Toilets | To remain operational 24 hours a day throughout the year. |
| 7. | Water Supply | To remain operational 24 hours a day throughout the year. |

| | | |
|-----|--|---|
| 8. | Electricity Supply | To remain operational 24 hours a day throughout the year . |
| 9. | Telecommunication and Networking Equipment | To remain operational 24 hours a day throughout the year. |
| 10. | Standby Diesel Generator Sets | Standby diesel generator sets to supply power to the Project facilities must be available 24 hours a day, throughout the year in case of disruption or breakdown in power supply. |
| 11. | Maintenance Office | This shall remain open for 16 hours a day and throughout the year. |
| 12. | Security | To remain functional 24 hours a day throughout the year Appropriate fencing of the site with lighting and security shall be provided to ensure that there will be no encroachment on the site. |

Annexure 5

Project Site Map

The Site is designated for Mixed (Hotel / Convention Centre) use under the Development Control Regulation, SAS Master Plan. The total area proposed for the site is 10 Acres with 2.50 FAR and 40 % Ground Coverage for project Site. (Refer Schedule L for Project Site map)

Annexure 6:

**GOVERNMENT OF PUNJAB
DEPARTMENT OF INDUSTRIES & COMMERCE**

NOTIFICATION

No.CC/JDP/EC/CM/1086

Dated: 9-3-2005

Whereas, with a view to consider and determine a Special Package of Incentives for Mega Projects under Clause 11.1 of Industrial Policy 2003 an Empowered Committee was constituted in Annexure V of the said Policy notified vide No. 5/58/2002/IIB/968 dated 26-3-2003.

Whereas, now with a view to amend the terms of reference of the Committee, the Governor of Punjab is pleased to notify the said Committee at Annexure V of Industrial Policy 2003 as under in super session to the earlier Annexure V of the Industrial Policy, 2003.

1. Composition

| | |
|---|------------------|
| Chief Minister, Punjab | Chairperson |
| Industries & Commerce Minister | Vice Chairperson |
| Finance Minister | |
| Excise & Taxation Minister | |
| Minister of State for Industries & Commerce | |
| Chief Secretary | |
| Principal Secretary, Finance | |
| Principal Secretary, Industries & Commerce | Convener |

2. Any other Minister or Administrative Secretary whose department is concerned with the proposal under consideration shall be associated with the committee in its detailed deliberations.
3. The Committee will consider and determine a Special Package of Incentives as well as facilitation by way of relaxation of Rules & Regulations and provision of Legal, Institutional and financial dispensation for new as well as existing Industrial units undertaking expansion.

4. The limit of Fixed Capital Investment by a unit for eligibility of Special Package shall be Rs. 100 crore and above. This limit will be Rs. 25 crore for Border districts.
5. The Minister for Tourism & Cultural Affairs and Principal Secretary Tourism & Cultural Affairs will be co-opted as Members of the committee for consideration of projects relating to Tourism / Hotel. The eligibility for special package for such new projects will be investment over and above Rs. 5 crore.
6. No formal examination of proposals put up to the Committee will be necessary either in the Administrative Department or in the Finance Department and decisions of the committee would be conveyed to the concerned departments. All decisions taken by the Committee shall be considered Directives of the Government.

S.C. Agrawal

Principal Secretary

Industries & Commerce, Punjab

Dated : 1st March 2005

POLICY FOR MEGA PROJECTS

CONDITIONS & CONCESSIONS FOR MEGA HOTEL PROJECTS

1. Conditions at the time of Submission of Project

- (i) Fixed Capital Investment should be Rs.10 crore excluding the cost of land.
- (ii) Detail of land on which project is to be set up will be given by the applicant. However, the location will comply to local byelaws.

2. Conditions of LOI after fulfilment of which Agreement is to be signed.

- (i) In principle approval of the financial institution / bank for funding the project may be given. In case the project is to be financed by own funds, the details of the same may be given.
- (ii) Proof of ownership of land or Development Agreement with owner of land in the name of the applicant company may be given.

3. Time Period

The Project will have to be implemented in 3 years from the date of signing of agreement by the Company with State Government, unless otherwise extended by the Government for a further period not exceeding one year for reasons to be recorded in writing.

4. Concessions

(a) Fiscal

(i) Exemption from electricity duty upto 5% for a period of 5 years from the date of release of connection by PSEB for the project of Hotel.

(b) Non-Fiscal

(i) FAR of 3, ground coverage of 50% and height upto 45 mtrs. subject to Air Safety Regulation, Traffic Circulation, Fire Safety norms and parking norms as per applicable byelaws. Atrium area to be counted once at ground floor level for the purpose of FAR.

(ii) Relaxation under Shops & Commercial Establishment Act by the Labour Department to permit 24 hour operation.

5. Conditions for Grant of Concessions

(i) Change of land use will be allowed by the Department of Housing & Urban Development in accordance with the periphery policy or any other policy formulated by the State Government on the payment of Change of Land Use charges fixed under the policy. Licence fees and External Development Charges will be levied as applicable.

(ii) If Hotel is part of a Multiplex, coming up on Industrial Land allotted by a Government Agency, then the Promoter will obtain conversion from the Department of Industries as per the policy framed and issued by the Department of Industries on 4.3.2005, amended from time to time on the payment of charges fixed by the Department of Housing & Urban Development.

APPLICATION FOR APPROVAL OF MEGA PROJECTS

1. Name of applicant
2. Full Address and Telephone Numbers including Mobile Phone
3. Whether applicant is public / private / Proprietorship Company / firm (Please attach proof).

4. Background & Experience of Applicant (attach details)
5. Proposed project
(Manufacturing/Multiplex/Industrial Park/Hotel/ Agri/Housing)
6. In case of manufacturing and Agri, whether new or expansion
7. Location of the project
8. Proposed Fixed Capital Investment
 - (i) Land
 - (ii) Building
 - (iii) Plants & Machinery
9. Means of Finance
10. Employment likely to be generated
11. Implementation schedule
12. Project Synopsis (To be attached)
13. Name and complete address of the person to be contacted with land line and Mobile Phones.
14. Details of concessions sought
15. a) Whether any equity participation / term loan has been availed for any earlier units of the applicant from PSIDC/PFC.
b) If so, is there any default in buyback/repayment, Give details, thereof.
15. Any other information

(Name and Signature of Applicant)

Note: Number of copies to be submitted

- | | | | |
|-------|---------------------------------|---|-----------|
| (i) | Manufacturing Projects/ Agri | | 7 copies |
| (ii) | Multiplex/Hotel/Industrial Park | - | 15 copies |
| (iii) | Housing Projects | - | 15 copies |

Section 2

INFORMATION & INSTRUCTIONS TO BIDDER (ITB)

I. General Conditions

1. **Background:**

(a) Punjab Infrastructure Development Board (PIDB) through IL&FS IDC, on behalf of Greater Mohali Area Development Authority (GMADA) invites proposals from all interested Bidders for developing International Convention cum Exhibition Center and Five Star Hotel (“the Project”) at Sector – 62, Mohali. It is envisaged that the Project would be developed on a Design – Build – Operate – Transfer (D.B.O.T) basis.

2. **Bidding Process:**

- (a) The bidding for the project would be completed in single stage where proposals from the interested bidders will be called through Notice Inviting Tender (NIT).
- (b) First the evaluation of Technical Proposals submitted by the bidders will be done based on the criteria mentioned in the Notice Inviting Tender. Qualified bidders will be further evaluated for Financial Proposal as per the criteria for evaluation of Financial Proposal mentioned in the RFP.
- (c) PIDB on its part is ensuring that the terms and conditions for the bidding process for the Project are followed and applied uniformly to all interested parties in a non-discriminatory, transparent and objective manner. PIDB or its authorized agency shall not provide to any interested party, any such information with regard to the Project or bidding process, which may have the effect of restricting competition.

3. **Bidding Parameter:**

Refer to Proposal Data Sheet.

4. **Scope of Project:**

Refer to Schedule A of Section 5 of RFP document.

5. **Eligible/Preferred Bidders:**

Bidders fulfilling the qualification criteria set out in Clause I-7 of this section of RFP will be the Eligible Bidders provided the Bidder is not under a declaration of ineligibility for corrupt or fraudulent practice in accordance with Clause VI-5 of this section of RFP.

6. Additional Requirement for Proposals Submitted by a Consortium:

- a. Interested parties, with no experience in hospitality sector shall be required to form a Consortium/ Joint Venture/tie-up with a National / International Hotel Chain.
- b. Interested parties that comprise of an unincorporated Joint Venture, Partnership, or a Consortium shall nominate a lead member or a lead partner to represent the Bidder. The maximum number of members/partners in a Consortium, Partnership or Joint Venture is limited to three (3).
- c. The bidder shall furnish the Power of Attorney duly signed by authorized representatives of the members of Consortium designating the bidder as a Lead Member.
- d. The proposal shall be signed by the duly authorized signatory of the Lead Member and shall be legally binding on all members of the Consortium.
- e. The Members of Consortium shall submit a Memorandum of Understanding (MoU) along with the proposal. The MoU shall interalia:
 - i. Convey the intent to form a Special Purpose Company with shareholding commitment(s) explicitly stated. The SPC shall be incorporated in line with the terms mentioned in Clause I 6 (d) of this section.
 - ii. Communicate the willingness of the Consortium to subsequently carry out all the responsibilities as Developer in terms of the Concession Agreement, in case the Concession to undertake the Project is awarded to the Consortium.
 - iii. Clearly outline the proposed roles and responsibilities of each member.
 - iv. Include that all members of the Consortium shall be liable jointly and severally for execution of the Project in accordance with the terms of the Concession Agreement.
- f. Wherever required, the proposal shall contain information required for each member of the Consortium.

7. **Eligibility Criteria:**

The eligibility criteria for the bidders are as under:

- i. The eligible criteria for the bidders provided the Bidder is not under a declaration of ineligibility for corrupt or fraudulent practice in accordance with Clause VI-5 of Section 2 of RFP shall be as follows:

Eligibility Criteria:-

Interested International / National Independent Legal entities including Joint Ventures, Consortium etc. meeting the following criteria may submit there proposal:

A. Technical Criteria

- 1) International chain of Hotels having experience in running of at least two (2) hotels with rating of Five Star or above, which are operational outside India;

OR

- 2) National chain of Hotels having experience in running of at least 3 hotels with rating of Five Star or above, which are operational in within India;

OR

- 3) Experience in Development of one (completed) Shopping Mall / Multiplex /Hotel having a built-up area of not less than 4 lakh sq ft. **OR** two such projects having built up area not less than 2.5 lakh sq ft. each. However, such Bidder(s) will be required to have a tie-up later, with an International/National Five Star or above Hotel chain as per the criteria stated above, within six (6) months of signing of Agreement.

B. Financial Criteria

Minimum Net worth of Rs 100 Crores as on March 31, 2010

C. High Net worth / Real Estate Infrastructure Fund / Core Infrastructure Criteria:

- 1) Prospective Bidder(s) having Net Worth of Rs. 1000 Crores & above as on March 31, 2010 will be exempted from the technical experience criteria mentioned above.

OR

- 2) Real Estate Infrastructure Funds having Assets under Management (AUM) of Rs.2000 Crores and more as on March 31, 2010 will be exempted from the technical experience criteria mentioned above.

OR

- 3) **Core infrastructure companies** with Networth of more than Rs 500 Crores as on March 31,2010 will be exempted from the technical experience criteria mentioned above

“Core Sector” would be deemed to include road, power, telecom, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, dams & bridges

However, such Bidder(s) applying through High net worth/Real Estate Fund/Core Infrastructure Companies will have to tie-up with International/National Chain of Five Star Hotels, within six (6) months of signing of agreement.

8. Special Purpose Company:

- i. The Selected Bidder will be required to incorporate a Special Purpose Company (SPC) in the form of a company under the Companies Act, 1956 for implementing the Project. The equity holding of the Consortium members or the partners in the special purpose Company would be in the same proportion as outlined in the proposal of the selected bidder.
- ii. In case the special purpose Company incorporated as a company, the aggregate equity component of the Concessionaire or Lead Member of the Consortium in the issued and paid up equity share capital shall not be less than (a) 51% for construction period and 26% for rest of the Term of Agreement, unless otherwise approved in writing (prior approval) by the GMADA.
- iii. The Successful Bidder, if it is a Subsidiary of a Holding / Parent Company or part of an SPC, it shall be required to furnish a Letter of Guarantee from its Holding / Parent Company (including a Board Resolution of such Holding / Parent Company) pledging such Holding / Parent Company's irrevocable Financial strength and Technical support to its Subsidiary (in case of SPC - in proportion to its Subsidiary's holding in the SPC), at all times during the currency of the Concession Agreement, and even after its termination for any of the acts and liabilities of its Subsidiary prior to termination.

9. Proposal Preparation Cost:

- i. Each interested party shall be responsible for bearing all the costs and expenses associated with the preparation of its proposal and its participation in the bidding process. PIDB shall not be responsible, or in

any way liable for such costs/expenses, regardless of the conduct or outcome of the bidding process.

10. Project Inspection and Site Visit:

- i. The Bidder, at the Bidder's own responsibility and risk can visit, and examine the Project Site and its surroundings, and obtain all information that may be necessary for preparing the proposal. The costs of visiting the site shall be borne by the Bidder. PIDB shall not be liable for such costs, regardless of the outcome of the Bidding process.

11. Prohibition against collusion amongst bidder(s):

- i. Each Bidder shall warrant by its Proposal that the contents of its Proposal have been arrived at independently. Any Proposal which have been arrived at, through connivance or collusion or pooling amongst two or more interested parties for the purpose of restricting competition shall be deemed to be invalid and the concerned Bidder(s) shall lose its/their Proposal Security, at PIDB's sole discretion. The format for Anti-Collusion Certificate has been provided in Form 8 of Section 3 of the RFP document.

12. Communication Between eligible bidders and PIDB through IL&FS IDC:

- i. IL&FS IDC shall communicate with interested parties on behalf of PIDB, in the context of the RFP document and related issues, unless specified otherwise. The same shall be addressed to:

Asst Vice President

IL&FS Infrastructure Development Corporation Limited

SCO 210-211, Sector 34-A

Chandigarh 160019

Email: iidc.chd@ilfsindia.com

Telephone No: 0172-4636389

Fax No: 0172- 4621388

II. Proposal Document

1. Contents of RFP:

The RFP document consists of following Sections and would include any addenda issued:

- Section 1: Project Information Memorandum
- Section 2: Information & Instructions to the Bidder
- Section 3: Proposal Formats
- Section 4: Concession Agreement
- Section 5: Schedules to the Concession Agreement

2. Clarification on RFP:

- i. A prospective Bidder requiring any clarification on the RFP document may notify PIDB in writing or facsimile. Bidder should send in their queries at least 7 days prior to Pre Proposal Conference.
- ii. Copies of the PIDB response will be forwarded to all prospective bidders, including a description of the enquiry but without identifying its source.

3. Amendment of RFP Document:

- i. On the basis of the inputs provided by Bidders during Pre-Proposal Conference and any further discussions with any/all interested parties, which PIDB may hold at its own discretion, PIDB may amend the RFP document. Such amendments shall be intimated in writing by PIDB which will qualify as an “**Addendum**”.
- ii. At any time prior to the deadline for submission of Proposals, PIDB may, for any reason, whether at its own initiative or in response to clarifications requested by one or more of the interested parties, modify the RFP document by way of issuance of an “Addendum”.
- iii. The Addendum will be sent in writing to all the interested parties, who have returned the Acknowledgment of RFP document and Notification of Intent to Bid and will be binding on them. Each such Addendum shall become part of the RFP document. The interested parties shall promptly acknowledge receipt thereof to PIDB.
- iv. Any/All Addendum would be issued at least 14 days prior to Proposal Due Date

4. Bidder's Responsibilities:

- i. The Bidder is expected to examine carefully the contents of all the documents provided. Failure to comply with the requirements of RFP will be at the Bidder's own risk.
- ii. It would be deemed that prior to the submission of the Proposal, the Bidder has:
 - (i) Made a complete and careful examination of requirements and other information set forth in the RFP document.
 - (ii) Examined all the relevant information as it has received from PIDB, in respect of the project.
 - (iii) Made a complete and careful examination to determine the difficulties and matters incidental to the performance of its obligations under the Concession Agreement, including but not limited to:
 - The Project Site,
 - Applicable Development Controls etc
 - All other matters that might affect its performance under the Concession Agreement.
- iii. PIDB shall not be liable for any mistakes or errors or neglect by the bidder in respect of above.

5. Other Conditions of Bidding Process:

- i. PIDB reserves the right to contact the Bidder(s), their bankers, their consultants, former clients of the bidder(s) and other such sources for verifying the information, references and data submitted by the bidder(s) in the proposal, without further reference to the Bidder(s).
- ii. Failure by the Bidder(s) to provide all requisite information in the Proposal or additional information required by PIDB, shall be at the Bidders' sole risk and cost and may impact evaluation of the Technical Proposal and/or Financial Proposal.
- iii. PIDB can disqualify any Bidder from bidding process for the following reasons:
 - (i) Failure to submit the requisite information (including any additional information requested by PIDB) and supporting documents within required timeframe.

- (ii) Material inconsistencies in the information submitted.
- (iii) Willful misrepresentation in any document provided by the Bidder.
- (iv) If a particular bidder or entity submits more than one proposal either independently or as part of different Consortium, Joint Venture, partnership firm etc.

III. Preparation of Proposal

1. Language of the Proposal:

- i. The Proposal and related documents to the Proposal and all correspondence exchanged between Bidder(s) and PIDB shall be written in the English. Supporting documents and printed literature furnished by the Bidder(s) may be in another language provided they are accompanied with accurate translation of the relevant passages in the English language. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the application, the English language translation shall prevail.

2. Currency of Proposal and Payment:

- i. The currency for the purpose of the RFP shall be Indian Rupees (INR).
- ii. Conversion rate of US\$ into Indian Rupee shall be taken as Rs 48 per dollar.

3. Proposal Security:

- i. The Proposal shall be accompanied by a Proposal Security in Indian Rupees for an amount specified in Proposal Data Sheet. The proposal security shall be the form of bank guarantee from a scheduled bank drawn in favour of "Punjab Infrastructure Development Board (PIDB)", payable at Chandigarh.

- ii. The Proposal Security shall be kept valid through the Proposal Validity Period. Upon any extension of the Proposal Validity Period, the validity of the Proposal Security shall be extended by the Bidder(s) by a corresponding period. Any extension of the validity of the Proposal Security shall be provided to PIDB, a minimum of seven calendar days prior to the expiry of the validity of the Proposal Security being extended. PIDB reserves the right to reject the proposal submitted by any Bidder(s) who fail to extend the validity of the Proposal Security in line with provisions of the clause.
- iii. Proposal Security of unsuccessful bidder(s) shall be returned by PIDB within a period of sixty (60) days from the date of execution of the Concession Agreement with the Selected Bidder.
- iv. The Proposal Security of the Selected Bidder shall be released on receipt of Performance Security from it in accordance with the provision of Concession Agreement.
- v. PIDB shall reject all such proposals, which do not include the Proposal Security. The Proposal Security of the bidder(s), whose proposals are rejected on the basis of evaluation of the contents of Envelop A in accordance with the provisions of the RFP document, will be returned within a period of thirty (30) days from the date of intimation of the rejection of the proposal by PIDB to the concerned bidder(s).
- vi. In addition to the above, PIDB will promptly release all Proposal Securities in the event PIDB decides to terminate the bidding process for any reason whatsoever.
- vii. The Proposal Security shall be forfeited by PIDB, at its sole discretion in the following cases:
 - (i) The bidder withdraws its proposal after Proposal Due Date and during Proposal Validity Period.
 - (ii) In the case of a Selected Bidder, if it fails to sign the Concession Agreement or furnish the required Performance Security to GMADA , within the time specified in the Notice of Award.
 - (iii) In the case of a Selected Bidder, if it fails to submit the Project Development Fees to PIDB within the time specified in the Notice of Award.
 - (iv) In case the proposal of the bidder, is determined as being “conditional” or “disqualified” in the opinion of PIDB.

4. Proposal Validity Period:

i. The Proposal shall remain valid for a period not less than 180 days from the Proposal Due Date. PIDB reserves the right to reject any Proposal which does not meet the requirement.

ii. **Extension of Proposal Validity Period:** PIDB may request for one or more extensions of the Proposal Validity Period for a total period upto 180 days from the Proposal Due Date. Such request to the bidder(s) shall be made in writing at least fourteen (14) days prior to expiration of the proposal validity period. If any bidder does not agree to the extension, it may withdraw its Proposal without inviting action of forfeiture of its Proposal Security by giving notice in writing to PIDB of its decision prior to the expiration of the Proposal Validity Period. In case PIDB does not receive any written notice of withdrawal prior to expiration of the proposal validity period, the requested extension shall be deemed to be accepted by the Bidders.

iii. The Proposal Validity Period of the Selected Bidder shall be automatically extended till the date on which the Concession Agreement is signed and is in force.

iv. When an extension of the Proposal Validity Period is requested, bidder(s) shall not be permitted to change the terms and conditions of their Proposal(s).

5. Pre-Proposal Conference:

i. A Pre-Proposal Conference shall be held in order to clarify and discuss any provisions or requirements related to the Project, the RFP document or any other related issue with the interested parties. PIDB at its discretion may also hold further discussions with eligible bidders to discuss the technical, legal and financial parameters and other related issues for the Project, before submission of the Proposal by the interested parties.

ii. Attendance of Bidders at the Pre-proposal is not mandatory. However, subsequent to the meeting, PIDB may not respond to the questions or inquiries from any interested party who has not attended the pre-proposal meeting, at its own discretion and not provided the Acknowledgment of RFP document and Notification of Intent to Bid.

- iii. All questions to be raised at the Pre-Proposal Conference should be submitted to PIDB in writing or facsimile at least seven (7) days before the date of the Pre-Proposal meeting and a soft copy of the same shall be emailed at the address listed in Clause I 13(i) of this Section. Inquiries/observations/comments received after the aforesaid time limit may not be addressed during the Pre-Proposal Conference.
- iv. PIDB at its discretion may respond to inquiries submitted by the conference attendees after the date of the Pre-proposal meeting. Such response will be sent in writing to all the interested parties who have returned the Acknowledgment of RFP document and Notification of Intent to Bid and such response will qualify as an “addendum”.

6. Formats and Signing of Proposal:

- i. The interested parties are required to submit their Proposals in accordance with the guidelines set forth in this RFP document. In order to enable consistency among Proposals and to facilitate smooth evaluation by PIDB, the formats in which the interested parties will provide information/data comprising Proposals is given in this RFP document. PIDB reserves the right to evaluate only those proposals that are received in the required format complete in all respects and in line with the instructions contained in this RFP.
- ii. The proposal shall be signed and each page initialed by a person or persons duly authorized to sign on behalf of bidder holding Power of Attorney as per the format provided in the (Form no 6 or 7 as applicable) of Section 3 of the RFP document.

IV. Submission Of Proposals

1. Sealing and Marking of Proposal

- i. The bidders shall prepare and submit:
 - a. One (1) Original and Two (2) Copies of the Technical Proposal in “Envelope A” duly marking “Original” and “Copies” in a separate sealed envelope. The envelope containing the Technical Proposal shall have written on the top:

Envelope 'A': TECHNICAL PROPOSAL for "Development of International Convention cum Exhibition Center and Five Star Hotel, Mohali"

Contents of Envelope-A shall be as follows:

(Technical Proposal in Original + 2 Copies)

- | | |
|------------|---|
| Form 1: | Check List |
| Form 2: | Covering Letter |
| Form 3: | Letter of Undertaking |
| Form 4: | Commitment to pay Project Development Fees |
| Form 5: | Consortium Agreement |
| Form 6: | Power of Attorney by each Member of the Bidder, In the favor of the Lead Member |
| Form 7: | Power of Attorney by Lead Member/Partner in favor of Designated Person (s) |
| Form 8: | Anti Collusion Certificate |
| Form 9: | Information about the Bidder |
| Form 10-A: | Experience in Development and Construction |
| Form 10-B: | Experience in Operations and Maintenance |
| Form 11: | Financial Capability Statement |
| Form 12: | Financial Default Information by Bidder |
| Form 13: | Current Litigation Status |
| Form 14: | Format for Board Resolution for Companies |
| Form 15: | Letter of Undertaking for Technical Proposal |

- b. One (1) Original of the Financial Proposal in “**Envelope B**” duly marking “**Original**” in a separate sealed envelope. The Financial Proposal to be submitted shall also be in separate sealed envelope mentioning:

Envelope ‘B’- FINANCIAL PROPOSAL for “Development of International Convention cum Exhibition Center and Five Star Hotel, Mohali”

Contents of Envelope-B shall be as follows:

(Financial Proposal, Original)

Form 16: Financial Proposal

Envelope ‘C’- PROPOSAL SECURITY for “Development of International Convention & Exhibition Center cum Five Star Hotel, Mohali”

One (1) Original of the Proposal Security in form of Bank Guarantee shall be sealed in a separate envelope mentioning:

Form 17: Bid Security (Bank Guarantee) Format

The aforementioned three envelopes A, B and C shall be sealed in an outer envelope mentioning, “**Not to be opened before [Proposal Due Date]**” and marked as follows:

“Development of International Convention cum Exhibition Center and Five Star Hotel, Mohali” Each of three envelopes shall indicate the complete name, address, telephone numbers (with city code) and facsimile number of the Bidder.

- ii. Each Envelope containing the Proposal shall be addressed to:

Managing Director

Punjab Infrastructure Development Board, PIDB

SCO 33-34-35, Sector 34-A

Chandigarh - 160022

- iii. PIDB reserves the right to reject any Proposal which is not sealed and marked as instructed above and will assume no responsibility for the misplacement or premature opening of the Proposal.

2. Proposal Due Date:

- i. Proposal should be submitted before 1500 hours Indian Standard Time (IST), on Proposal Due Date, as stated in the Schedule of Bidding Process, at the address given in Clause IV 1-iii, in the manner and form as detailed in the RFP Document. The Proposals submitted by facsimile transmission will not be accepted.
- ii. PIDB may at its sole discretion, extend the Proposal Due Date by issuing a communication/addendum uniformly for all Bidders.

3. Late Proposals:

- i. Any Proposal received by PIDB after 1500 hours on the Proposal Due Date will not be accepted.

4. Modifications/Substitution/Withdrawal of Proposals:

- i. A Bidder may modify, substitute or withdraw its Proposal after submission, provided that written notice of the modification, substitution or withdrawal is received by PIDB by the Proposal Due Date. No Proposal shall be modified, substituted or withdrawn by the Bidder after the Proposal Due Date.
- ii. Any Bidder may withdraw its Proposal on or prior to the Proposal Due Date without inviting action for forfeiture of its Proposal Security. Withdrawal by the Bidder of its Proposal after Proposal Due Date shall entitle the PIDB to forfeit the Proposal Security.
- iii. The modification, substitution, or withdrawal notice shall be sealed, marked and delivered in accordance with Clause IV-1, with the envelope being additionally marked "MODIFICATION", "SUBSTITUTION" OR "WITHDRAWAL" as appropriate.

V. Proposal Opening And Evaluation

1. Proposal Opening:

- i. PIDB will open the proposals, including withdrawals, modifications made pursuant to Clause IV-4 in the presence of Bidder's designated representatives who choose to attend, at time, date and location stipulated in Schedule of Bidding Process.
- ii. Envelops marked "Withdrawals" shall be opened first and the name of the Bidders shall be read out. Proposals for which an acceptable notice of withdrawal has been submitted in accordance with Clause IV-4 shall not be opened.
- iii. Subsequently, all envelopes marked "Modifications" shall be opened and submissions therein read out in appropriate detail.
- iv. PIDB reserves the right to open **Envelope B** containing Financial Proposal on the same day, in the event that only one proposal is received by PIDB for the Project.

- v. PIDB would subsequently examine responsiveness of Proposals in accordance with the criteria set out in Clause V-3.

2. Confidentiality:

- i. PIDB shall treat the contents of all Proposals and other documents, information and solutions submitted by the bidders as confidential. PIDB shall take all reasonable precautions to ensure that all persons have access to such materials, maintain confidentiality in respect of the same. PIDB shall not divulge any such information, unless it is directed to do by any authority, which has power to order its release.
- ii. Each person or entity to which this RFP document is issued, shall, whether or not, he/it submits a proposal, treat this RFP, related clarifications, information and solutions provided by PIDB in relation to this Project or bidding process as confidential for a period of co-terminus with the concession period. During this period, the concerned person or entity shall not disclose or utilize in any manner, any such documents, information or solutions, without prior written approval of PIDB, unless he/it is required to do so in pursuance of any applicable law. Intellectual Property contained in this RFP document package is owned by PIDB and shall continue to be owned by PIDB.
- iii. PIDB shall have right to make available the proposal related information provided by the Bidder(s) to its advisors/consultants/project developers etc. for the purpose of availing their assistance in evaluating the Proposals. Each interested party shall have the right to make available this RFP document and related documents/information to its advisors/consultants, and to the concerned financial institutions for the purpose of preparation of its proposal and for achieving Financial Closure. PIDB and interested parties shall ensure that their advisors/consultants and/or financial institutions treat this RFP document and the related information as confidential.
- iv. Any information relating to examination, clarification, evaluation and comparison of Proposals and recommendations for the selection of the Selected Bidder shall not be disclosed to any Bidder or any other person not officially concerned with such process, until Notice of Award has been issued by PIDB.

3. Determination of Responsiveness:

- i. Prior to evaluation of Proposals, PIDB will determine whether each Proposal is substantially responsive to the requirements of the RFP. A Proposal shall be considered responsive if the Proposal:
 - (i) is received by the Proposal Due Date including any extension thereof pursuant to Clause IV-2 of Section 2 of RFP,
 - (ii) is signed sealed and marked as stipulated in Clause III-7 and Clause IV-1 of Section 2 of RFP,
 - (iii) is accompanied by the Power of Attorney in the format specified in Form 6 or 7 as applicable) of Section 3 of the RFP document,
 - (iv) is accompanied by Proposal Security as specified in Clause III-3 of Section 2 of RFP,
 - (v) contains all the information as requested in the RFP,
 - (vi) contains information in format same as those specified in this RFP,
 - (vii) mentions the validity period as set out in Clause III-4 of Section 2 of RFP,
 - (viii) is accompanied by MoU (for Consortium) as stipulated in Clause I 6(e) of Section 2 of RFP.
- ii. A Proposal that is substantially responsive is one that conforms to the preceding requirements without material deviation or reservation. A material deviation or reservation is one which:
 - (i) affects in any substantial way the scope, quality, or performance of the Project, or
 - (ii) limits in any substantial way, inconsistent with the RFP Document, rights of PIDB and GMADA or the obligations of the Bidder under the Concession Agreement, or
 - (iii) would affect unfairly the competitive position of other Bidders presenting substantially responsive bids,
- iii. PIDB reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained in request of such Proposals.

4. Clarifications/ Additional Submissions:

- i. To facilitate evaluation of Proposals, PIDB may at its sole discretion, seek clarifications or additional submission in writing from any Bidder regarding its proposal. Notwithstanding anything contained in the RFP Document, PIDB reserves the right to take into consideration any such clarifications/additional submissions sought by it for evaluation of the Proposal.

5. Evaluation of Proposals:

- i. PIDB will evaluate and compare only the Proposals determined to be substantially responsive in accordance with Clause V-3.
- ii. Only those firms whose qualifications and technical proposals are found substantially responsive to the requirements as specified in this document, will be nominated as qualified bidders for purpose of opening of financial proposals and their evaluation
- iii.

6. Technical Proposal Evaluation:

- i. PIDB will carry out a detailed evaluation of the Proposals previously determined to be substantially responsive in order to determine whether the technical aspects are in accordance with the requirements set forth in the Proposal Documents. In order to reach such a determination, PIDB will examine and compare the technical aspects of the Proposals on the basis of the information supplied by the Bidders, taking into account the following factors:
 - a. Overall, completeness and compliance with the requirements of the GMADA; suitability of the works offered, in relation to the conditions prevailing at the site; and quantity, function and operation of any process control concept included in the Proposal. The Proposal that does not meet minimum acceptable standards of completeness, consistency and detail as required by RFP document will be rejected for non-responsiveness,
 - b. Overall approach as per Technical proposal shall demonstrate that the Bidder will achieve the performance standards specified in this RFP Document.

- ii. Any other relevant factors, if any, listed in the Proposal Data Sheet, or that the “GMADA” deems necessary or prudent to take into consideration.
- iii. The evaluation of Technical Proposal will be on Pass/ Fail basis. The reasonableness and viability of the Technical Proposal would be ascertained based on the following factors:

Letter of Undertaking, as specified in Form 15 of Section 3 of RFP.

Technical Bid Requirements Yes/No

- iv. If the answer to the ‘Compliance’ is ‘No’, the Bid shall be non-qualifying and hence would not be taken up for opening and evaluation of the Price Bid. If answer to the ‘Compliance’ is ‘Yes’, then it will be deemed qualified in the technical proposal and then the Price Bid of the Bidder will be opened and evaluated.

7. Financial Proposal Evaluation:

- i. Evaluation of Financial Proposal shall be based on the bidding parameter as specified in the Proposal Data Sheet.
- ii. The Selected Bidder shall be the Bidder whose Proposal has been determined to be substantially responsive to the RFP and who has offered the, **Highest Annual Concession Fee** payable to the GMADA, provided that such bidder continue to be qualified in accordance with the provisions of this Request for Proposal document.

8. Negotiations:

- i. Negotiations will be held at the address indicated in the Proposal Data Sheet. The aim is to reach agreement on all points and sign Concession Agreement.
- ii. Negotiations will include a discussion of the Technical Proposal, work plan, financials and any other project related matter. The agreed terms of negotiations shall be incorporated and will form part of Concession Agreement.

9. Interpretation of Documents:

- i. PIDB will have the sole discretion in relation to:
 - (ii) the interpretation of this RFP document, the Proposals and any documents provided in support of the Proposals; and
 - (iii) all decisions in relation to the evaluation and ranking of Proposals.

PIDB will have no obligation to explain or justify its interpretation of this RFP document, the Proposal(s) or their supporting/related documents/information or to justify the evaluation process, ranking process or selection of the Selected Bidder.

- ii. In the event of conflicts of any sort among the Information and Instructions to Bidder and the Concession Agreement, the documents shall be given the following priority:
 - a. Concession Agreement,
 - b. Information and Instructions to Bidder.
- iii. PIDB reserves the right to use and interpret the Proposal documents, data etc it receives from the Bidder(s) in its absolute discretion.

VI. Award Of Concession Agreement

1. Notice of Award and Signing of Concession Agreement:

- i. The Selected Bidder would be notified in writing by PIDB,
- ii. Following the issuance of the Notice of Award, the Selected Bidder shall be required to sign the Concession Agreement, as per the Agreement provided in the Section 4 of this RFP,
- iii. The Concession Agreement shall be executed between Selected Bidder and GMADA in pursuance of the provisions of the Punjab Infrastructure (Development and Regulation) Act 2002.

2. Right to Accept Any Proposal and To Reject Any or All Proposal:

- i. Notwithstanding anything contained in this RFP document, PIDB reserves the right to accept or reject any Proposal and to terminate the bidding process and reject all Proposals, at any time prior to the issue of Notice of Award, without incurring any liability towards the rejected bidder(s) or any obligations to inform the affected bidders(s) of the grounds for rejection and without assigning any reason for the same.

- ii. PIDB reserves the absolute rights to cancel, terminate, change or modify this procurement process and/or requirements of bidding stated in the RFP, without assigning any reason or providing any notice and without accepting any liability for the same.

3. Performance Security:

- i. The Selected Bidder shall furnish Performance Security by way of an unconditional and irrevocable bank guarantee in favor of “**Greater Mohali Area Development Authority (GMADA)**” as specified in the Concession Agreement and the Proposal Data Sheet. The Selected Bidder shall provide the Performance Security prior to execution of the Concession Agreement, within 21 days of issue of Notice of Award to the Selected Bidder. In the event the Selected Bidder fails to submit the performance Security within the prescribed time period, PIDB, in addition to any other rights and remedies that may be available to it under the provisions of the RFP document and the applicable laws, shall be at liberty to revoke / cancel the Notice of Award issued to the Selected Bidder, to annul the Bidding Process and or invite fresh Bids for the Project.

4. Payment of Project Development Fees:

- i. The Selected Bidder shall pay to the PIDB an non-refundable **Project Development Fee** as specified in the Proposal Data Sheet in the form of a demand draft drawn in favour of “Punjab Infrastructure Development Board (PIDB)” on any nationalized or scheduled bank payable at Chandigarh, within 21 days of the date of Notice of Award, a pre-condition to the execution of this Agreement. In the event the Selected Bidder fails to pay the Project Development Fee, within the prescribed time period, PIDB, in addition to any other rights and remedies that may be available to it under the provisions of the RFP document and the applicable laws, shall be at liberty to revoke / cancel the Notice of Award issued to the Selected Bidder and forfeit the Proposal Security submitted by, to annul the Bidding Process and or invite fresh Bids for the Project.

5. Corrupt or Fraudulent Practices:

- i. The PIDB desires to observe a high standard of ethics during the procurement and execution of this Draft Concession Agreement. In pursuance of this Clause, the GMADA/PIDB:
- (i) will not accept a proposal for award if it determines that the Bidder or Developer, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt fraudulent practices on competing for the Draft Concession Agreement in question; and
 - (ii) will declare a firm ineligible, to be awarded the Draft Concession Agreement if it, at any time determines that the firm has engaged in corrupt or fraudulent practices, for this Agreement or in the past.

For the purpose of this provision, the PIDB defined the terms set forth as follows:

- **“Corrupt Practices”** means the offering, giving, receiving and soliciting of anything of value to influence the action of an official in the procurement process or in Concession Agreement execution; and
 - **“Fraudulent Practice”** means a misrepresentation of facts in order to influence a procurement process or the execution of a Concession Agreement and includes collusive practices among Bidders (prior to or after Proposal submission) designed to establish Proposal prices at artificial, non competitive levels and to deprive the PIDB of the benefits of free and open competition

Proposal Data Sheet

| Sl | Key Information | Details |
|----|---|--|
| 1 | Name of the Project | “International Convention cum Exhibition Center and Five Star Hotel, Mohali, Punjab on Design-Build-Operate-Transfer (D.B.O.T) Basis” |
| 2 | Location of the Project | Sector 62, Mohali |
| 3 | Name and Address of the Concessions Authority | Chief Administrator, Greater Mohali Area Development Authority (GMADA), PUDA Bhawan Sector -62 Mohali, Punjab |

| Sl | Key Information | Details | | | | | | |
|---------|---|--|---------|--------|-----------------------|--|--|--|
| 4 | Institutional Structure for Implementation | Form a Special Purpose Company (SPC) under Company's Act of India, 1956. | | | | | | |
| 5 | Concession Format | Design - Build - Operate - Transfer (D.B.O.T.) Basis | | | | | | |
| 6 | Proposal Security | <p>Amount of Proposal Security shall be Rs. 2.5 Crores (Rupees Two Crore and Fifty Lacs only) per proposal.</p> <p>The Proposal Security shall be in the form of Bank Guarantee in favour of "Punjab Infrastructure Development Board (PIDB)" payable at Chandigarh.</p> | | | | | | |
| 7 | Project Development Fees | <p>The Selected Bidder is required to submit non-refundable Project Development Fees in the form of Demand Draft in favour of "Punjab Infrastructure Development Board (PIDB)" payable at Chandigarh.</p> <p>Amount of Project Development Fees is Rs. 2.5 Cr (Rupees Two Crore and Fifty Lacs only)</p> <p>To be paid within 21 days of issue of Notice of Award, a pre condition to execute Concession Agreement.</p> | | | | | | |
| 8 | Bidding Parameter | <p>The bidder quoting the Highest Annual Concession Fee shall be the Selected Bidder.</p> <ol style="list-style-type: none"> i. The Annual Concession Fee shall be due from the Signing Date and accordingly the Concessionaire shall deposit the Annual Concession Fee on the same date every year. However the first Annual Concession Fee shall be paid before the signing of Concession Agreement as pre condition to execute the agreement. ii. The Selected Bidder shall be liable to pay to the Concessions Authority an Annual Concession Fee or a %age of the Annual Gross Revenue (as per the Table below) of a particular year, from the Project Facilities whichever is higher. iii. The Annual Concession Fee (amount quoted by the Bidder in its financial proposal), shall be subject to escalation @ 10% every three years; <table border="1" data-bbox="480 1787 1528 1879"> <thead> <tr> <th data-bbox="480 1787 602 1879">Sr. No.</th> <th data-bbox="602 1787 1208 1879">Period</th> <th data-bbox="1208 1787 1528 1879">%age of Gross Revenue</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table> | Sr. No. | Period | %age of Gross Revenue | | | |
| Sr. No. | Period | %age of Gross Revenue | | | | | | |
| | | | | | | | | |

| Sl | Key Information | Details | | |
|----|-------------------------------------|---|---|----|
| | | 1. | For first 10 years of the Operations Period , | 6% |
| | | 2. | For next 10 years | 7% |
| | | 3. | Rest of the Operations Period | 8% |
| 9 | Development Guidelines | Refer Annexure 2 of Section 1 of RPF (PIM) | | |
| 10 | Technical Specifications | Refer Annexure 3 of Section 1 of RFP (PIM) | | |
| 11 | Performance Security | <p>Construction Performance Security: - Rs. 12.5 Crores only (Rupees Twelve Crore and Fifty Lacs only). Performance Security is to be submitted in the form of Bank Guarantee from a scheduled bank in favor of Greater Mohali Area Development Authority payable at Mohali. Performance Security shall be submitted within 21 days of issue of Notice of Award.</p> <p>Operations & Maintenance Performance Security: - Rs. 5 Crores only (Rupees Five Crore only). Performance Security is to be submitted in the form of Bank Guarantee from a scheduled bank in favor of Greater Mohali Area Development Authority payable at Mohali. Performance Security shall be submitted prior to operationalisation of the Project. The performance security during the operation period shall be increase @ 25% every 5 years for the subsequent years</p> | | |
| 12 | Notice of Award | Within 21 days of Financial Proposal opening or any extension specified by GMADA. | | |
| 13 | Signing of Concession Agreement | Within 30 days from the date of issue of Notice of Award. | | |
| 14 | Name and address for Correspondence | <p>Managing Director Punjab Infrastructure Development Board SCO 33-34-35, Sector 34 A Chandigarh - 160022 Tel. No.: 0172 2665410 Fax No.: 0172 2665596 E-mail: mdpidb@glide.net.in</p> | | |

| Sl | Key Information | Details |
|----|---|---|
| | | <p><i>IL&FS IDC shall be represented by (up to the date of execution of Concession Agreement):</i> Asst Vice President IL&FS Infrastructure Development Corporation Limited SCO 210-211, Sector -34-A, Chandigarh Tel. No.:0172-4636389 Fax : 91-172-4621388 E-mail : iidc.chd@ilfsindia.com</p> |
| 15 | Proposal Language | English (Refer Section 2, Clause III-1 of RFP) |
| 16 | Currency of the Proposal | Bidder shall quote entirely in the Indian Rupees. (Refer Section 2, Clause III-2 of RFP) |
| 17 | Period of Proposal Validity | 180 days after the date of opening of proposals. (Refer Section 2, Clause III-4(i) of RFP) |
| 18 | Number of copies of the Proposal to be completed and returned | In addition to the original (marked "ORIGINAL"), two copies of the technical proposal shall also be submitted (marked "COPY 1" and "COPY 2"). (Refer Section 2, Clause IV-1 of RFP) |
| 19 | Concession Period | 50 years including construction period, from the Compliance Date. (Refer Section 4, Clause 2.2 of RFP). |
| 20 | Construction Period | Project Facilities (Minimum Development Obligations/Essential Facilities) to be constructed within 30 months from the compliance date. (Refer Clause 8.1 of Section 4 of RFP) |
| 21 | Venue, time and date of the Pre-Proposal Conference | Venue: PIDB Conference room, SCO 33-34-35, Sector 34-A, Chandigarh Date: November 23, 2010 Time: 1500 hrs |

| Sl | Key Information | Details |
|----|-------------------------------------|---|
| 22 | Technical Proposal Opening | Same date as Proposal Due Date. |
| 23 | Financial Proposal Opening | Within 14 days of the Technical Proposal Opening. |
| 24 | Deadline for Submission of Proposal | Place: IL&FS IDC, SCO 210-211, Sector 34-A, Chandigarh Time: 1500 Hrs Date: December 14, 2010 |

SECTION 3:

PROPOSAL FORMATS (TECHNICAL AND FINANCIAL FORMATS)

| | |
|--------------------|---|
| Envelope A: | Technical Proposal |
| Form 1: | Check List |
| Form 2: | Covering Letter |
| Form 3: | Letter of Undertaking |
| Form 4: | Commitment to pay Project Development Fees |
| Form 5: | Consortium Agreement |
| Form 6: | Power of Attorney by each Member of the Bidder, in favor of the Lead Member |
| Form 7: | Power of Attorney by Lead Member/Partner in favor of Designated Person (s) |
| Form 8: | Anti Collusion Certificate |
| Form 9: | Information about the Bidder |
| Form 10-A: | Experience in Development and Construction |
| Form 10-B: | Experience in Operations and Maintenance |
| Form 11: | Financial Capability Statement |
| Form 12: | Financial Default Information by Bidder |
| Form 13: | Current Litigation Status |
| Form 14: | Format for Board Resolution for Companies |
| Form 15: | Letter of Undertaking for Technical Proposal |
| Envelope B: | Financial Proposal |
| Form 16: | Price Proposal |
| Envelope C: | |
| Form 17: | Proposal Security (Bank Guarantee) Format |

Form 1**Checklist for Submission**

| <u>Form No.</u> | <u>Enclosures to the Technical Bid</u> | <u>Status (Submitted /Not Submitted)</u> | <u>Comments, if any.</u> |
|------------------------|---|---|---------------------------------|
| 2 | Covering Letter | | |
| 3 | Letter of Undertaking | | |
| 4 | Commitment to pay Project Development Fees | | |
| 5 | Consortium Agreement | | |
| 6 | Power of Attorney by each Member of the Bidder, in favor of the Lead Member | | |
| 7 | Power of Attorney by Lead Member/Partner in favor of Designated Person (s) | | |
| 8 | Anti Collusion Certificate | | |
| 9 | Information about the Bidder | | |
| 10 -A | Experience in Development and Construction | | |
| 10 - B | Experience in Operations and Maintenance | | |
| 11 | Financial Capability Statement | | |
| 12 | Financial Default Information by Bidder | | |
| 13 | Current Litigation Status | | |
| 14 | Format for Board Resolution for Companies | | |
| 15 | Letter of Undertaking for Technical Proposal | | |
| 16 | Price Proposal | | |
| 17 | Bid Security Format | | |

Covering Letter

Dated: _____

The Managing Director

Punjab Infrastructure Development Board
SCO 33-34-35, Sector 34-A, Chandigarh
Chandigarh - 160022

Subject: "International Convention cum Exhibition Center and Five Star Hotel, Mohali, Punjab on Design-Build-Operate-Transfer (D.B.O.T) Basis"

Dear Sir,

Attached to this letter is the authority regarding the Power of Attorney appointing me/us, as designated person(s) to make this representation for and on behalf of the Bidder in respect of the Proposal.

For and on behalf of the Bidder, I/we confirm:

1. Our offer for implementing the Project is in accordance with the terms and conditions of the RFP documents issued by Punjab Infrastructure Development Board (PIDB), and we agree to sign the Concession Agreement and we have initialed each page of it to convey our acceptance.
2. That if PIDB accepts this Proposal, we will procure that:
 - (a) we shall participate in the Project Development;
 - (b) the Agreement will be executed in the form issued by Punjab Infrastructure Development Board (PIDB); and
 - (c) we shall provide the Project Development Fees and Performance Security as required by the RFP document.
3. That the offer contained in the Proposal attached to this letter is a firm offer which will remain open for the Proposal Validity period referred to in the RFP, including any extension of the Proposal Validity period.
4. PIDB may, by written notice, extend the period of Proposal Validity period and the Proposal attached to this letter and the Proposal Security below will remain in full force and be valid for that extended period as per provisions of the RFP document.
5. That we accept the terms and conditions stipulated in RFP document for the selection process and undertake to perform its obligations accordingly.
6. That attached to this letter is the Proposal Security as required by the RFP document.

7. That we have received the Addendum dated [date to be inserted] to the RFP document and confirm that the attached Proposal has been submitted in accordance with the RFP document and the Addendum [only to be used in the event of clarification and/or revisions being made by PIDB].

8. Attached to this letter, is the true copy of the Power of Attorney between the parties constituting the Consortium.

All capitalized terms used in this letter have the same meaning as defined in the Request for Proposal issued by PIDB in relation to “Development of International Convention cum Exhibition Center and Five Star Hotel, Mohali”

Name: _____

Title: _____

Date: _____

Form 3

[To be furnished by the Bidder on the Letter Head of the Firm, In case of Consortium to be given separately]

**Format for
Letter of Undertaking**

Date:

The Managing Director

Punjab Infrastructure Development Board (PIDB)

SCO 33-34-35, Sector 34-A

Chandigarh - 160022

Tel: +91-172-2665417

Fax: +91-171-2665596

Sub: "International Convention cum Exhibition Center and Five Star Hotel, Mohali, Punjab on Design-Build-Operate-Transfer (D.B.O.T) Basis"

We have read and understood the Request for Proposal (RFP) document in respect of the captioned project provided to us by PIDB.

We hereby agree and undertake as under:

Notwithstanding any qualifications of conditions, whether implied or otherwise, contained in our Proposal we hereby represent and confirm that our Proposal is qualified and unconditional in all respects' and we agree to the terms of the proposed Concession Agreement, a draft of which also forms a part of the RFP document provided to us.

Dated this..... Day of..... 2010

Name of the Bidder

Signature of the Authorized Person

Name of the Authorized Person

Note: To be signed by the lead member in case of a Consortium.

**Format for
Commitment to Pay Project Development Fees**

Date:

**The Managing Director
Punjab Infrastructure Development Board (PIDB)
SCO 33-34-35, Sector 34-A
Chandigarh - 160022
Tel: +91-172-2665417
Fax: +91-171-2665596**

Sub: "International Convention cum Exhibition Center and Five Star Hotel, Mohali, Punjab on Design-Build-Operate-Transfer (D.B.O.T) Basis"

Dear Sir:

We _____ (the "Member"), / [Our Consortium consisting of the Following Members (the "Member")]:

1. [Lead Party]
2. []
3. []

Have submitted our bid for **Development of International Convention cum Exhibition Center and Five Star Hotel, Mohali**

We hereby write to inform you that if we/[the Consortium] are/[is] selected as the Selected Bidder for implementing the project, we/[the Lead Member of the Consortium] shall pay the Project Development Fee amounting to Rs. 2.5 Crores (Rupees Two Crore and Fifty lacs only) directly to "**Punjab Infrastructure Development Board**" within 21 days of the issue of Notice of Award as specified under the RFP Document.

SIGNATURE _____
NAME _____
DESIGNATION _____
COMPANY _____
DATE _____

COMPANY SEAL

**Format for
Consortium Agreement**

THIS AGREEMENT is executed at _____ on this _____ day of _____ 2010 between _____ a Company registered under the Companies Act 1956 and having its registered Office at _____ (hereinafter referred to as “the Party of the First Part”) and _____ also a Company registered under the Companies Act 1956 and having its registered office at _____ (hereinafter referred to as “the Party of the Second Part”) and _____ also a Company registered under the Companies Act 1956 and having its registered office at _____ (hereinafter referred to as “the Party of the Third Part”) [Depends on the number of consortium members]

WHEREAS:

- i. All the Parties of the First, Second and Third Part are entitled to enter into joint venture/ partnership with any person or persons including a company for carrying on the business authorized by their respective Memorandum of Association.
- ii. The Parties hereto propose to participate as a Consortium for the Bid based on the Request for proposal (RFP) Punjab Infrastructure Development Board (PIDB) for the project of International Convention cum Exhibition Center and Five Star Hotel at Mohali (“the Bid”) by pooling together their resources and expertise.

If the Parties hereto succeed in the Bid, they propose to incorporate a Special Purpose Company (SPC) which will undertake financing, designing, construction, commissioning, marketing, operation, maintenance and management of the proposed International Convention cum Exhibition Center and Five Star Hotel at Mohali, Punjab (“the Project”).

The Parties hereto are desirous of recording the broad terms of their understanding as set out here below:

NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:-

- 1) That the Parties hereto agree to carry on the business in Joint Venture on the broad terms and conditions herein through a Special Purpose Company (SPC) to be incorporated by them with the shareholding commitments expressly stated to domicile the project, prior to the implementation.
- 2) That the business of the SPC will be that of Developing, Financing, Constructing, Operating, Maintaining & Managing the Project.
- 3) That in the event the Parties hereto succeed in the Bid for the Project, the SPC will execute the Project in accordance with terms and conditions of the

Bid document and will execute the Concession Agreement and all the documents /writings / papers with the GMADA and construct and commission the project in accordance with the plans/designs sanctioned by the appropriate /concerned authorities.

- 4) That it shall be ensured that _____ (“the Lead Member”) holds, either directly or through its Affiliate, provided that the same affiliate is a member of the bidding consortium, at least 51% of the capital of the SPC during the construction period from the Compliance Date, and _____ and _____ (other constituent members of the Consortium) hold at least 26% of the capital of the SPC each, during the construction period from the Compliance Date. Any change in composition of the Consortium/SPC, including lead and non-lead members shall be at the sole discretion and with prior written permission of GMADA during the construction period from the Compliance Date.
- 5) That it shall be ensured that _____ (“the Lead Member”) holds, either directly or through its Affiliate, provided that the same affiliate is a member of the bidding consortium, at least 26% of the capital of the SPC, after the period from the Compliance Date i.e. during the balance Operation & Maintenance Period, and _____ and _____ (other constituent members of the Consortium) hold at least 10% of the capital of the SPC each, after the period from the Compliance Date i.e. during the balance Operation & Maintenance Period. Any change in composition of the Consortium/SPC, including lead and non-lead members shall be at the sole discretion and with prior written permission of GMADA during the construction period from the Compliance Date.
- 6) The roles and responsibilities of the Members of the Consortium shall be as follow:
 - a) The Party of the First Part (Lead Member) shall be responsible for:
 - (i)
 - (ii)
 - (iii)
 - b) The Party of the Second Part shall be responsible for:
 - (ii)
 - (iii)
 - (iv)
 - c) The Party of the Third Part shall be responsible for:
 - (i)
 - (ii)

(iii)

d) Each of the Parties shall be liable and responsible jointly and severally for:

- i. Compliance of all statutory requirements as may be applicable in respect of the Project.
- ii. Contribute to the Joint Venture, all of its management and business experience, expertise, competence and acumen for the success of the Project.
(Note: Role & Responsibility of all members of the Consortium shall be included in the above para)

7) That the minimum equity holding of each Party (Member) (in percentage term) in the SPC shall be as follows:

| Name of the Party (Member) | % of equity capital |
|-----------------------------------|----------------------------|
| | |
| | |

- 8) That the responsibility of all the members of the Consortium shall be joint and several at every stage of implementation of the Project.
- 9) That in case the project is awarded to the Consortium, the Consortium will carry out all the responsibilities as the Developer /Hotelier and will comply with all the terms and conditions of the Concession Agreement as would be entered with the GMADA (Concessions Authority).
- 10) That this Agreement shall remain in full force and effect till the award the SPC is formed and the Concession Agreement is signed.
- 11) That nothing in this Agreement shall be construed to prevent or disable any Party hereto to carry on any business on their own in terms of their respective Memorandum of Association.

(Note : The above provisions are mandatory, the Consortium may add any other provision, if required)

IN WITNESS WHEREOF the parties have put their respective hands the day and year first herein above written.

Signed and delivered for and on behalf)
Of the within named M/s.....)
..... by its Director,)
duly authorized in the presence of)
.....)

Signed and delivered for and on behalf)

Of the within named M/s.....)
...by its Director,)
_____)
duly authorized in the presence of)
.....)

Signed and delivered for and on behalf)
Of the within named M/s.....)
...by its Director,)
_____)
duly authorized in the presence of)
.....)

Power of Attorney by each Member of the Bidder, in Favor of the Lead Member

Dated _____

**POWER OF ATTORNEY
TO WHOMSOEVER IT MAY CONCERN**

WHEREAS we have decided to participate in the bidding process for the “**International Convention cum Exhibition Center and Five Star Hotel, Mohali, Punjab on Design-Build-Operate-Transfer (D.B.O.T) Basis**” (the “Project”) as a member of [Name of Consortium] independently, we,[name of the authorizing company], a company incorporated under the laws of, the registered address of which is..... hereby duly authorize, the registered address of which is, to lawfully represent and act on our behalf as the Lead member of the Consortium / Joint Venture / Partnership firm to sign any qualification statement, Proposal, conduct negotiations, sign contracts, incur liabilities and receive instructions for us and on our behalf and execute all other necessary matters in connection with the Project.

We hereby confirm that we are jointly and severally liable, together with the other members of the Consortium/ Partnership Firm/ Joint Venture, to the GMADA for all of the obligations of the Consortium/ Partnership Firm/ Joint Venture in respect of our qualification statement, technical and financial Proposal for the Project, in accordance with this RFP document for the Project issued on ____ and as amended prior to the date hereof.

We hereby ratify and confirm that all the acts done by our said attorney_____ (name of lead entity/member) shall be binding on us as if the same had been done by us personally.

IN WITNESS WHEREOF, we have hereunto set our respective hands this day of 2010 in the presence of the following witnesses.

Witness 1
Signature _____
Name _____
Address _____

Witness 2
Signature _____
Name _____
Address _____

SEALED HEREIN

By:..... [the authorizing company]
Signature:..... [Signature of authorized signing officer]
Name:..... [Name of authorized signing officer]
Title:..... [Title of authorized signing officer]

* Any change in the designated person(s) should be informed to Greater Mohali Area Development Authority (GMADA) along with a similar Power of Attorney in favor of such person(s).

Power of Attorney by Lead Member/ Partner in favor of Designated Person(s)

(A maximum two individuals)

Dated _____

POWER OF ATTORNEY

TO WHOMSOEVER IT MAY CONCERN

Shri -----(Name of the Person, domiciled at -----(Address), acting as -----(Designation and name of the Firm), and whose signature is attested below, is hereby authorized on behalf of -----(Name of Bidder) to negotiate and settle terms and conditions, finalize, approve, sign and execute Agreements, Documents, Endorsements, Writings, etc. as may be required by PIDB for **“International Convention cum Exhibition Center and Five Star Hotel, Mohali, Punjab on Design-Build-Operate-Transfer (D.B.O.T) Basis”**and is hereby further authorized to sign and file relevant documents in respect of the above.

(Attested signature of Shri-----)

We hereby ratify and confirm that all acts done by our attorney ----- (name of designated person) shall be binding on us as if same had been done by us personally.

IN WITNESS WHEREOF, we have hereunto set our respective hands this -----day of ---- --2010 – in the presence of the following witnesses,

| Witness 1 | | Witness 2 | |
|-----------|-------|---|-------|
| Signature | ----- | Signature | ----- |
| Name | ----- | Name | ----- |
| Address | ----- | Address | ----- |
| Signature | ----- | [signature of authorized signing officer] | |
| Name | ----- | [Name of authorized signing officer] | |
| Title | ----- | [Title of authorized signing officer] | |

* Any change in the designated person(s) should be informed to GMADA along with a similar Power of Attorney in favor of such person(s).

Form 8

Anti Collusion Certificate

1. We certify that this Proposal is made in good faith and that we have not fixed or adjusted the amount of the Proposal by, or under, or in accordance with any agreement or arrangement with any other person. We also certify that we have not and we undertake that we will not, before the award of any contract for the work:
 - (i) (a) Communicate to any person (outside this Consortium, its professional and financial advisors, proposed financing banks and financial advisors) other than the Concessioneing Authority / GoP/ PIDB or person duly authorized by it in that behalf the amount or approximate amount of the Proposal, or Proposed Proposal, except where the disclosure, in confidence, of the approximate amount of the Proposal was necessary to obtain insurance premium quotations required for the preparation of the Proposal
 - (b) Enter into any agreement or arrangement with any person (outside this Consortium) that they shall refrain from bidding, that they shall withdraw any Proposal once offered or vary the amount of any Proposal to be submitted
 - (ii) Pay, give or offer to pay or give any sum of money or other valuable considerations directly or indirectly to any person (outside this Consortium) for doing or having done or having caused to be done in relation to any other Proposal or proposed Proposal for the work, any act or thing of the sort described at (i) (a) or (i) (b) above.
2. We further certify that the principles described in paragraphs 1 (i) and (ii) above have been or will be, brought to the attention of all sub-contractors, suppliers and associated companies providing services or material connected with the Proposal and any contract entered into with such sub-contractors, suppliers, or associated companies will be made on the basis of compliance with the above principles by all parties.
3. In this certificate, the word "person" includes any persons or any body or association, corporate or unincorporated; "any agreement or arrangement"

includes any transaction, formal or informal and whether legally binding or not;
and "the work" means the work in relation to which this Proposal is made.

Dated this.....Days of.....2010.

.....

Name of the Bidder.

Bidder.....

Signature of the designated person.....

Name of the designated person.

.....

Date of receipt of RFP

documents.....

Information about the Bidder

| |
|---|
| Name of the Bidder |
| Names and roles of all the members of the bidder should be given below: |
| 1. Information about Bidder |
| (a) Brief Introduction |
| Registered Name of Bidder |
| Address |
| Telephone |
| Fax |
| E-mail |
| (b) Main Business |
| |
| |
| 2. Information about Designated Person(s) |
| |
| Name |
| Position |
| Telephone |
| Fax |
| E-mail |

Experience in Development and Construction

| | |
|--|--------|
| Name of the Bidder | |
| 1. Name of the Project | |
| 2. Location | |
| 3. Project Details | |
| 4. Total Project Cost | Actual |
| 5. Total Project Area | Actual |
| 6. Date of Financial Close | Actual |
| 7. Date of commissioning of the Project | Actual |
| 8. Bidder(s) Role in the Project | |
| 9. Name, Address, Contact Person, Tel/Fax of the Other Members and their roles in the Project | |
| 10. Operating Performance (for the immediately preceding three years) | |
| 11. Financing | |
| Brief description of the financing plan of the project (balance sheet funding/ non-recourse funding, amount of funds raised, terms on which funds raised) and role played by the Bidder. | |

Note:

- (1) Please use separate sheet for each project

Experience in Operations and Maintenance

| | |
|--|--------|
| Name of the Bidder | |
| | |
| 1. Name of the Project | |
| 2. Location | |
| 3. Project Details | |
| 4. Total Project Cost | Actual |
| | |
| 5. Total Project Area | Actual |
| | |
| 6. Date of Financial Close | Actual |
| | |
| 7. Date of commissioning of the Project | Actual |
| | |
| 8. Bidder(s) Role in the Project | |
| | |
| 12. Name, Address, Contact Person, Tel/Fax of the Other Members and their roles in the Project | |
| | |
| 13. Operating Performance (for the immediately preceding three years) | |
| | |
| 14. Financing | |
| | |
| Brief description of the financing plan of the project (balance sheet funding/ non-recourse funding, amount of funds raised, terms on which funds raised) and role played by the Bidder. | |

Note:

(1) Please use separate sheet for each project

Form 11

Financial Capability Statement
To be attested by a Chartered Accountant

| S.No. | Parameters | FY 2009-2010 |
|--------------|-------------------|---------------------|
| 1 | Net Worth | |

Note:

Net Worth = Equity Capital + Reserve and Surplus

To be certified by Chartered Accountant/Statutory Auditor

- (a) The Bidder shall provide copies of its audited financial statements and other financial data for the immediately preceding three years.
- (b) Additional information supporting evaluation of the company's financial and legal status.
- (c) List of Bankers along with Name and addresses from who references can be obtained.

Form 12

Financial Default Information by Bidder (if any)

| |
|---------------------------|
| Name of the Bidder |
|---------------------------|

| Year | Nature of Default | Period of Default: Current Status | Defaulted amount (Current value, Rs Equivalent) |
|-------------|--------------------------|--|--|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Note:

This information shall include any defaults on financial commitments in the immediately preceding years.

Current Litigation Status

| |
|---------------------------|
| Name of the Bidder |
|---------------------------|

| Year | Name of disputing parties, cause of litigation / arbitration and matter in dispute (Party initiating to be underlined) | Disputed amount (current value, in Rupees) | Interim Award, Order or Decree For or Against Bidder |
|-------------|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Note:

Bidder shall provide information on any current or pending litigation or arbitration.

Form 14

Format for Board Resolution for Companies (it is to be clarified in the agreement that in case of Developer / Infra Company / Real Estate Fund he need to sign an MoA with Hotel Chain or Operating agreement. will that agreement be the part of consortium or not

(Format for Lead Member)

“RESOLVED THAT approval of Board be and is hereby granted to join Consortium with _____ (name and address of the consortium members) for joint submission of bids to PIDB for **“International Convention cum Exhibition Center and Five Star Hotel, Mohali on Design-Build-Operate-Transfer (D.B.O.T) Basis”**

“RESOLVED FURTHER THAT the “draft” Memorandum of Understanding (“MoU”) to be entered into with the consortium partners (a copy whereof duly initialized by the Chairman is tabled in the meeting) be and is hereby approved”

“RESOLVED FURTHER THAT Mr. _____ (name), _____ (designation) be and is hereby authorized to enter into an MoU, on behalf of the company, with the consortium members and to sign the bidding documents on behalf of the Consortium for submission of the bidding documents and execute a power of attorney of the Company as Lead Member”

(Format for Members)

“RESOLVED THAT approval of Board be and is hereby granted to join Consortium with _____ (name and address of the consortium members) for joint submission of bids to PIDB for Development and Establishment of Five Star Hotel cum International Convention & Exhibition Center at Mohali, Punjab on D.B.O.T Basis”.

“RESOLVED FURTHER THAT the “draft” Memorandum of Understanding (“MoU”) to be entered into with the consortium partners (a copy whereof duly initialized by the Chairman is tabled in the meeting) be and is hereby approved”

“RESOLVED FURTHER THAT Mr. _____ (name), _____
(designation) be and is hereby authorized to enter into an MoU, with the consortium
members and execute a power of attorney in favour of the _____ as Lead Member”.

Format For
Letter of Undertaking for Technical Proposal

(On the Letter Head of the Bidder (in case of single Bidder) or Lead Member (in case of a Consortium))

Date

The Managing Director

Punjab Infrastructure Development Board (PIDB)

SCO 33-34-35, Sector 34-A

Chandigarh - 160022

Tel: +91-172-2665417

Fax: +91-171-2665596

Sub: "International Convention cum Exhibition Center and Five Star Hotel, Mohali, Punjab on Design-Build-Operate-Transfer (D.B.O.T) Basis"

Dear Sir:

As a part of the Bid for Development and Establishment of International Convention cum Exhibition Center and Five Star Hotel at Mohali, Punjab on D.B.O.T Basis. We hereby agree to develop and operate the Project as per the requirements stipulated in the RFP for the Concession Period of 50 Years. We hereby undertake that if the Project is awarded to us, we will meet requirements as specified hereunder and hereby give our compliance for the same:

| Sl. No. | Project Facilities | Facilities |
|---------|--|---|
| 1. | Minimum Development Obligations/ Essential Facilities | <p>1. Convention & Exhibition Centre</p> <p>a. 4000 pax single multipurpose hall with removable partitions and retractable seating, if required including 1000 delegate Plenary Hall</p> <p>b. 1 Hall of 250 pax capacity, 2 Halls of 100 pax capacity, 4 Halls of 40 pax capacity each with seating arrangement, provisions for Board Rooms and 2 Nos.(two) VVIP rooms.</p> <p>c. Other basic facilities such as Reception, Information counters, public facilities, eating stalls, as per the requirement & norms. Reception area with a minimum of 8 Terminals to be provided. Provision for additional</p> |

| | | |
|----|----------------------------|--|
| | | <p>Terminals if required-.</p> <p>d. Facility to interpret 6 languages and wireless IR receivers of minimum 1000 Nos.</p> <p>e. Convention & Exhibition Center shall be maintained by the Hotel Chain operating the Hotel.</p> <p>2. Five Star Hotel</p> <p>a. Minimum number of rooms shall be 200 (provision to be made in the building design for further expansion).</p> <p>b. Coffee Shop of 100 seating capacity</p> <p>c. Specialty Restaurant of 100 seating capacity</p> <p>d. Lounge / Bar of 100 seating capacity</p> <p>e. Executive Health Club which includes Gymnasium, Swimming Pool, Spa & Health Club, Indoor & Outdoor recreation Facilities.</p> <p>Food-Beverages & Other ancillary facilities as per the standards and requirements meeting the Ministry of Tourism Guidelines, FHRAI guidelines.</p> <p>Parking: Provision of Car parking should be made as per Local Building Bye-Laws and applicable parking norms as mentioned in Development Controls. However minimum of 800 ECS shall be provided by the concessionaire considering the applicable Punjab Government By laws.</p> <p>3. Support Facilities & infrastructure like internal road network, parking areas, security, air conditioning, water supply and rain - water harvesting, Power, sewage treatment, solid waste management, landscaping and other services required for the complex.</p> |
| 2. | Optional Facilities | <p>4) International Convention and Exhibition center (ICE):</p> <p>b) Restaurants and cafeteria can be constructed as optional facility in ICE</p> <p>5) Five Star Hotel:</p> <p>c) Service apartments as optional facility can be constructed along with the Five Star Hotel. Service apartments shall be maintained by the Hotel Chain operating the Five Star Hotel</p> |

| | | |
|--|--|---|
| | | <p>6) Commercial Area</p> <p>a. Maximum permitted built up Commercial Area/Space shall be 10% of the actual constructed area of Five Star Hotel. This area i.e. (10% commercial area) shall not count the area constructed for Convention, Exhibition, Parking and basement facility for the project.</p> <p>b. The allowed commercial area shall be maintained by the hotel chain operating the Five Star Hotel.</p> <p>c. Commercial Area / Space would essentially mean Retail shopping, Branded showrooms, Anchor stores, and Entertainment complex/zone and office/business spaces within Commercial complex only.</p> <p>d. Specialty Restaurants, Lounge/Bar, Health club, SPA, Gym, Indoor and outdoor recreation facility shall not be counted in the permissible commercial space.</p> <p>e. The applicable Commercial Area/Spaces in the Five Star Hotels (showrooms/shops) shall be counted toward the approved commercial space for the project.</p> <p>f. Event specific Commercial Facilities (Temporary) such as Food stalls, Souvenir stalls etc shall not be the part of the Commercial Area/Space.</p> <p>d) Open Exhibition areas, Commercial Area /Space permitted under Five Star Hotel Category, Food & Beverage outlets such as Multi cuisine Restaurants & additional facilities shall be constructed, as per requirement, in synergy with the Minimum Development Obligations / Essential Facilities.</p> |
|--|--|---|

We hereby assure you and guarantee that in future, from time to time whenever we are required to undertake or follow any specific guidelines / laws, we shall do the needful as required to ensure that the project and the Developer /Hotelier comply to the legal requirements.

Yours faithfully,

(Signature of Authorized Signatory)

(Name, Title, Address, Date)

Form 16

Price Proposal

(On the Letter Head of the Bidder)

Date:

**The Managing Director
Punjab Infrastructure Development Board (PIDB)
SCO 33-34-35, Sector 34-A
Chandigarh - 160022
Tel: +91-172-2665417
Fax: +91-171-2665596**

Sub: "International Convention cum Exhibition Center and Five Star Hotel, Mohali, Punjab on Design-Build-Operate-Transfer (D.B.O.T) Basis"

Being duly authorized to represent and act on behalf ----- and having reviewed and fully understood all requirements of bid submission provided in the RFP document and subsequent clarifications provided in relation to project, we hereby provide our Price Proposal.

We have read all the General Conditions etc. in detail and on the basis of our full study of the above mentioned Document(s) and the conditions; we undertake to do "**Development of International Convention cum Exhibition Center and Five Star Hotel, Mohali on Design-Build-Operate-Transfer (DBOT) Basis**" in accordance with the general conditions as provided in the above mentioned Document(s). The Financial Proposal is enclosed asunder:

The bidder quoting the highest Annual Concession Fee shall be the Selected Bidder.

- i. The Selected Bidder would pay an Annual Concession Fee (in advance) every year from the signing of the Concession Agreement till the end of the Concession period.
- ii. The Selected Bidder shall be liable to pay to the Concessions Authority an Annual Concession Fee or a %age of the Annual Gross Revenue (as per the Table below) of a particular year, from the Project Facilities ('**Revenue share**'), whichever is higher.
- iii. The Annual Concession Fee (amount quoted by the Bidder in its financial proposal), shall be subject to escalation @15% every three years;

- iv. The Annual Concession Fee shall be due from the Signing Date and accordingly the Concessionaire shall deposit the Annual Concession Fee on the same date every year. However, in case, any time during the Operations Period, the amount equivalent to the %age of the Gross Revenue of Project Facility for particular financial year as per the Annual Report submitted by Statutory Auditor at the end of the Financial Year, during the 'Financial Year in which Annual Concession Fee is due, is higher than the amount of Annual Concession Fee payable in that particular financial year, the Concessionaire shall pay to the Concessioneing Authority the difference amount (equivalent to %age of the Gross Revenue from the Project Facility for particular financial year *minus* Annual Concession Fee already paid for that particular financial year).

| Sr. No. | Period | Percentage of Gross Revenue |
|----------------|---|------------------------------------|
| 1. | For first 10 years of the Operations Period , | 6% |
| 2. | For next 10 years | 7% |
| 3. | Rest of the Operations Period | 8% |

Our Annual Concession Fee for the project shall be

We confirm that we will submit the Project Development Fee, Construction and Operations Performance Security as specified in the RFP document and Concession Agreement.

Name of Bidder:

Signature of the Authorized Person

Seal:

Address and contact number:

Note:

In case the highest bid being equal in respect of more than one bidder, the financial offer shall be submitted again by such highest bidders to break the tie (not lower than original bid).

Proposal Security (Bank Guarantee) Format

[To be issued by a Scheduled Bank its branch in Chandigarh]

UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE

Bank Guarantee No.: _____ **Dated:** _____

Issuer of Bank Guarantee:

_____ (Name of the Bank)

(hereinafter referred to as the "Bank")

Beneficiary of Bank Guarantee:

Punjab Infrastructure Development Board (PIDB)

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee:

In pursuance of Clause III (3) of Section 2 of the Request for Proposal Document dated October 30,2010 (hereinafter referred to as the "RFP" inclusive of Concession Agreement) for the Development of "International Convention cum Exhibition Center and Five Star Hotel" (hereinafter referred to as the "Project"), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner to relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and PIDB and is not dependent upon execution or performance of any Agreement between _____ and _____(name of the bidder).

Operative part of the Bank Guarantee:

1. At the request of the ____ (name & address of the bidder), we _____, _____ (name and address of the bank), hereinafter referred to as the "Bank"), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the PIDB i.e. the beneficiary on behalf of the Bidder, up to a total sum of **Rs. 250 Lakhs (Rupees Two Hundred and Fifty Lakhs Only)**, such sum being payable by us to the PIDB immediately upon receipt of first written demand from PIDB.
2. We unconditionally and irrevocably undertake to pay to the PIDB on an immediate basis, upon receipt of first written demand from the PIDB and without any cavil or

argument or delaying tactics or reference by us to Bidder and without any need for the PIDB to convey to us any reasons for invocation of the Guarantee or to prove the failure on the part of the Bidder to repay the amount of _____ or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of **Rs. 250 Lakhs (Rupees Two Hundred and Fifty Lakhs Only)**.

3. We hereby waive the necessity of the PIDB demanding the said amount from Bidder prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the PIDB that the PIDB shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the PIDB by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Bidder. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the PIDB.
6. We unconditionally and irrevocably undertake to pay to the PIDB, any amount so demanded not exceeding **Rs. 250 Lakhs (Rupees Two Hundred and Fifty Lakhs Only)**, notwithstanding any dispute or disputes raised by Bidder or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the PIDB, shall be a valid discharge of our liability for payment under this Guarantee and the Bidder shall be a valid discharge of our liability for payment under this Guarantee and the Bidder shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____ (180 days from the proposal due date).

Notwithstanding any contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian **Rs. 250 Lakhs (Rupees Two Hundred and Fifty Lakhs Only)**.
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ (Date of Submission of Bid) to _____.

We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if Punjab Infrastructure Development Board (PIDB), serves upon us a written claim or demand on or before

_____.

Authorized Signatory
For Bank

SECTION 4

**CONCESSION AGREEMENT FOR
“INTERNATIONAL CONVENTION CUM EXHIBITION CENTER AND FIVE STAR
HOTEL, MOHALI**

By and Among

Greater Mohali Area Development Authority (Concessions Authority)

And

M/s Limited (Concessionaire)

And

Punjab Infrastructure Development Board (Conforming Party)

Draft Concession Agreement for “Development of International Convention cum Exhibition Center and Five Star Hotel, Mohali”

This Concession Agreement for Development of **International Convention cum Exhibition Center and Five Star Hotel** (hereinafter referred to as “**Project**”), Mohali on D.B.O.T basis, is made on this _____ day of _____ 2010 at _____

By and Among

Greater Mohali Area Development Authority (GMADA) a statutory body constituted on 14-8-2006 under the Punjab Regional and Town Planning and Development Act 1995 (Punjab Act No.11 of 1995), and having its registered office at PUDA Bhavan, Sector 62 SAS Nagar, Mohali acting through its Chief Administrator, hereinafter referred to as “**GMADA**” or “**Concessions Authority**” (which expression shall, unless the context otherwise require, include its successors and assigns); of the **First Part**.

And

M/s _____, a Special Purpose Company incorporated under the Companies Act, 1956 and having its registered office at _____, **acting through its.....** hereinafter referred to as the “**Concessionaire**” (which expression shall, unless the context otherwise requires, include its successors and permitted assigns); of the **Second Part**.

And

Punjab Infrastructure Development Board incorporated under the Punjab Infrastructure (Development & Regulation) Act, 2002, acting through its Managing Director, hereafter referred as “**PIDB**” or “**Conforming Party**”, which expression shall, unless the context otherwise requires, include its successors and assigns) of the **Third Part**

Each singly a “party” and together referred to as “parties”.

WHEREAS:

- A. PIDB is the nodal agency of the Government of Punjab (“**GOP**”) for coordinating all efforts of **GOP** regarding development of infrastructure projects in the State of Punjab involving private participation. PIDB is keen to develop the **Project**, on D.B.O.T basis at Mohali for promoting the growth of the Hospitality industry in the region, and thereby to give an impetus to tourism in the State and the Mohali region.

- B. In order to attain its objectives of providing hospitality and commercial sector development in the State of Punjab, the Concessioneing Authority undertaking the development, designing, financing, construction, commissioning, operation and maintenance and management of the Project in Mohali on the land located at City Center Sector 62, Mohali which is just 4 kms from the Sub City Centre, Sector 34 and 5.5 kms from Central Business District , sector 17, Chandigarh, on D.B.O.T. basis, with a private sector Concessionaire, selected through a transparent and competitive bidding process.

Pursuant to the above, the Concessioneing Authority, under the aegis of PIDB decided to undertake the process of selection of a suitable Concessionaire through competitive bidding. Pursuant to Notice Inviting Tender (NIT), proposals were sought from the eligible bidders vide Request for Proposal dated October 30,2010("RFP").

- D. Pursuant to the evaluation of the proposals that were received from the eligible bidders, the Concessioneing Authority accepted the proposal submitted by the Selected Bidder consisting of M/s._____, _____ & _____(collectively the "**Consortium**") and a Notice of Award (NOA) bearing No._____ dated _____was issued to the Selected Bidder.
- E. The Selected Bidder has represented that it has the requisite experience in Hospitality Sector/Real Estate Sector/Real Estate Fund House/Core Infrastructure Sector and meets the technical & financial criteria as specified in the RFP document.
- F. In accordance with the requirements of the RFP, the Bid, and the Notice of Award, the Selected Bidder has promoted and incorporated the Concessionaire as a **Special Purpose Company ("SPC")** for undertaking the Project; and has requested the Concessioneing Authority to accept the Concessionaire as the entity which shall undertake, fulfill and perform obligations and exercise the rights of the Selected Bidder under the Notice of Award, including the obligation to enter into this Concession Agreement.
- G. The Successful Bidder, if it is a Subsidiary of a Holding / Parent Company or part of an SPC, it shall be required to furnish a Letter of Guarantee from its Holding / Parent Company (including a Board Resolution of such Holding / Parent Company)

pledging such Holding / Parent Company's irrevocable Financial strength and Technical support to its Subsidiary (in case of SPC - in proportion to its Subsidiary's holding in the SPC), at all times during the currency of the Concession Agreement, and even after its termination for any of the acts and liabilities of its Subsidiary prior to termination

- H. The Concessionaire acknowledges and confirms that it has undertaken an independent due diligence audit of all aspects of the Project, including but not limited to technical and financial viability, legal framework, structure, demand for built up Commercial space & Hospitality sector, growth and forecasts for Project Facilities in the region, and on the basis of its independent satisfaction hereby agrees to implement the Project in accordance with the terms and conditions hereof.
- I. It is clearly understood by the Parties that the selection of the Concessionaire and the grant of the rights herein to it has been made under the provisions of the Punjab Infrastructure (Development & Regulation) Act, 2002 (hereinafter the "Act") and that this Agreement shall be operated there under.
- J. Following the issuance of Notice of Award, the following has been undertaken:
- (i) The Selected Bidder / Concessionaire has paid the non-refundable and irrevocable project development fees of Rs. 2.5 Crores (Rupees Two Crores and Fifty Lacs Only), vide Demand Draft _____ in favour of "Punjab Infrastructure Development Board (PIDB)", payable at Chandigarh; and
 - (ii) The Selected Bidder / Concessionaire has provided a Construction Performance Security of Rs. 12.5 Crores/- (Rupees Twelve Crores Fifty Lacs Only) by way of bank guarantee in favor of the "Greater Mohali Area Development Authority (GMADA)", payable at Mohali.
 - (iii) The SPC has paid the Annual Concession Fee for the first year as per the Schedule K, attached hereto.

NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions

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

“Addendum” means any further clarification, changes, modification made in the RFP document after the publication of Notice Inviting Tender on October 30,2010.

“Agreement” means this agreement, including the Recitals, Schedules, and documents appended hereto, as amended, supplemented or modified from time to time in accordance with the provisions hereof;

“Annual Concession Fee” shall have the same meaning as defined in Article 13 of this Agreement;

“Applicable Laws” means any statute, law, regulation, ordinance, notification, rule, judgment, order, decree, bye-law, approval, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of GOI, GOP, by any Competent Authorities or instrumentality thereof, as may be in effect on the date of this Agreement and during the subsistence thereof;

“Applicable Permits” means any or all permissions, clearances, licenses, concession, consents, no-objections, approvals from any Competent Authorities required in connection with the Project/Project Facilities and for undertaking, performing or discharging the obligations or fulfillment of the purposes contemplated by this Agreement;

“Change in Law” means occurrence of any of the following events after the execution of this Agreement:

- (i) enactment of any new Applicable Law;
- (ii) the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Law;
- (iii) the change in interpretation or application of any Applicable Law;
- (iv) the imposition of a requirement for an Applicable Permit (s) (other than for cause) not required on the date of this;
- (v) after the date of grant of any Applicable Permit (s), a change in the terms and conditions attaching to such Applicable Permit (s) (other than for cause) or

- the attachment of any new terms and conditions to an Applicable Permit (s)(other than for cause); or
- (vi) any Applicable Permit (s) previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a party (including a failure to renew), or if granted for a limited period, not being renewed on a timely basis on an application therefore having been duly made in good time;

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk;

“Clearance” means, as on the date of execution of this Agreement, any consents, licences, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective implementation of the Project

“Concession” or **“Concession Agreement”** means and includes this Agreement, the Notice of Award issued by PIDB, the written clarifications issued to bidders and the RFP, along with their addenda;

“Concessionaire” means -----, a company incorporated, by the Consortium under the Companies Act, 1956, having its registered office at -----, and includes its subsidiaries, successors and permitted assigns;

“Concessionaire's Equipment” means all machinery, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, and includes any equipment referred to as "Construction Equipment" but does not include Plant and Materials;

“Concessionaire's Representative” means the Person appointed by Concessionaire under Section 6.1 II;

“Concession Period” means the Five Star Hotel and International Convention Center Project concession period, as defined in Section 2.2, for which this Concession is granted, commencing from the Compliance Date and as varied from time to time;

“Construction Commencement Date” shall have the meaning specified in Section 7.2 (c);

“Condition Precedent” means the conditions set out in Section 3 hereof;

“Control Plan” means the zoning plan for the development of site proposed for utilization as Five Star Hotel, International Convention cum Exhibition Center and Optional facilities like Commercial space, Service Apartments use, at Sector 62, Mohali, duly approved and notified by GMADA;

“Commercial Areas / spaces” shall have the meaning specified in Annexure 1 of Section 1 of the RFP document;

“Commercial Operations” means the commercial utilization of the Project Facility pursuant to Project Completion for provisioning of facilities and services as an accredited Five star hotel from Users and charging, demanding, collecting, and appropriating the User Charges;

“Commercial Operation Date” means the date on which the Independent Engineer issues the Provisional Certificate or the Completion Certificate for the Project Facility, as the case may be, upon which the Concessionaire commences Commercial Operations;

“Completion Certificate” means the certificate issued by the Independent Engineer in the manner set out in Section 8.2 (c);

“Competent Authority” means any agency, authority, department, ministry, public or statutory Person of the Government of Punjab or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Site or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession;

“Compliance Date” shall have the meaning set forth in Section 3.3 (a), upon which the conditions to this Agreement have been fulfilled, being the date upon which this Agreement becomes unconditional and effective;

“Consortium Members” means -----, ----- & -----
----.

“Construction Documents” means and includes all drawings, calculations, computer application software (programs), samples, patterns, models, operation and maintenance

manuals, and other manuals and information of a similar nature prepared in relation to the Project Facilities;

“Construction Period” or “Time for Completion of Construction” means the period from the Compliance Date to the date of issue of Construction Completion Certificate in accordance with the Project Implementation Schedule;

“Cost” means all expenditure properly incurred (or to be incurred) by the Concessionaire, whether on or off the Site, including overheads and similar charges, but does not include profit;

“Construction Period” means the period from the Compliance Date to the date of issue of the Provisional Certificate or Completion Certificate, as the case may be;

“Contractor” means a reputed Person with whom the Concessionaire has entered into/ may enter into a contract relating to the Works and subcontractors, including contractors for equipment, procurement and engineering and contractors for operations and maintenance (“O&M Contractors”) and/or any other contractors and sub-contractors, manufacturers or suppliers of Works or part thereof, as the context may admit or require;

“Contractual Arrangements” shall have the meaning specified in Section 6.7(a);

“Day” means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 days;

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding and payable to the Lenders under the Financing Documents:

- (i) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the principal) which is outstanding as on the Transfer Date, excluding any part of the principal that had fallen due for repayment one year prior to the Transfer Date unless such repayment had been rescheduled with the prior consent of the Concessioneing Authority; and
- (ii) all accrued interest, financing fees and other charges outstanding and payable on or in respect of the debt referred to in sub-section (i) above up to the date preceding the Transfer Date but excluding any (a) interest or charges that had fallen due one year prior to the Transfer Date, and (b) penal interest or charges payable under the Financing Documents to the Lenders;

“Designs and Drawings” means the conceptual and detailed designs, drawings and engineering, project master plans, backup technical information required for the Project Facilities and all calculations, samples, patterns, models, specifications and other technical information relating to the Project, submitted by the Concessionaire from time to time for approval in accordance with the provisions of this Agreement;

“Design Approval Committee” means the committee constituted in terms of Section 10.4 of this Agreement for approving the concept design of the Five Star Hotel Project;

“Dispute Resolution Procedure” means the procedure for resolution of disputes set forth in Article 23;

“Directive” means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified by the Concessions Authority or the Independent Engineer to the Concessionaire, and any modification, extension or replacement thereof from time to time in force;

“Encumbrances” 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 obligation or restriction and shall include legal obstructions or encroachments on the Site or Third Party claims or rights of any kind attaching to the Site;

“Environment Management Plan” or **“EMP”** means the environment management plan as set out in Schedule I;

“Engineer” means the Superintending Engineer/Nodal Person nominated by the Concessions Authority to undertake, perform, and carry out such functions, duties, responsibilities, services and activities as are set forth in Schedule V hereto and elsewhere in this Agreement;

“Event of Default” means a Concessionaire Event of Default or a Concessions Authority Event of Default or both, as the context may require or admit;

“Equity” means the sum expressed in Indian Rupees representing the equity share capital of the Concessionaire;

“Financial Assistance or Financing” means the aggregate amounts provided by way of loan, lease finance, advances, guarantees or otherwise by the Lenders to the Concessionaire

for the implementation of the Project and shall include all related financial charges, fees and expenses of all kinds relating to the Project;

“Financial Closure” means the date on which the Financing Documents have been properly executed and become effective, as more specifically detailed in Article 17A;

“Financial Model” means the financial model adopted by Lenders setting forth the capital and operating costs of the Project and revenues there from on the basis of which the financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“Financial Year” means the financial year commencing on 1st April each year and ending on 31st March of the next year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this Agreement, it means the period from 1st April to the Transfer Date;

“Financing Documents” means, collectively, the documents executed in favor of or entered into with the Lenders, by the Concessionaire in respect of the Financial Assistance, including loan agreements, lease agreements, hire purchase agreements, notes, indentures, security agreements or arrangements, guarantees and acceptable letters of credit and other agreements evidencing any obligation of the Concessionaire and other necessary undertakings required pursuant to the respective terms thereof, relating to the Financial Assistance or any part thereof (including refinancing) provided by the Lenders to the Concessionaire for the Project;

“Five Star Hotel Facility or Hotel” means the hotel of not less than 5-star accreditations including all its furniture, fixtures, furnishings, systems, plant, equipment, operating supplies and materials which forms part of the Project;

“Force Majeure Event” shall have the meaning ascribed to it in Section 18.1 of this Agreement;

“Greater Mohali Area Development Authority (GMADA)” shall mean the statutory body constituted on 14-8-2006 under the Punjab Regional and Town Planning and Development Act 1995 (Punjab Act No.11 of 1995), and having its registered office at Puda Bhavan, Sector 62, SAS Nagar, Mohali

“GOI” means the Government of India;

“GOP” means the Government of Punjab;

“Good Industry Practice” means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of engineering, procurement, construction, equipment, safety, operation 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 construction contractor and/or operator, in a project of the type and size similar to the Project;

“Gross Annual Revenue” means the sum total of User Charges from all sources, from the Project, accruing to the Concessionaire in a year

“Independent Engineer” means the independent engineer appointed under/referred to in Section 10.1;

“Independent Auditor” means the independent auditor appointed under/referred to in Section 10.2;

“Lenders” means any Persons based in India or abroad providing Financial Assistance under the Financing Documents and includes banks, financial institutions, non-banking financial companies and funds;

“Material Adverse Effect” means circumstances which may or do (i) render any right vested in a Party by the terms of this Agreement ineffective or (ii) adversely affect or restrict or frustrate the ability of any Party to observe and perform in a timely manner its obligations under this Agreement or the legality, validity, binding nature or enforceability of this Agreement;

“Material Breach” means a breach of the obligations, terms and conditions of this Agreement or covenants by a Party, which materially and substantially affects the performance of the transactions contemplated by the Agreement or has a Material Adverse Effect;

“Minimum Development Obligation (MDO)” means the essential Project Facility to be developed under the development obligations of the Concessionaire in respect of the Project as mentioned in Schedule M

“Operations” means the provision of services and facilities of the standard no less than appropriate for an accredited five star hotel cum international convention centre and Commercial Spaces within its complex, and includes commercial exploitation and utilization of the Project Facilities and the levy, charging, demanding, collecting, retaining and appropriating of the User Charges;

“Operation Date” means the date on which the Independent Engineer issues the Provisional Certificate or the Completion Certificate, as the case may be, upon which the Operations of the Project Facilities may be commenced;

“Operation and Maintenance Period” is the period commencing from the Operations Date and terminating at the Transfer Date;

“Operation & Maintenance Works” or “O & M Works” means the works from time to time during the Operations and Maintenance Period in connection with maintenance of the Project Facility and includes inspection, surveys, testing, checks, and remedying the defects therein in accordance with the provisions of the Agreement, including the Specifications and Standards and Good Industry Practice;

“Operations Period” means the period commencing from the Operations Date and terminating on the Transfer Date;

“Person” means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity;

“Performance Security” shall mean the irrevocable and unconditional bank guarantee (Construction Performance Security and/or the Operations Performance Security, as the context may require or admit) provided by the Concessionaire/Selected Bidder from a nationalized/scheduled bank having a branch at Mohali substantially in the format set

forth in Schedule P and Schedule Q respectively as guarantee for the performance of its obligations in respect of the Project;

“Performance Standards” means the performance parameters for the operation and maintenance of the Project/Project Facilities set out in Schedule O

“Project ” means, subject to the provisions of the Agreement, the (i) the development of Site, design, financing, construction, implementation, completion, commissioning, management, operation and maintenance and use of the Project Facilities, execution of Works and all activities incidental thereto, such as engineering, civil, testing, commissioning and insurance etc., by the Concessionaire during the Term of Agreement; (ii) management, operation and maintenance of the Project facilities and provision of facilities and services to customers and users of the standard no less than the standards required under this Agreement; (iii) determining, demanding, charging, collecting, retaining and appropriating and revision of User Charges and (iv) handing over of all Project Assets by the Concessionaire to “Concessioning Authority” or its nominated agency at the end of the Term of Agreement by efflux of time or prior termination;

“Project Assets” means all tangible and intangible assets relating to the Project/Project Facilities including, but not limited to, (a) rights over the Site in the form of license, right-of-way or otherwise, (b) the Project Facilities, (c) tangible assets such as the Project, foundation, embankments, buildings, structures, super structures, constructions, additions, alterations or improvements etc. thereof, landscape structures, pavement and walkways, drainage facilities, sign boards, milestones, electrical, mechanical, civil, sanitation and other works, telephone, other communication equipment, laboratories with equipment, other equipment, technology at the Site/relating to the Project; (d) all Applicable Permits, affiliations and authorizations relating to or in respect of the project, (e) movable assets of the Project/project facilities, movable property, things and goods like equipment, machinery, fittings and fixtures etc. (f) financial assets of the Project such as receivables, cash and investments, security deposits for utilities, User Charges etc.; (g) the rights of the Selected Bidder/Concessionaire under the Project Contracts, (h) the Applicable Permits relating to the Project and (i) insurance proceeds;

“Project Completion” shall have the meaning specified in Section 8.1 (a);

“Project Contracts” means collectively this Agreement, the EPC Contract(s), the O&M Contract(s) and any other material contract (other than the Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project;

“Project Expenses” mean

- (i) **Cost of Construction** - all payments made or committed to be made, towards construction of the Project Facilities up to the date of issue of the Completion Certificate, that do not exceed an amount equivalent to Rs _____, and includes such variations thereto not attributable to any breach by the Concessionaire or its contractors of their respective obligations under the Project Contracts and duly certified by the Concessionaire’s auditors; plus
- (ii) **Cost of Commissioning** - all costs and expenses of whatever kind incurred in respect of the Project, prior to Operations Date, other than the Cost of Construction, or as otherwise approved by the Concessioning Authority” as reasonably necessary or appropriate to bring the Project Facilities safely and efficiently into operation including but without limitation to: (i) all pre-operative expenses incurred by GMADA/PIDB and the Concessionaire prior to the Operations Date, (ii) management overheads such as corporate office expenses, salaries to staff, travelling expenses, administrative overheads and management and legal expenses, (iii) expenses incurred by the Concessionaire for mobilization of financial resources, in whatever form for funding the Project, including but not limited to, brokerage, commissions, up-front discounts on debt, merchant banker’s fees, legal fees, publicity and travel expenses, financial advisory charges and other related charges and fees, including interest, charges and fees payable under the Financing Documents, (iv) any duties (including stamp duty payable on the Financing Documents), taxes, levies, corporate taxes, income tax, fees and commissions, duly grossed up, (v) costs paid to any Competent Authority, and (vi) all costs of the insurance required to be obtained in connection with the Project prior to the Operations Date; plus
- (iii) **O&M Expenses**-in any period commencing after the Operations Date, all costs and expenses incurred or committed to be made by or on behalf of the Concessionaire, duly certified by its auditors, for all regularly scheduled and reasonably anticipated costs and expenses on the management and operation and maintenance of the Project Facilities and performance of the Concessionaire’s obligations hereunder during the Operations Period including, without limitation, (i) all payments, costs,

- rents, fees, charges and levies incurred by the Concessionaire and/or payable by the Concessionaire; (ii) all cost of salaries and other employee compensation payable; (c) cost of materials, supplies, utilities and other services; (iii) all premia for insurance; (iv) all taxes and duties imposed upon or measured by income or receipts and all penalties, interest, addition to tax, expenses and other similar costs associated herewith; plus
- (iv) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for operation and maintenance of the Project; (vi) all fees and expenses of consultants and experts retained by the Concessionaire (including without limitation, attorney and accountants fees) in the ordinary course of business; (vii) costs incurred by the Concessionaire for handing over of the Project Facilities and the Project Assets; (viii) other miscellaneous expenses arising out of the provisions of this Agreement; (viii) all cost incurred on procurement by way of purchase, hire and purchase, lease, sub-lease or otherwise of equipment, consumables, machinery, plant, supplies etc and of its/their installation, erection, management, operation, replacement, upgradation, maintenance, repair and servicing and (ix) all other expenditures required to be incurred under the Applicable Laws or Applicable Permits necessary for the implementation of the Project in accordance with the provisions of this Agreement.

“Project Facilities” means the Minimum Facilities to be constructed under the provision of RFP issued on October 30,2010i.e. Five Star Hotel, International Convention cum Exhibition Center and Optional Facilities i.e. Commercial Area, Service Apartments and any other facility constructed with prior consent of Concessioning Authority at the Project Site, along with the buildings, structures, common areas, infrastructure, furniture, furnishings and equipment, plant, systems and fixtures, operating equipment, operating supplies, and all related and other facilities more particularly detailed in Schedule M, that shall be developed, designed, financed, constructed, installed, equipped, completed, commissioned and operated and maintained at the Project Site by the Concessionaire in accordance with the provisions hereof;

“Project Implementation Schedule” means implementation schedule for the Project as set forth in Schedule G hereto and includes the Milestone Dates;

“Project Site” or “Site” means the land located at City Centre, Sector 62, S.A.S. Nagar in Mohali City admeasuring 10 Acres, with 2.50 FAR and 40 % ground coverage described in schedule L.

“Proposal” or “Bid” means the documents in their entirety comprised in the proposal or bid submitted by the Selected Bidder (including the technical and financial proposal/ bid) in response to the Request for Proposal, and accepted by the “GMADA / CONCESSIONING AUTHORITY”, signed for verification by the authorised representatives of the Parties, attached as Schedule D and Schedule E;

“Provisional Certificate” means the certificate in respect of the Project Facilities issued by the Independent Engineer pursuant to Section 8.2 (b);

“Punjab Infrastructure Development Board” shall mean the nodal agency of the Government of Punjab (GOP), which is a statutory body incorporated in pursuance of the provisions of the Punjab Infrastructure (Development & Regulation) Act, 2002, that has been established for co-coordinating all efforts of GOP regarding the development of infrastructure projects, involving private participation on its various forms and funding from sources other than those provided by the State budget. PIDB would include its successors and assigns.

“PIRA” means Punjab Infrastructure Regulatory Authority constituted under the Punjab Infrastructure (Development & Regulation) Act, 2002 vide a notification dated 07.10.2009.

“Punch List” shall have the meaning specified in Section 8.2(b);

“Request for Proposal” or “RFP” means the Request for Proposal dated ____ issued by PIDB, on behalf of the “Concessioning Authority”, inviting proposals for the Project, and includes any addendum / clarifications issued in respect thereof;

“Schedule” means any of the schedules, supplements or documents, appended to this Agreement;

“Scheduled Project Completion Date” shall have the meaning specified in Section 8.1 (b);

“Security Interest” means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes

without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law;

“Signing Date” means the actual date on which Concession Agreement has been signed between Concessioneing Authority and Concessionaire.

“Space Norms” means space norms as prescribed by the affiliating/accrediting agency and as modified from time to time;

“Selected Bidder”: means the consortium/entity that has been successful in the bidding process for the Project and that has been incorporated as the Concessionaire;

“Specifications and Standards” or **“Technical Specifications and Standards”** means collectively or singularly, as the context may admit or require, the Technical Specifications, the Performance Standards; the Space Norms, the Staff norms, the Equipment and Laboratory Norms and the technical specifications for the construction and implementation of the Project Facilities as set forth in Schedule N, including the Planning & Development Authority (Development Plan) Regulations 2000 of the Government of Punjab and Ministry of Tourism (MoT), Federation of Hotel & Restaurant Association of India (FHRAI), the Punjab Municipal Corporations, as amended, supplemented or varied from time to time; National Building Code of India published by the Bureau of Indian Standards and applicable IS standards;

“Staff Norms” means as prescribed by the affiliating/accrediting agency and as modified from time to time,

“Subcontractor” means the construction contractor(s) and/or operation and maintenance contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of Works and/ or building/ services or part thereof, as the context may require, to whom the Concessionaire contracts or subcontracts the Works in full or part;

“Substitute Entity” means the entity defined in the Substitution Agreement;

“Tax” means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value, goods, services, works, import, export, production or other reference and statutory, governmental,

state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and/or levied of any nature whatsoever, whether by GOI, the GOP, Competent Authorities, and in respect of any Person and all penalties, charges, costs and interest relating to it;

“Termination” means prior termination of this Agreement pursuant to Termination Notice but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course;

“Termination Period” shall have the meaning specified in Section 20.1;

“Term of Agreement” shall have the meaning specified in Section 2.2;

“Tests” means the tests to be carried out pursuant to this Agreement and include the test to determine the completion of the Construction Works and certification thereof by the Independent Engineer prior to Operations;

“Termination Payment” means the aggregate of the amounts payable by “Concessioneing Authority” to the Concessionaire under this Agreement upon Termination provided, however, that for purposes of determining such Termination Payments the capital cost of the Project shall at all times be reckoned as an amount not exceeding the Total Project Cost and the liability of the Concessioneing Authority to make such payments shall be determined as if such capital cost is restricted to Total Project Cost;

“Third Party” means any Person, real or legal, or entity other than the Parties to this Agreement;

“Total Project Cost” shall means the lowest of the following

- (a) Total Project Cost for the Project as set forth in the Financing Documents submitted by the Concessionaire.
- (b) Total Cost of Construction as determined/ verified by Independent Engineer, on the basis of the detailed cost estimate of the Project Facilities submitted by the Concessionaire and as approved by him with due reference to Construction Work executed as per the approved drawings, specifications and proposal.

“Transfer Date” means the date immediately following the date of expiry of Term of Agreement/this Agreement, including extension thereto or earlier Termination thereof in accordance with the provisions of this Agreement;

“Transaction Documents” means documents including but not limited to Transaction Documents to which the Concessionaire is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto and of any amendments, supplements or replacements etc

“User” means any Person using the Project Facilities, and includes any guest, visitor, user, licensee or customer;

“User Charges” means the charges, tariffs, prices, fees, commissions, royalties, rentals, rates, premiums, deposits, license fees etc. and all sources of revenue or amounts of money by whatever name called that is payable at any time and from time to time by any Person to the Concessionaire in respect of the Project Facilities or under or pursuant to this Agreement;

“Vacant Possession” means delivery of possession of the land comprising the Site free from all Encumbrances, restriction or impediments and with all easements and all other rights appurtenant or in relation thereto;

“Vesting Certificate” shall have the meaning specified in Schedule U;

“Works” mean the works under and in accordance with the provisions of this Agreement relating to design, development of Site, construction, completion, testing and commissioning of the Project/Project Facilities (the **“Construction Works”**), and the **O&M Works**, collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project/Project Facilities and any other permanent, temporary or urgent works required hereunder;

1.2 Principles of Interpretation

In this Agreement, unless the context otherwise requires:

- (a) reference to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted;
- (b) words importing singular shall include plural and vice versa, and words importing the masculine shall include the feminine gender; and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- (c) The table of contents and headings are for convenience of reference only, and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- (d) Words “include” and “including” are to be construed without limitation;
- (e) any reference to any point in time shall mean a reference to that point in time according to Indian Standard Time; any reference to Rs. or Rupees shall mean a reference to Indian Rs. or Rupees (currency of India);
- (f) Any reference to day shall mean a reference to a calendar day; any reference to month shall mean a reference to a calendar month;
- (g) The Annexure 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;
- (h) reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to such agreement, deed, instrument, license or other document as the same may be amended, varied, supplemented, modified, novated or suspended at the time of such reference;
- (i) References to recitals, clauses, sub-clauses, schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, clauses, sub-clauses, schedules of or to this Agreement;

- (j) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a Business Day, then the period shall run until the end of the next Business Day;
- (k) references to “construction” include, unless the context otherwise requires, investigation, design, development of site, engineering, procurement, delivery, transportation, installation, processing, fabrication, equipping, installation, establishment, testing, commissioning and other activities incidental to the construction and “construct” shall be construed accordingly;
- (l) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer/ Independent Expert shall be valid and effective only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer/ Independent Expert;
- (m) wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate or determination by any Person, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing and the words “notify”, “endorsed”, “consent”, “approval”, “certify” or “determined” shall be construed accordingly;
- (n) Unless otherwise provided, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement;
- (o) Any word or expression used in this Agreement shall, unless defined or construed in this Agreement, bear its ordinary English meaning;
- (p) the damages payable by a Party to the other Party as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage/liquidated damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty;

- (q) Reference to an individual shall include his legal representative, successor, legal heir, executor and administrator; and
- (r) Reference to a Person shall be construed as including a reference to its successors and permitted assigns in accordance with their respective interests.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

- (a) Between two Clauses of this Agreement, the provisions of specific Clauses relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) Between the Clauses and the Schedules, the Clauses shall prevail, save and except as expressly provided in the Clauses or the Schedules;
- (c) Between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
- (d) Between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- (e) Between any value written in numerals and that in words, the latter shall prevail.

1.5 Priority of Documents

The documents forming part of the bidding process leading to this Agreement shall be interpreted in the following descending order of priority:

- (a) The Concession Agreement
- (b) The Schedules to the Concession Agreement
- (c) The Notice of Award / Letter of Acceptance issued to the Concessionaire
- (d) The written clarifications issued to the bidders
- (e) Written addenda/Addendum to the RFP Doc.
- (f) The RFP Doc.
- (g) The Concessionaire's Bid

ARTICLE 2

GRANT OF CONCESSION

Section 2.1 Concession

Subject to and in accordance with the terms and conditions set forth in the Agreement, the **Concessions Authority** hereby grants and Concessionaire hereby accepts the exclusive right and authority during the Concession Period to develop, design, engineer, procure, finance, manage, construct and operate and maintain the project facility at the Project Site and to exercise and/or enjoy the rights, powers, privileges, authorizations and entitlements as set forth in this Agreement, including but not limited to the right to charge, demand, collect, retain and appropriate User Charges (collectively the “**Concession**”).

For this purpose, subject to the provisions of this Agreement, the **Concessions Authority** hereby grants the Concessionaire the exclusive right and authority during the Concession Period to:

- i. Design, develop, construct, establish, finance, manage, operate and maintain the Project Facility as per the scope of work as mentioned in Schedule A of this Agreement and transfer it to **Concessions Authority** or its nominated agency on the Transfer Date;
- ii. Enjoy complete and uninterrupted possession of and control over the Project Site that shall be leased to the Concessionaire by **Concessions Authority** under Project Site Lease Deed for a period that shall be co-terminus with this Agreement;
- iii. Without prejudice to anything to the contrary in this Agreement, including the Minimum Development Obligations and the approval for the overall concept designs and drawings by the Design Approval Committee, to have access and liberty to plan, design, construct, finance, maintain and operate the proposed Project Facility;
- iv. Manage, operate and maintain all or any part of the Project Assets without any limitation or restriction other than as expressly set out in this Agreement;
- v. Determine, revise, charge, demand, collect, recover, retain and appropriate, the tariff at market driven rates from the Users of the Project Facility in accordance with the provisions hereof;

- vi. To fulfill its obligations under this Agreement, undertake activities either itself or through subcontracting arrangements and to appoint subcontractors and agents without in any way relieving the Concessionaire of its obligations as set out in this Agreement;
- vii. Exercise such other rights as Concessioneing Authority may determine as being necessary or desirable for the purposes incidental and necessary for implementing the Project;
- viii. obtain all the required Clearances from the Competent Authorities for the Project. Responsibility of taking all necessary approvals of construction, demolition and reconstruction lies with the Concessionaire. Nevertheless, the Concessioneing Authority without any binding obligation may provide any reasonable assistance upon written request from the Concessionaire;
- ix. Arrange statutory clearance from the Concessioneing Authority and Concerned Authorities for removal of existing trees, if any, from the Site;
- x. Bear and pay all expenses, costs and charges incurred in the fulfilment of all the Concessionaire's obligations under this Agreement;

Nothing contained herein, including the act of granting permission to develop the Project Facility at the Site shall vest or create any proprietary interest in the Project Facility or any part thereof including any permanent fixtures, fittings etc. installed in the structure of the Project Facility in favour of the Concessionaire or any person claiming through or under the Concessionaire. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the Project Facility in any manner. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

I Section 2.2 Concession Period

- i. The Concession Period shall commence from the Compliance Date and shall extend for a period of Fifty (50) years or the earlier termination of this Agreement in terms hereof and during which the Concessionaire is authorized to implement the Project and to operate the Project Facility in accordance with the provisions hereof. For the avoidance of doubt, the Concession Period shall include the Construction Period.

It is hereby made clear that:

- ii. In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination;
- iii. At the end of the Concession Period or sooner termination of this Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Site and Project Facility and the Project Assets shall revert to the Concessions Authority.

Section 2.3 Construction Period

- a. The Construction Period for the Project shall be a period of 30 (*Thirty months*) (starting from the Compliance Date).
- b. The Concessionaire guarantees that construction milestone set out in Schedule G shall be achieved in accordance with the Project Implementation Schedule and the Project Completion shall be achieved by the Scheduled Project Completion Date.
- c. In the event that is the Project Completion is not achieved by the Scheduled Project Completion Date, for any reason other than Force Majeure or reasons attributable to the Concessions Authority or any Competent Authority, the Concessionaire shall, subject to sub-clause (d) below, pay to the Concessions Authority, liquidated damages for each day of delay beyond the Scheduled Project Completion Date @ Rs. 6.94 Lacs (Rupees Six Lakhs Ninety Four Thousand Only) per day until the Project Completion is achieved and maximum period for such extension shall be six months. Provided that nothing contained in this sub-clause (c) shall be deemed or construed to authorize any delay by the Concessionaire in achieving construction milestone or the Project Completion.
- d. In the event that Concessionaire does not pay the Liquidated damages to the Concessions Authority, the Concessions Authority shall be entitled to invoke the Construction Performance Security and to terminate this Agreement for a Concessionaire Event of Default in accordance with the provisions of Article 19 hereof. Provided that instead of terminating this Agreement, the Concessions Authority may at its sole option extend the time for achieving Construction Completion on such terms and conditions as it deems fit in its sole discretion. It is clarified that a delay of greater than six

- (6) months in achieving any construction milestone shall be a Concessionaire Event of Default and the Concessioneing Authority shall be entitled to terminate this Agreement and to invoke the Construction Performance Security.
- e. During the Concession Period, the Concessionaire shall have the option to add capacity to the Project by carrying out additional construction in synergy with the existing facility (interior/exterior/ façade) and as per the byelaws/ Technical Specifications and Standards to consume maximum FAR, subject to the approval of the concept designs by the Maintenance Board/Concessioneing Authority; and the Approvals and Clearances from the Competent Authorities.

Section 2.4 Sole Purpose of Concessionaire

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

Section 2.5 Actions in Support of Concession

- i) The Concessioneing Authority shall assist the Concessionaire, as necessary and mutually agreeable, to enable the Concessionaire to achieve Financial Closure. Such assistance shall include discussion in good faith and entering into appropriate documentation or additional writings in order to facilitate the process of achieving Financial Closure and which do not materially and adversely affect the rights and interests of the Concessioneing Authority hereunder or impose additional material liabilities;
- ii) Concessioneing Authority shall recommend, endorse, assist and provide all reasonable assistance and recommendations to the Competent Authorities, including GOI, in support of the Concessionaire's applications for Clearances that may be needed from time to time for the implementation of the Project; provided the Concessionaire has made the requisite applications, paid the applicable fees and is in compliance with the necessary conditions for the grant of such Clearances;

- iii) The Concessioneing Authority shall grant such permission or exemptions within its powers as may be required for the Concessionaire to enjoy Vacant Possession and hold the area of land comprising the Project Site for implementation of the Project, other than where the failure to enjoy Vacant Possession results from a breach by the Concessionaire of the terms of this Agreement or of any Clearance;
- iv) In order to implement the Project, the Concessionaire shall have the right to sub-contract to subcontractors, at its cost and risk, any of the Works without in any way relieving the Concessionaire of its obligations as set out in this Agreement, provided such Subcontractors are capable of discharging the obligations under this Agreement for and on behalf of the Concessionaire and possess the qualifications, experience and skills for undertaking such Works; provided further that this does not result in the carrying out of the whole or substantially the whole, as determined by the Concessioneing Authority, of the Works by Subcontractors. The Concessionaire shall ensure that all its obligations pursuant to this Agreement, which are relevant to the scope of work of a Subcontractor, are incorporated in the terms and conditions under which such Subcontractor is retained;
- v) The Concessionaire shall supervise, monitor and control the activities of the Subcontractors under their respective Project Contracts as may be necessary and shall be liable and responsible for the acts or defaults of the Subcontractors or their employees and agents as if such acts or defaults were the acts or defaults of the Concessionaire;
- vi) The Concessionaire shall at the End Date, transfer and handover the Project Facilities, the Project and the Project Assets to the Concessioneing Authority or its nominated agency in accordance with the provision hereof.

ARTICLE: 3
CONDITIONS PRECEDENT

Section 3.1 Conditions Precedent for Concessioneing Authority

The obligations of the Concessionaire hereunder, other than the obligations under Section 3.2, are subject to the satisfaction in full by the Concessioneing Authority of the Conditions Precedent set out in this Section 3.1. The Concessioneing Authority shall have:

- (a) Handed over vacant possession of site to the Concessionaire along with the furnished confirmation of land use classification from the Competent Authority;
- (b) executed with the Competent Authority the Project Site Lease Deed (in the form attached hereto in Schedule J and co-terminus with this Agreement) in favour of the Concessionaire and handed over to the Concessionaire the Vacant Possession of the Project Site along with all Easementary Rights free from Encumbrances in accordance with the terms and conditions of this Agreement, provided that the Concessionaire shall have given a bank guarantee to the Concessioneing Authority as Construction Performance Security in accordance with the terms hereof ;
- (c) constituted a Design Approval Committee (“DAC”) in accordance with the provisions of Section 10.4 to review the concept design for the Project Facilities submitted by the Concessionaire, and subject to satisfaction, approve the same;
- (d) submitted to the Concessionaire a panel of five reputed engineering firms shortlisted through limited selection process and pursuant to short listing of three (3) firms out of such five (5) firms by the Concessionaire, appointed one out of such three (3) short listed firms as Independent Engineer, in accordance with the terms hereof; and
- (e) Designated the Engineer in accordance with the terms hereof .

Section 3.2 Conditions Precedent for Concessionaire

The obligations of the **Concessioneing Authority** hereunder, other than the obligations under Section 3.1 above, are subject to the satisfaction in full by the Concessionaire of the Conditions Precedent set out in this Clause 3.2. The Concessionaire shall have:

- (a) prepared and finalized the concept design for the development of the Project Facilities in consultation with and approval from the Design Approval Committee;
- (b) Registered with the Competent Authority the Project Site Lease Deed (in the form attached hereto in Schedule J and co-terminus with this Agreement)
- (c) prepared, finalised and got approved by Chartered Structural Engineer, the DAC, Detailed Design and Drawings including the Architectural Plans, Structural Drawings, Elevations, Section etc, as per the applicable Local Building Byelaws, Norms etc, of the Project Facility for execution of Project;
- (d) made arrangement for financing the Project and executed the Financing Documents and delivered to Concessioneing Authority notarised true copies thereof along with soft copies;
- (e) submitted a detailed description, calculation and estimate of the Total Project Cost to the Concessioneing Authority for its perusal;
- (f) procured at its cost the Clearances/ Permits, including environmental permits, from the concern agencies as required for the commencement of the Construction Works, as set out in Schedule H, unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such permits are in full force and effect and the Concessionaire is in compliance with the conditions of grant thereof and they are valid and effective;
- (g) ensured that all the representations and warranties of the Selected Bidder/Concessionaire set forth herein are true and correct as on the date of execution of this Agreement and the Compliance Date;
- (h) shortlisted three firms from a set of five firms named by the Concessioneing Authority for selection of Independent Engineer;
- (i) nominated a person in the Maintenance Board as an observer;
- (j) provided the Concessioneing Authority notarised copies (certified as true by the duly authorised Director of the Concessionaire) of all its constitutional documents and board resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Agreement by the Concessionaire;

- (k) received from the Indian Legal Counsel of the Concessionaire a legal opinion with respect to the authority of the Concessionaire to enter into this Agreement and the Project Contracts and the Financing Documents and the enforceability of the provisions thereof;
- (l) procured permission from Airport Authority of India (AAI) with regard to the proposed height of the Project Facility;
- (m) furnished the certified copy of the duly executed shareholders'/ joint venture agreement between the Consortium Members in respect of the Concessionaire and the Project, with appropriate provisions as regards obligations of the Consortium Members with respect to Equity and restrictions on transfer thereof, in terms of this Agreement; and
- (n) furnished, if any, the certified copy of this agreement for provisions of technical support, operations or management of the Project during the Operations Period between the Concessionaire and any Consortium Member or any other Person, as the case may be;

Provided that upon request in writing by the Concessionaire, the Concessions Authority may, in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Section 3.2.

Section 3.3 Obligation to Satisfy Conditions Precedent

- (a) Each Party shall make all reasonable endeavors at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent relating to it within a period of 120 (One Twenty) days from the date of execution of this Agreement. The later of the date within such 120 (One Twenty) days when the Concessions Authority or the Concessionaire fulfils its Conditions Precedent (unless Concessions Authority waives the same for the Concessionaire) shall be the date from which the obligations of the Parties hereunder shall commence (the "**Compliance Date**");
- (b) In the event the Conditions Precedent for a Party have not been satisfied within the stipulated time and the Concessions Authority has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this

Agreement and the Concessions Authority shall not be liable in any manner to the Concessionaire or Persons claiming through or under it;

- (c) Upon the termination of this Agreement under this Section 3.3, the access to or possession of the Project Site granted to the Concessionaire pursuant to Section 4.1 shall forthwith terminate, the Concessionaire and the Persons claiming through or under it shall immediately vacate the Project Site, without any demur or delay, free and clear from any Encumbrances irrespective of any outstanding mutual claims between the Parties or claims of any person;
- (d) In the event this Agreement is terminated due to non-fulfillment of the Concessionaire's Conditions Precedent and the same is not due to the Concessions Authority's default, the Concessions Authority shall forfeit the Construction Performance Security as damages;
- (e) In the event this Agreement is terminated due to non fulfillment of the Concessions Authority's Conditions Precedent, the Concessions Authority shall upon such termination return/refund in full the Construction Performance Security to the Concessionaire; provided there are no outstanding claims of the Concessions Authority on the Concessionaire and unless the Concessions Authority's failure to fulfill its Conditions Precedent is a result of the Concessionaire's default, in which case the Concessions Authority shall invoke the Construction Performance Security as damages;
- (f) Instead of this Agreement terminating as provided in this Section 3.3, the Parties may by mutual agreement in writing extend the time for fulfilling the Conditions Precedent;

PERFORMANCE SECURITY

Section 3.4 Construction Performance Security

For securing the performance of the obligations of the Concessionaire's/Selected Bidder's obligations under the RFP, the Notice of Award, under Section 2.3 of this Agreement and during the Construction Period, the Selected Bidder/Concessionaire has prior to the date of execution of this Agreement, delivered to the Concessions Authority a bank guarantee for a sum of Rs. **12.5 Crores (Rupees Twelve Crores and Fifty Lacs Only)**, valid from the date of issue thereof and until Operations Date in

favour of the Greater Mohali Area Development Authority (GMADA) from _____ bank (a nationalized/scheduled bank), and payable and enforceable in Mohali, in the form set forth in Schedule (the “**Construction Performance Security**”).

On receipt of the Performance Security, the Proposal Security submitted by the Concessionaire at the time of submitting the Proposal to the Concessions Authority, shall be released.

Section 3.5 Operation and Maintenance Performance Security

- a) For securing the due and punctual performance of obligations of the Concessionaire during the Operations Period, the Concessionaire shall deliver to the Concessions Authority, 30 (thirty) days prior to the Scheduled Project Completion Date or Operations Date, whichever is earlier, a demand bank guarantee of **Rs. 5 Crores (Rupees Five Crores only)** valid from the date of issue thereof until the Transfer Date of the Project, in favour of the Greater Mohali Area Development Authority (GMADA) from a scheduled/nationalized bank acceptable to the Concessions Authority and enforceable and payable in Mohali, in the form set forth in Schedule (the “**Operations and Maintenance Performance Security**”). The Operations and Maintenance Performance Security during the operation period shall be increased @ 25% every 5 years for the subsequent years;
- b) The Concessionaire’s failure to provide the Operations and Maintenance Performance Security, in accordance with the provisions of this Section 3.5 shall (i) entitle the Concessions Authority to call in and invoke the Construction Performance Security and retain and appropriate the same and (ii) constitute a Concessionaire Event of Default entitling the Concessions Authority to terminate this Agreement under the provision of Articles 20 and 21 hereof;
- c) The Selected Bidder/Concessionaire shall keep the Construction and Operations and Maintenance Performance Security valid at all times during the stipulated period and renew it 30 (thirty) days prior to the expiry of its validity;

Section 3.6 Appropriation of Performance Security

- a) In the event of the Selected Bidder/Concessionaire being in default of the due, faithful and punctual performance of its obligations under the RFP, the Notice of Award, under Section 2.3 of this Agreement and during the Term of this Agreement, as the case may be, or owing any sums whatsoever to Concessions Authority

under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of the Concessions Authority for or against the Concessionaire under this Agreement or against the Concessions Authority in respect of this Agreement, the Concessions Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the Performance Security as damages for such default, dues, demands or claims;

- b) The decision of the Concessions Authority as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Selected Bidder/Concessionaire. The Selected Bidder/Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Concessions Authority under this Agreement is required to be provided in connection with any demand made by the Concessions Authority to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than the Concessions Authority's written demand as aforesaid;
- c) In the event of encashment of the Performance Security by the Concessions Authority, in full or part, the Selected Bidder/Concessionaire shall within 30 (thirty) days of receipt of the encashment notice from the Concessions Authority provide a fresh Performance Security or replenish the deficit in the existing Performance Security, as the case may be. The provisions of the Section 3 shall apply mutatis mutandis to such fresh Performance Security. The Selected Bidder's/Concessionaire's failure to comply with the provision shall constitute a Concessionaire Event of Default which shall entitle the Concessions Authority to terminate this Agreement in accordance with the provisions of Articles 20 and 21 hereof;

Section 3.7 Release of Security

- a) Subject to the provisions hereof, the Concessions Authority shall promptly return the Construction Performance Security to the Selected Bidder/Concessionaire upon Project Completion being achieved, and the Concessionaire furnishing the Operations and Maintenance Performance Security within the stipulated time, provided that there are no outstanding claims of the Concessions Authority on the

Selected Bidder/Concessionaire;

- b) Subject to the provisions hereof, the Concessions Authority shall return the Operations and Maintenance Performance Security to the Concessionaire within thirty days after the end of the Term of this Agreement, provided that the Concessionaire has fulfilled all its obligations under this Agreement, including in respect of smooth transfer of Project Facilities, Project Assets and the Project, and there are no outstanding claims of the Concessions Authority on the Selected Bidder/Concessionaire;

ARTICLE 4

PROJECT SITE

Section 4.1 Lease of Site

- a) In consideration of implementation of the Project by the Concessionaire and the payment herein reserved and of other covenants on the part of the Concessionaire, the Concessioneing Authority shall, upon signing of the Lease Deed, be deemed to have handed over and delivered to the Concessionaire possession of all the land and rights comprising the Site, free from Encumbrances, and together with the Easementary Rights and with the full and free right and liberty of way and passage and other rights in relation thereto and the right, authority and license to implement the Project thereat in accordance with the provisions of this Agreement, under a valid and binding Site Lease Deed, in the form attached hereto in Schedule J, for a period that shall be co-terminus with the Concession Period.
- b) The Parties shall, within 15 (fifteen) days of the Concessioneing Authority notice in this behalf to the Concessionaire prior to the Compliance Date, carry out through their duly authorised representative, a joint inspection and verification of all the real estate, structures, land, buildings at the Site and record the report thereof in a memorandum duly signed by the Parties/their representatives. The participation of the Concessionaire in such joint inspection shall be mandatory. The Concessionaire shall carry out at its cost a due diligence of all Encumbrances at, on or under the Site and notify the same to the Concessioneing Authority, which shall take prompt action for removing the same.
- c) The Concessioneing Authority shall bear all the costs of making available the Project Site to the Concessionaire and be liable to remove/relocate at its cost all Persons that may have to be displaced from the Project Site, including the payment of compensation, if any, to such Persons or litigation pursuant thereto and the Concessionaire shall not be liable in this behalf.
- d) The Concessioneing Authority shall, on or prior to the Compliance Date hand over the Vacant Possession of the Project Site unto the Concessionaire and together with the full and free right and liberty of way and passage and other rights in relation thereto, for the purpose of implementing the Project in accordance with the

provisions of this Agreement.

- e) In consideration for the Lease of the Site, the Concessionaire shall pay the Concessions Authority, the Lease Rent as specified in Section 13.2 hereof.
- f) The Project Site Lease Deed shall be duly registered with the relevant Government Authority at the Concessionaire's cost (stamp duties, registration charges etc.) as soon as practicable, but in any case within four months of the date of execution thereof.

Section 4.2 No Lease/Sub-Lease of Project Site

- a) The Concessionaire shall not lease, sub-lease, transfer, assign or part possession of the whole or any part of the land comprising the Project Site, to any person in any form or under any arrangement, device or method. This is an essential condition of this Agreement, the breach of which shall constitute a Concessionaire Event of Default that shall entitle the Concessions Authority to terminate this Agreement in accordance with the provisions of Article 20 and 21 hereof.
- b) Provided that the Concessionaire shall be entitled to enter into Contractual Arrangements, including the licensing, franchising or similar arrangements in respect of the Project Facility (built up area), for activities usual in the set-up of a Five Star Hotel, International Convention cum Exhibition Center which, however, shall not involve the transfer of the leasehold rights therein or thereof.
- c) The concessionaire may enter into any License Agreement with any Third Party for operation and maintenance of the Project Facility with prior approval/ permission of the Concessions Authority and such permission which shall not be unduly delayed or denied. However decision for providing approval to lease the permitted commercial space shall rest with the Concessions Authority.
- d) Notwithstanding anything to the contrary in this Agreement, the Concessionaire will not enter into any Contractual Arrangement with anybody that has the effect of derogating any rights of the Concessions Authority under this Agreement or which may adversely affect the interests of Concessions Authority and/ or which seeks to grant any rights that the Concessionaire is not permitted to grant or are not available to the Concessionaire in the very first place.

Section 4.3 Information about Project Site

- a) The information about the Project Site set out in Schedule L is provided by the Concessioneing Authority to the Concessionaire 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, which the Concessioneing Authority may now possess or may hereafter come to possess.
- b) The Site for the Project is located at City Centre, sector 62, S.A.S. Nagar in Mohali City. The Project Site is just 4 kms from the Sub City Centre, Sector 34 and 5.5 kms from CBD, sector 17, Chandigarh. The total area means the land located at City Centre, Sector 62, S.A.S. Nagar in Mohali City admeasuring 10 Acres, with 2.50 FAR and 40 % ground coverage described in schedule L.

Section 4.4 Concessioneing Authority Property at Project Site

- a) All debris and construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying at the Project Site or generated during the implementation of the Project shall be promptly disposed off by the Concessionaire at its cost. The Concessionaire may if it deems appropriate use the same for the execution of the Works.
- b) All articles of value or antiquity found on the Project Site shall be the property of the Concessioneing Authority. The Concessionaire shall take reasonable precautions to prevent its labor and personnel and that of its Contractors from removing or damaging any such article or thing. The Concessionaire shall immediately upon discovery of such article or thing, inform the Concessioneing Authority, which may issue instructions for dealing therewith.

Section 4.5 Access to Project Site

- a) Following the delivery of Vacant Possession of the Project Site by the Concessioneing Authority to the Concessionaire, the Concessionaire shall, at all reasonable times and on reasonable notice, afford access to the Project Site to the representatives of or Persons duly authorized by the relevant Competent Authority concerned with safety, security or environmental protection to inspect the Site, and the Project and the Works, carry out their respective duties and functions and to investigate any other matter within their authority.

- b) The Persons obtaining access to the Site shall conduct their activities and operations at their own risk, cost and expense and in such manner so as to cause minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose of the Person gaining such access.

Section 4.6 Use of Project Site

- a) The Concessionaire shall use the Project Site during the Term of Agreement only for the purposes of implementing the Project and for purposes incidental or necessary thereto as permitted under this Agreement and shall not, without the prior written consent of the Concessioning Authority, use the Project Site for any other purpose. The Concessionaire accepts that this is an essential condition of this Agreement.

- b) The Concessionaire shall not part with or create any Encumbrances on the whole or any part of the Project Site save and except as expressly permitted under this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors in accordance with the provisions of this Agreement.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

Section 5.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party that:

- (a) it is duly organized, 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 Agreement;
- (c) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to carry out the transactions contemplated hereby;
- (d) This Agreement constitutes its legal, valid and binding obligation, fully enforceable against it in accordance with the terms hereof;
- (e) it has the financial standing and capacity to undertake the Project;
- (f) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (g) it shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

Section 5.2 Further Representations and Warranties of Concessionaire

In addition, the Concessionaire represents and warrants to the Concessions Authority that:

- (a) The execution, delivery and performance of this Agreement and all instruments or agreements required hereunder do not conflict with, contravene, violate, result in the breach of, constitute a default under or accelerate performance of any agreement or instrument to which the Concessionaire is a party, including without limitation, its articles and memorandum of association or by which it is or may be bound or any Applicable Laws or any covenant, agreement, understanding, decree or order,

injunction, award to which it is a party or by which it or any of its properties or assets is bound or affected;

- (b) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;
- (c) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Competent Authority or any other pending or potential matters which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (d) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (e) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Concessioning Authority or to any Competent Authority in relation to Applicable Permits or otherwise contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (f) Each consortium member of the Selected Bidder/the Selected Bidder was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Concessionaire entering into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

Provided that whenever any pending or potential matter, including the matters listed in the sub-sections above, comes to the knowledge of the Concessionaire, during the Term of Agreement, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties

under this Agreement, the Concessionaire shall immediately intimate the same to the Concessing Authority ;

- (g) In submitting its Proposal the Selected Bidder/Concessionaire has complied with all the Applicable Laws and it is and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal proceedings or liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to implement the Project;
- (h) All rights and interests of the Concessionaire in the Project, the Project Facilities and Project Assets shall pass to and vest in the Concessing Authority or its nominated agency on the Transfer Date free and clear of all liens, claims, and encumbrances, without any further act or deed on the part of the Concessionaire or the Concessing Authority ; and
- (i) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of commission or otherwise for securing the execution of this Agreement or for influencing or attempting to influence any officer or employee of the Concessing Authority.

Section 5.3 Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, the Selected Bidder/Concessionaire acknowledges that prior to the execution of this Agreement, the Selected Bidder/Concessionaire has after a complete and careful examination made an independent evaluation of the Project, the legal and contractual framework, the Applicable Laws and Applicable Permits and the technical and financial aspects of the Project, the Specifications and Standards, the Project Site and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things needed for implementing Project, all the information and documents provided by the Concessing Authority, its consultants or any Competent Authority, the market and demand conditions, information relating to users and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Selected Bidder's/Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder. It has also carried out a title search, including without limitation the title, ownership, possession, land acquisition, land use etc. in respect of the Project Site;

- (b) The Selected Bidder/Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) above and hereby confirms that the Concessioneing Authority, its consultants or any Competent Authority shall not be liable for the same in any manner whatsoever to the Concessionaire/Selected Bidder or Persons claiming through or under the Concessionaire;
- (c) The Selected Bidder/Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided to the Concessionaire by the Concessioneing Authority, its consultants or any Competent Authority and that it shall accept and act thereon at its own cost and risk;
- (d) The Selected Bidder/Concessionaire shall be solely responsible for the contents of its Proposal, adequacy and correctness of the Design and Drawing, data and detailed engineering prepared or procured by the Concessionaire for implementing the Project;
- (e) The Selected Bidder/Concessionaire is entering into this Agreement on the basis of its satisfaction based on the due diligence audit undertaken by it.

ARTICLE 6

OBLIGATION OF PARTIES

The Parties shall, in addition and without prejudice to their respective obligations, covenants, terms and conditions specified in the other provisions of this Agreement, during the Term of Agreement, without qualification, observe and comply with the following obligations:

Section 6.1: Obligations of Concessioneing Authority

Concessioneing Authority, in addition to and without prejudice to its obligations specified in the other provisions of this Agreement, shall, without qualification, during the Concession Period, including extension thereof, observe and comply with the following obligations:

- (a) Concessioneing Authority shall, upon request from the Concessioneaire, render all reasonable assistance to the Concessioneaire in obtaining Clearances which are necessary for the implementation of the Project at the appropriate stages thereof and grant such Clearances which are in its authority to grant subject to the Concessioneaire complying with the eligible criteria for the grant of such Clearances and paying the necessary fees in relation thereto;
- (b) The Concessioneing Authority shall obtain any approval in respect of Change of Land Use (CLU), if required. Arranging /granting any such approval, if required, shall be the obligation of the Concessioneing Authority/Concerned Departments of the State Government, without any expenses on this account being incurred by the Concessioneaire
- (c) Concessioneing Authority shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the construction, operation and maintenance of the Project;
- (d) In the event of any action or suit to prevent, prohibit or otherwise challenge the Project by any Competent Authority, trade union, environmental group or any other person or organization being instituted or contemplated which in the reasonable opinion of the Concessioneaire may have a Material Adverse Effect, the Concessioneaire may by notice in writing to Concessioneing Authority require them to take such action as is reasonably available to them in order to mitigate such Material Adverse Effect;

- (e) All litigation involving the Project Site prior to the Compliance Date and wherein the actions have been filed against the Concessioneing Authority shall be conducted solely by the Concessioneing Authority. The Concessioneaire shall not be liable or responsible for the same in any manner. The Concessioneing Authority shall indemnify Concessioneaire and shall hold it harmless from and against any claim or cost that may arise as a result of any such litigation;
- (f) The Concessioneing Authority accepts the Concessioneaire's right to advertise and set up and display hoardings, billboards and other information panels at the Project Facility or to grant licenses for such rights against payment; provided that such rights shall be exercised in accordance with the terms of Clearances and Applicable Laws
- (g) The Concessioneing Authority shall permit the Concessioneaire to Plan, Design, Finance, Engineer, Construct, Market, Operate, Maintain and Manage the infrastructure at the Project Site, including without limitation sewers, drains, public conveniences, waste disposal facilities, laying of cables and pipelines and such other facilities and shall cooperate with and render reasonable assistance in facilitating the requisite Clearances for the same;
- (h) The Concessioneing Authority shall constitute a Maintenance Board comprising of [] nominees / representatives of Concessioneing Authority and one (1) nominee of the Concessioneaire, to monitor the operation and management of the Project in accordance with the terms and conditions of the Concession Agreement during the Concession Period;
- (i) The Concessioneing Authority shall bear and be responsible for all costs, expense or charges incurred in making available the Project Site in accordance with this Agreement, including any compensation required to be paid for acquisition of such Project Site. Further, the Concessioneing Authority shall hold Concessioneaire harmless from all costs, expenses or charges incurred in relocating, rehabilitating or resettling Persons in connection with making available the Vacant Possession of the Project Site to the Concessioneaire. The Concessioneing Authority shall reimburse the amount incurred by the Concessioneaire in relocation of underground and overhead services and utilities;

- (j) The Concessing Authority shall ensure that from the Compliance Date and till the completion of the Concession Period, the Concessionaire has access to the Project Site for the purpose of carrying out the Concessionaire's obligations under this Concession Agreement. Such right of access will not be exclusive to the Concessionaire and shall be subject to the rights of access referred to in this Agreement;
- (k) If the Concessionaire suffers delay or incurs Cost as a direct result of failure on the part of the Concessing Authority to perform its obligation under the Agreement, Concessionaire shall give notice of the same to the Concessing Authority. Upon receipt of such notice Concessing Authority shall proceed to take remedial measures;
- (l) The Concessing Authority shall appoint the Independent Auditor and all fees and expenses for the same shall be borne by the Concessing Authority.

Section 6.2 Obligations of the Concessionaire

I. Obligations of Concessionaire

The Concessionaire shall, in addition and without prejudice to its obligations specified in the other provisions of this Agreement, during the Concession Period, without qualification, observe and comply with the following obligations:

- (a) Take over Vacant Possession of the Project Site from the Concessing Authority in terms hereof and develop, design, finance, construct, operate and maintain the Project Facility in accordance with the terms of this Agreement, including the Specifications and Standards, Applicable Laws, terms of Clearance and Good Industry Practice;
- (b) Make or cause to be made the necessary applications to and obtain from the relevant Competent Authority for all Clearances, permits, necessary approvals and sanctions from the Competent Authorities, for building plans, infrastructure facilities including power, water supply, drainage & sewerage, fire fighting, telecommunications etc, including environmental clearances, changes or clearances relating to import of goods, technology and personnel, pay applicable fees and supply the appropriate particulars and details to such Competent Authority as may be necessary for confirming that the Concessionaire fulfills the eligibility criteria to enable such authority reasonably to consider the request for the grant of the relevant Clearance and,

following the grant of any such Clearance, maintain such Clearance in full force and effect so long as it is necessary in order for the Concessionaire to perform its obligations hereunder;

- (c) Organize the supervision, monitoring and control of the construction and operation and maintenance of the Project Facility by Subcontractors and operate and maintain the Project Facility, as may be necessary, to ensure the proper performance of its respective obligations under the Construction Agreement, the O&M Agreement and other relevant Project Contracts in accordance with the terms of this Agreement and Good Industry Practice;
- (d) Meet the Minimum Development Obligations in terms of this Agreement and as specified in Schedule M;
- (e) Furnish the MoA with the International/National Hotel Chain for tie up/JV arrangement within 6 (six) months of the signing date of Concession Agreement.
- (f) Shall pay to the Concessioneing Authority, in time, all applicable payments and keep the Performance Securities valid, subsisting and in force as set out in this Agreement;
- (g) Report to the Concessioneing Authority, the Maintenance Board and the Independent Engineer during the Concession Period as detailed in Article 10. and elsewhere in this Agreement. Such reports will contain such information as is reasonably required to keep them properly informed of material matters relating to the construction, operation and maintenance of the Project Facility;
- (h) Achieve Completion (starting from Site clearances, cordoning off the site, security of premises ,dismantling of existing structures, removal of debris [shall be property of Concessionaire] construction of the Project Facilities within 30 (Thirty) months of the Compliance Date and also achieve the respective construction milestone; provided that the Concessionaire shall not be in breach of this Section 6.2 (g), if any non-fulfillment or delay in fulfillment of its obligations herein are caused by (i) the occurrence of an event of Force Majeure in accordance with Section 18 hereof or (ii) a Concessioneing Authority Event of Default or (iii) increase in scope of work, as certified by Independent Engineer;

- (i) To furnish the Concessioneing Authority with the “**As Built Drawings**” of the Project within 90 (Ninety) days of the completion of the Construction of the Project;
- (j) Commence Commercial Operations of the Project Facility only upon Construction Completion of Minimum Development Obligations as certified by the Independent Engineer;
- (k) Arrange and access at its cost and expense all infrastructural facilities like water, power and technology, goods, materials, consumables, things and services etc. as necessary for the implementation of Project and make arrangements for back-up supply of power for meeting the power requirements for the operation and maintenance of the project and emergency situations during periods of power shut down and/or failure;
- (l) Save and accept as expressly provided herein, not to transfer/dispose of or otherwise alienate any of the Project Assets without the prior written approval of Concessioneing Authority;
- (m) Be responsible for safety, soundness and durability of the Project Facility, including all structures forming part thereof and their compliance with the provisions of this Agreement and the local building byelaws;
- (n) Take full responsibility for the adequacy, stability and safety of all Project Site operations, of all methods of construction, operation and maintenance of the project, irrespective of any approval or consent by Concessioneing Authority;
- (o) Maintain the Project Facility and the Project Assets in accordance with the provisions hereof, including the Specifications and Standards and Good Industry Practices with the objective of providing adequate service standards to Users and ensuring that at the end of the Concession Period the Project Facility and the Project Assets are transferred to the Concessioneing or its nominated agency in the condition specified in Section 22.2;
- (p) Carry out its obligations/duties with regard to the operation and maintenance of the Project in accordance with the Schedule O, specifications and Performance Standards. The obligations shall include all work which is necessary to satisfy the Schedules, specifications, Technical Requirements and Performance Standards or is implied by this Concession Agreement, or arises from any obligation of the Concessionaire, and all duties not mentioned in

the Concession Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project;

- (q) The Concessionaire shall, in the performance of its obligations under this Agreement, throughout the Concession Period, ensure full compliance with the guidelines and/ or directions issued by PIRA, in this regard from time to time.
- (r) Be responsible from the date of signing of Concession Agreement for all liabilities arising out of construction, design, operation and maintenance of the Project. The Concessionaire shall plan, organizes and execute the Works so that there is least disruption to the movement on adjoining roads and minimal inconvenience to the neighboring residents. The Concessioning Authority shall render reasonable assistance to the Concessionaire in all respects with reference to such Works, but the assistance or denial thereof shall not release the Concessionaire from its obligations;
- (s) Submit to the Concessioning Authority certified true copies of each of the Project Contracts and any further replacement, amendment or modifications within 7 (seven) days of their execution;
- (t) Submit "Structural Safety Certificate" of the proposed Facility from competent structural engineer before the commencement of commercial activities. The Concessionaire shall ensure that the certificate is also counter certified/ signed by the Independent Engineer;
- (u) Provide to the Concessioning Authority, notarized true copies of the Financing Documents & the Financial Model furnished by it to the prospective senior Lenders. As and when these documents are approved by the senior Lenders, with or without modifications, true notarized copies of the Financing Documents & the Financial Model shall be furnished by the Concessionaire to the Concessioning Authority forthwith. The soft copy of the Financing Documents & the Financial Model shall also be provided;
- (v) To take all reasonable steps to protect environment (both on and off the Project Site) and to limit the damages and nuisance to people and property resulting from construction and operations, within guidelines specified as per Applicable Laws and Applicable Permits;

- (w) To duly supervise, monitor and control the activities of Contractors, Sub-contractors, their employees and agents under their respective Project Contracts as may be necessary;
- (x) To obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- (y) To take all reasonable precautions for the prevention of accidents on or about the Project Facility and provide all reasonable assistance and emergency medical aid to accident victims;
- (z) Not to permit any Contractor, Sub-contractors or other person, claiming through or under the Concessionaire, to create or place any Encumbrances or security interest over all or any part of Project Site or the Project Assets or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly permitted in this Agreement;
- (aa) To ensure that such Project Site remains free from all encumbrances, encroachments and trespass during the entire Concession Period;
- (bb) Within 30 (thirty) days of achieving "Completion" of the construction of **each phase / milestone in the Project Site**, to remove from the "Project Site" all surplus construction machinery and materials, including without limitation, hazardous materials and wastes and keep the "Project Site" in a neat and clean condition, and in conformity with the Applicable Laws; except that the Concessionaire shall be entitled to retain on any Project Site, until the expiry of the Concession Period such equipment, materials and temporary works as required by it for the purpose of fulfilling its obligations under this Concession Agreement in respect of operation and maintenance of the Project Site;
- (cc) On expiry of the Concession Period or upon termination, within the stipulated period, to hand over the Project Site, Project Assets and Project Facility in an as usual operational state to the satisfaction of Concessioning Authority, and in a manner so as to cause minimal or negligible disruption to the operations of the Five Star Hotel, International Convention cum Exhibition Center & Commercial Space. Provided that if the Concessionaire fails to cooperate with the Concessioning Authority or its nominee in

ensuring a smooth transfer, as contemplated under this Agreement, the Concessioneing Authority may invoke the Performance Guarantee and appropriate the amount as damages for the loss of reputation of the Five Star Hotel and International Convention cum Exhibition Centre loss of revenue and disruption of business resulting from such non-cooperation;

- (dd) To provide all assistance to the Engineer/Independent Engineer and the Independent Auditor for the performance of their duties and services;
- (ee) At all times, to afford access to the Project Site to the authorised representatives of Concessioneing Authority, senior Lenders, other persons duly authorized by any Governmental Agency having jurisdiction over the Project, to inspect the project and to investigate any matter within their authority and upon reasonable notice;
- (ff) Shall be solely and primarily responsible to Concessioneing Authority for observance of all the provisions of this Agreement on behalf of the Concessionaire, its employees and representatives and further on behalf of Contractors, , Sub-contractors, their employees and agents and any person acting under or for and on behalf of the Concessionaire or such Contractors and the Sub-contractor as fully as if they were the acts or defaults of the Concessionaire, its agents or employees;
- (gg) Shall be liable for and shall indemnify, protect, defend and hold harmless Concessioneing Authority, Concessioneing Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Concessionaire to discharge its obligations under the Article and to comply with the provisions of Applicable Laws and Applicable Permits;
- (hh) Provide a security and watch and ward service at the Project Facility to maintain the safety and security of the life and property and make provision and arrangement for first-aid and prompt medical attention in cases of accidents and emergencies. Take adequate preventive measures to safeguard against fires and install the requisite fire fighting equipment;

- (ii) Maintain the requisite insurance in respect of the Project Facility in terms of Article 14;
- (jj) Dispose at its expense the solid wastes and building and excavation material generated during implementation of the Project at sites approved by Concessioning Authority;
- (kk) Promptly notify the Competent Authorities and hand over to them any archaeological finds, treasures and precious and semi-precious minerals discovered at the Project Site by the Concessionaire or its Contractors and Subcontractors and their respective employees and agents;
- (ll) provide to the Concessioning Authority notarized true copies of the duly executed Transaction Documents to which the Concessionaire is a party, including any related instruments, deeds, contracts, supplemental agreements and other such documents relating thereto and of any amendments, supplements or replacements etc. thereof within 15 (fifteen) days of the execution or such amendment etc.,
- (mm) Not make any replacement, modification or amendment to any of the Transaction Documents at any time without the prior written consent of the Concessioning Authority if such replacement, modification or amendment has or may have the effect of imposing or increasing any financial liability or obligation on the Concessioning Authority and in the event that any replacement, modification or amendment is made without such consent, the Concessionaire shall not enforce such a replacement, modification or amendment;
- (nn) In the event of an accident the Concessionaire shall, by most expeditious means, inform the police and other concerned Competent Authorities and the Concessioning Authority. The Concessionaire shall take expeditious action to provide medical aid, emergency services and relief to the accident victims and upon completion of legal formalities clear the accident site and remove the debris and wreckage or debris;
- (oo) The Concessionaire shall be liable to pay to the concerned Competent Authorities the electricity, gas, water, sewerage, power, telephone, sanitation, garbage disposal and other applicable utility expenses, charges and rates, including penalties for default in payment, in relation to the use thereof in the construction, operation and maintenance of the Project Facility by the

Concessionaire, Subcontractors, Transferees or agents or as are applicable from time to time in respect of the Project Facility and indemnify and keep indemnified the Concessioneing Authority in this respects and ensures avoidance of any disruption thereof due to disconnection or withdrawal of the facility;

- (pp) The Concessionaire shall pay all present and future applicable taxes, charges, rates, assessments, duties, levies, fines, penalties and other outgoings, including municipality taxes, services tax, stamp duty, registration charges, any other legal documentation charges and any other applicable taxes / charges /duties of any kind applicable on the Project/Project Facilities from time to time during the Concession Period to the Competent Authorities in respect of the Project Facility. The Concessionaire shall indemnify and keep indemnified the Concessioneing Authority from any and all liabilities and consequences arising from any and all such non-payment, delayed payment, attachment, disturbance of possession, notice, order, litigation etc.;
- (qq) The Concessionaire shall remove the utilities at, on, over or under the Project Site, without any delay or obstruction to the execution of the Works, including the existing utilities. The Concessioneing Authority shall reimburse the amount incurred by the Concessionaire in relocation of underground and overhead services and utilities.
- (rr) The Concessionaire shall pay liquidated damages to the Concessioneing Authority with reference to section 2.3;
- (ss) Ensure that aggregate shareholding of the Selected Bidder or the Consortium Members (in case of Consortium) in the issued and paid up equity share capital of the Concessionaire is maintained in accordance with the provisions of Section 6.6 shall be not less than:
 - (i) 100% till a period of 30 (Thirty) months from the Compliance Date; and
 - (ii) 51% after the period of 30 (Thirty) months from the Compliance Date i.e. during the balance Operation and Maintenance Period, till the Project Transfer Date/ issuance of Concession Agreement Completion Certificate.

In addition to the above obligations, the lead member of the Consortium shall maintain a minimum Equity component of 51% and 26% in the stipulated

- Concessionaire's equity share capital as specified above (qq) (i) and (ii) respectively;
- (tt) The Concessionaire if it is a Subsidiary of a Holding / Parent Company or part of an SPC, it shall be required to furnish a Letter of Guarantee from its Holding / Parent Company (including a Board Resolution of such Holding / Parent Company) pledging such Holding / Parent Company's irrevocable Financial strength and Technical support to its Subsidiary (in case of SPC - in proportion to its Subsidiary's holding in the SPC), at all times during the currency of the Concession Agreement, and even after its termination for any of the acts and liabilities of its Subsidiary prior to termination(refer Schedule W);
 - (uu) The Concessionaire shall indemnify and keep indemnified the Concessions Authority, its employees and consultants from and against any claim, liability, cost, suit or legal proceeding and attorney costs arising in any manner from the implementation of the Project;
 - (vv) The Concessionaire shall make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement and be the principal employer in respect of such labour and personnel. The Concessionaire shall be solely responsible and liable for compliance with all Applicable Laws, including labour and local laws, pertaining to the employment of labour, staff and personnel by it and its Subcontractors for implementing the Project;
 - (ww) Ensure that each Project Contract contains provisions that would entitle Concessions Authority or a nominee of Concessions Authority to step into such agreement at Concessions Authority's discretion, in place and substitution of the Concessionaire in the event of termination pursuant to the provisions of this Agreement;
 - (xx) Provide all assistance to the Concessions Authority, the Design Approval Committee and the Independent Engineer , as they may reasonably require for the performance of their duties and services under this Agreement;
 - (yy) The Concessionaire acknowledges and undertakes that it shall remain fully and primarily responsible for the performance of all acts, omissions or faults of any Persons claiming through or under it, including the Transferees,

Subcontractors, agents, third parties and their respective employees, in relation to the Project Facility/the Contractual Arrangements or otherwise, as if they were the acts, omissions, faults of the Concessionaire and the Concessioning Authority shall not be liable in any manner in respect thereof;

- (zz) The Concessionaire shall arrange at its cost the foreign exchange and Clearances required for import of technology, equipment or materials and pay all requisite duties and levies in this behalf;
- (aaa) Obtain accreditation from the concerned accreditation agency a five star rating for the Hotel within six (6) months from the date of issue of Construction Completion Certificate and ensure that the said accreditation is renewed from time to time so that it remains valid and subsisting throughout the Operations Period;
- (bbb) The Concessionaire acknowledges and recognizes that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly.
- (ccc) The Concessionaire shall within 30 (thirty) days of the issuance of Provisional Certificate, create an Operation and Maintenance fund for the purpose of the Project by opening a current account to collect payments from the sub - lessees of the sub leased areas in the Project Facilities. This fund shall be created exclusively, to meet the recurring costs and expenses towards the O & M Works of all the sub leased areas (Commercial Areas) in Project Facilities. The Concessionaire shall notify the Concessioning Authority of the status of such current account and the details of all sub lessees in the Project Facilities every quarter of the Financial Year. In the event of termination of the Concession Agreement, all such payments towards the O & M Works of the sub leased areas in Project Facilities shall be paid to the Concessioning Authority by the sub lessees in accordance with the payment mode notified by the Concessioning Authority to all such sub lessees. Concessionaire will confirm that a suitable provision to this effect shall be included by the Concessionaire in the sub lease deeds to be entered between the Concessionaire and his sub lessees for the sub leased areas (Commercial Areas) under the Project Facilities. The Concessioning Authority at its own discretion may sign the sub lease deed as a Confirming Party, if required.

- (ddd) Concessionaire shall ensure, at all times during the Operation and Maintenance Period, that each sub lessee pays the Concessionaire, an annual lease rental in respect of the Commercial Area taken on lease by the sub lessee, at such rate in rupees per Square feet which shall not be less than 25% (twenty five percent) of the Annual Concession Fee divided by the total built up Commercial Area in square feet, as per the design proposed by Concessionaire and approved by the Concessions Authority/Design Approval Committee. Concessionaire will confirm that a suitable provision to this effect shall be included by the Concessionaire in the sub lease deeds to be entered between the Concessionaire and his sub lessees for the sub leased areas (Commercial Areas) under the Project Facilities. The Concessions Authority at its own discretion may sign the sub lease deed as a Confirming Party, if required.
- (eee) The draft of the sub lease deed which the Concessionaire shall use for the purpose of entering into sub leases, in respect of the commercial areas in the Project Facilities, shall be approved by the Concessions Authority. The Concessionaire will confirm and covenants that it shall not modify any provision(s) of the approved draft of the sub lease deed under any circumstance unless prior written approval for such modification has been accorded by the Concessions Authority.

Section 6.3. Concessionaire's Representative.

- a. The Concessionaire's Representative shall be the person so designated by the Concessionaire. If at some point of time the Concessionaire is unable to provide the services of the person named the Concessionaire's Representative, and then it shall notify the Concessions Authority its reasons for this, and thereafter, provide a substitute person who can be the Concessionaire's Representative.
- b. The person named as the Concessionaire's Representative under this Concession Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project. Prior to appointment of the Concessionaire's Representative, the Concessionaire shall also submit the curriculum vitae of the person it proposes to appoint, detailing in particular the relevant project experience, and then obtain the written consent of the Concessions Authority to the appointment of the Concessionaire's Representative.

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

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

Section 6.4. Obligations of Parties

Each Party:

- (a) Shall comply with and perform its respective obligations under this Agreement and shall work and cooperate in good faith with the other Party.

- (b) Shall comply with its respective obligations under the Environment Management Plan.

- (c) Shall carry out their respective obligations during the Construction Period and Operation & Maintenance Phase.

- (d) Acknowledges that the title to and ownership of the Project Site shall at all times vest in the Concessioneing Authority and shall not under any circumstance

whatsoever pass over or be deemed to pass over to the Concessionaire or Persons or any other Third Party claiming by, under or through the Concessionaire.

Section 6.5. No Breach

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- (a) Force Majeure Events subject to provisions of Article 18;
- (b) Concessions Authority Event of Default;
- (c) a material delay, impediment or prevention due to or caused by any Competent Authority provided such delay, impediment or prevention by any Competent Authority is not as a result of any failure and/or neglect on the part of the Concessionaire to comply with Applicable Laws or the conditions of Clearances and Approvals;
- (d) Compliance with the instructions or directions of the Concessions Authority other than instructions issued as a consequence of a breach or default by the Concessionaire of any of its obligations hereunder;
- (e) Extensions granted under the provisions of this Agreement, or specific extensions granted by the Concessions Authority or extensions made by the mutual agreement of the Parties.

In the event of delay due to circumstances set forth in this section 6.5, the Concessionaire shall be relieved of its obligations to the extent of such delay and, upon written request, be granted an extension of the time as appropriate to make good the consequence of such delay, as certified by the Independent Engineer, for fulfilling its obligations under this Agreement.

Section 6.6. Shareholding Pattern

- (a) The Concessionaire and the members of the Consortium/Selected Bidder, shall ensure that aggregate shareholding of the members of the Consortium/Selected Bidder in the issued and paid up equity share capital of the Concessionaire shall be not less than:

- (i) 100% till a period of 30 (Thirty) months from the Compliance Date; and
 - (ii) 51% after the period of 30 (Thirty) months from the Compliance Date i.e during the balance Operation and Maintenance Period, till the Project Transfer Date/ issuance of Concession Agreement Completion Certificate.
- (b) In addition to the above obligations, the lead member of the Consortium namely [.....], shall maintain a minimum shareholding of 51% and 26% in the stipulated Concessionaire's equity share capital as specified above in sub-clause (a) (i) and (ii) respectively.
- (c) At no stage, including as specified under sub-clause (a) above, shall any change in the shareholding patterns shall be made in the Concessionaire without obtaining prior approval from Concessions Authority. On an application made for the purpose, Concessions Authority may permit the change of Equity Components/ shareholding patterns, and such permission shall not be unreasonably rejected or withheld, provided Concessions Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Concessions Authority and any of the Confirming Authorities. However, no such change in the shareholding pattern shall be permitted by Concessions Authority, which would make the Consortium Members or Associates or the Concessionaire non-compliant with sub-clauses (a) and (b) above.

Section 6.7. Contractual Arrangements

a) Terms and Conditions

The Concessionaire may, effective from the Commercial Operation Date, grant licenses or enter into licensing, franchising, operations, management, service, maintenance, subcontracting or similar arrangements on mutually agreed market driven terms and conditions ("**Contractual Arrangements**") with any Person (the "**Transferees**") in respect of the Project Facilities. The Concessionaire may demand, charge, collect, retain and appropriate the charges, fee or commission for or on account of such licenses or arrangements in respect of Project Facilities on market driven terms, provided, however, that in respect of all such Contractual Arrangements, this agreements shall confer an unconditional right

upon the Concessionaire to terminate the Contractual Arrangement at any time without assigning any reason, by giving at most three (3) months prior notice. All Commercial Arrangements shall be subject to the following terms and conditions.

- i) the Concessionaire shall be liable for undertaking the maintenance of the Commercial Area, including the common areas and the common facilities and amenities; provided that the Concessionaire shall be entitled to demand, collect and retain monthly/periodic maintenance charges from the Transferees;
- ii) the Contractual Arrangements under or pursuant to this Agreement shall not contain any terms or provisions inconsistent with or in derogation of any terms or provisions contained in this Agreement;
- iii) the term of the Contractual Arrangements shall be limited to and be coterminous with this Agreement;
- iv) all the Contractual Arrangements shall be determined and terminated automatically and simultaneously with the expiry, determination or termination of this Agreement, as the case may be;
- v) all the Contractual Arrangements shall come into effect and operation only upon the Concessionaire achieving Construction Completion in accordance with the provisions hereof;
- vi) the execution of Contractual Arrangements shall not relieve the Concessionaire of its liability or obligations as set out in this Agreement;
- vii) Each Contractual Arrangement shall include provisions to the effect that in case of a conflict, direct or indirect, between the provision of this Agreement or the Project Site Lease Deed on the one hand and the Contractual Arrangement on the other hand, the provisions of Agreement or the Project Site Lease Deed, as the case may be, shall prevail and such Contractual Arrangement shall stand modified to that extent;
- viii) the Concessionaire's failure to comply with this Section 6.7 shall be at its cost, risk and consequence and constitute a Concessionaire Event of Default that shall entitle the Concessioneing Authority to terminate this Agreement in accordance with the provisions of Articles 20 and 21 hereof; and

The Concessionaire shall submit to the Concessions Authority for its information and records a notarized true copy of this agreements relating to the Contracting Arrangements within 15 (fifteen) days of the date of execution, modification or amendment thereof.

b) No Liability of Concessions Authority for Contractual Arrangements

The Concessions Authority shall not be liable in any manner whatsoever to any Transferee/Person in respect of or in connection with execution of documents/agreements or understandings and disputes relating to the Contractual Arrangements between the Concessionaire and such Transferee / Person. The Concessionaire shall indemnify and keep indemnified the Concessions Authority, its employees, agents, representatives and consultants from and against all costs, losses, damages, liabilities, proceedings, litigation, penalties etc. in this behalf.

ARTICLE 7

ENGINEERING, PROCUREMENT AND CONSTRUCTION

Section 7.1 Designs and Drawings

(a) Preparation of Designs and Drawings

- (i) The Concessionaire shall, at its cost, charges and expenses, prepare or cause preparation of the Detailed Designs and Drawings for the Project Facilities in accordance with the concept design for the Project approved by the Design Approval Committee, and in accordance with the Specifications and Standards and the Control Plan.
- (ii) The Concessionaire shall have the Designs and Drawings approved by the Independent Engineer and Design Approval Committee.

(b) Review and Approval of Designs and Drawings

- (i) The Concessionaire shall within 75 days of the execution of this Agreement submit to the Independent Engineer for the approval of the Independent Engineer, the detailed Designs and Drawings, along with specifications and calculations, for the construction of the Project Facilities in accordance with the concept design for the Project approved by the Design Approval Committee. By submitting the Designs and Drawings, the Concessionaire represents that it has determined and verified that the Designs and Drawings, including field construction criteria related thereto, are in conformity with the Specifications and Standards and the Control Plan, the Applicable Laws and Good Industry Practice.
- (ii) The Independent Engineer shall review the detailed Designs and Drawings and specifications and calculations submitted by the Concessionaire and subject to the provisions of sub-section (iii) herein below, communicate its approval within thirty (30) days from the date of the receipt of such Designs and Drawings. The Independent Engineer shall in consultation with the Parties prescribe a schedule for submission, clarifications and approval of detailed Designs and Drawings for specific components of the Project Facilities.

- (iii) In the event that the Independent Engineer has any objection to the detailed Designs and Drawings and specifications and calculations or any part thereof, it shall within 14 (fourteen) days and without any undue delay notify the Concessionaire of its objections, seek clarifications or suggest changes or modifications or corrections thereto. Thereupon, the Concessionaire shall within 14 (fourteen) days of such notification provide necessary clarification to the and/ or re-submit the Designs and Drawings and/or specifications and calculations or part thereof, as the case may be, after incorporating the changes, modifications or corrections suggested by the Independent Engineer.
- (iv) If the Independent Engineer does not object to the detailed Designs and Drawings and specifications and calculations submitted to it by the Concessionaire within thirty (30) days of submission, the Independent Engineer shall be deemed to have approved such Designs and Drawings and the Concessionaire shall be entitled to proceed with the Project accordingly.
- (v) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Concessioneing Authority may suitably extend the Construction Period or provide other relief to compensate for any such delay not attributable to the Concessionaire and which has a Material Adverse Effect.
- (vi) The Concessionaire shall not change any Designs and Drawings, specifications and calculations approved by Independent Engineer under this Agreement, without the prior written consent of the Concessioneing Authority.
- (vii) Notwithstanding the express or deemed approval by Independent Engineer, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project Facilities or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.
- (viii) The Concessionaire shall obtain sanction to the building plans for the Project Facilities, with necessary designs, plans and specifications, as necessary to commence and undertake construction, from the proper municipal or other

authority, at its own expense. The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings.

- (ix) Within 90 (ninety) days of Project Completion, the Concessionaire shall furnish to the Concessioneing Authority three copies of "as built" drawings reflecting the Project/Project Facilities as actually designed, engineered and constructed, including without limitation an "as built" survey illustrating the layout of the Project Facilities and setback lines, if any, of the buildings and structures forming part of the Project Facilities.

Section 7.2 Construction Commencement & Construction Works

- (a) The rights and obligations of the Parties under this Agreement shall commence from the Compliance Date. Any works of whatever nature, which the Concessionaire elects to carry out prior to the Compliance Date including design or mobilization etc., shall be entirely at the risk and cost of the Concessionaire.
- (b) Within 30 days from the Compliance Date and prior to commencement of construction of the Project Facilities, the Concessionaire shall:
 - (i) Submit to the Independent Engineer with due regard to Project Implementation Schedule and Scheduled Project Completion Date, its design, engineering and construction time schedule created using precedence network techniques, construction methodology outlining, inter alia, the quality assurance, safety and surveillance plan and programme of Works and shall formulate and provide Critical Path Method (CPM)/ Project Evaluation and Review Technique (PERT) charts for the completion of the said activities.
 - (ii) Have requisite organization and designate and appoint suitable officers/ representatives, as it may deem appropriate to supervise the Project and to deal with the Independent Engineer and the Competent Authorities;
 - (iii) Undertake, do and perform all such acts, deeds and things as may be necessary or required to adhere to the Project Implementation Schedule and to achieve the Project Completion under and in accordance with this Agreement;

- (iv) Develop and institute a quality assurance system and implement the same until the end of the Term of Agreement. The quality assurance system shall involve maintenance of appropriate records, documents and data, charts, samples etc. regarding the construction and operation of the Project/Project Facilities; and
 - (v) Mobilize its manpower, plant, equipment, materials and resources.
- (c) The Concessionaire shall commence the Construction Works within 60 (sixty) days from the Compliance Date (the “**Construction Commencement Date**”). The Project milestones set forth in the Project Implementation Schedule, other than the Scheduled Project Completion Date, shall be determined with reference to the Construction Commencement Date. The Scheduled Project Completion Date and the Construction Period shall be determined with reference to the Compliance Date. The Concessionaire shall undertake and complete the Construction Works so as to achieve such milestones and the Project Completion by the Scheduled Project Completion Date.
- (d) The Concessionaire shall undertake or procure the design, procurement, construction (modular or otherwise), completion, testing and commissioning of the Project Facilities at its cost in accordance with the provisions hereof, including the detailed Designs and Drawings, the Specifications and Standards and the Good Industry Practice, the Applicable Laws and terms of the Applicable Permits by itself or, subject to the provisions hereof;
- (e) The Concessionaire shall ensure that all contract(s) and arrangement(s) entered into in relation to the Construction Works shall (to the extent such provisions can be reasonably obtained in the market concerned) include provisions whereby the relevant Contractor warrants that each part of such Works carried out there under shall be fit for its purpose and free from all defects in design, workmanship and materials.
- (f) In the execution of the Construction Works, the Concessionaire shall procure coordination amongst and avoidance of conflicts in the working of the Contractors, including all types of suppliers, subcontractors, agents, advisors and consultants. The Concessionaire shall monitor and supervise the activities of the Contractors, retained by it to fulfill its obligations hereunder, under the terms of their respective contracts.

- (g) The Concessionaire shall at its responsibility arrange for materials such as bricks, cement, steel, aggregates, soil, bituminous and asphalt materials, and any other materials used in undertaking the Construction Works, as well as equipment, machinery, tools and ancillary materials such as shuttering and scaffolding, bearings, joint fillers and similar materials. The Concessionaire shall make arrangements for transport, loading and unloading, stacking and proper storage (including making sheds) for all materials and equipment. The Independent Engineer shall have the right to inspect and check the quality and quantity of the materials and equipment and their storage in compliance with the terms of this Agreement.
- (h) The Concessionaire shall organize the Site during the period of construction with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel and labor and industrial relations and general site services including, without limitation, access to and on the Site.
- (i) The Concessionaire shall ensure that the Works shall comprise only materials and goods which shall be of sound quality and which shall have been manufactured and prepared and all workmanship shall be in accordance with the Specifications and Standards and Good Industry Practice and that each part of the Works shall be fit for the purpose for which it is required as stated in or as may be reasonably inferred from such plans.
- (j) The Concessionaire shall carry out or cause to be carried out the Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, engineers and contractors with experience of work similar in scope and nature to that required under this Agreement. The Concessionaire shall design, engineer and execute the construction and implementation of the Works using the best design and engineering principles and practices.
- (k) The Concessionaire shall ensure that the components of the Project, namely the Five Star Hotel, the International Convention Centre, Exhibition Center & the Commercial Space, are appropriately furnished, equipped, staffed as per the Specifications and Standards and Good Industry Practice so as to comply respectively with the requirements of the agencies granting accreditation/affiliation/recognition for the five star rating for the Hotel / Project.

- (l) The Concessionaire shall ensure that in fulfilling its obligations hereunder it shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for the designs, software, materials, methods, processes and systems used or incorporated into the Works undertaken by it and indemnify and keep indemnified the Concessioneing Authority and its advisors and consultants against all costs, damages, liabilities or consequences arising out of any breach by the Concessionaire in this behalf.
- (m) Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of the Concessioneing Authority. The Concessionaire shall promptly notify the Concessioneing Authority of such discoveries and carry out the Concessioneing Authority instructions for dealing therewith.
- (n) The Concessionaire shall complete the Construction Works in respect of Project Facilities within a period of **30 (thirty) months** from the Compliance Date, which may be extended under the provisions of this Agreement or by mutual agreement of the Parties.

Section 7.3 Progress Review during Construction

- (a) During the Construction Period, the Concessionaire shall, on or before the 15th (fifteenth) day of every second month, prepare and submit to the Independent Engineer, a monthly progress report, for the previous months, in the form and manner prescribed by the Independent Engineer from time to time. Such report shall describe the progress of the design, procurement, completion and commissioning of the Project.
- (b) The Concessionaire shall also submit to the Independent Engineer and the Design Approval Committee, the relevant Designs and Drawings and other technical information as may be reasonably necessary to determine and confirm compliance with the Specifications and Standards.
- (c) The Concessionaire shall promptly carry out at its cost such further Works as may be necessary to remove the defects and deficiencies observed by the Independent Engineer and ensure completion of construction of the Project Facilities in all respects in accordance with the provisions of this Agreement.

ARTICLE 8 TESTING AND COMMISSIONING

Section 8.1 Project Completion

- (a) The Project shall be deemed to be complete and open for Operations only when the Completion Certificate or the Provisional Certificate is issued by the Independent Engineer in accordance with the provisions of Section 8.2 (the “**Project Completion**”).
- (b) The Concessionaire shall achieve Project Completion in accordance with the provisions of this Agreement within 30 (**Thirty**) months from the Compliance Date (the “**Scheduled Project Completion Date**”), failing which the Concessionaire shall be required to complete the same within six months from such date upon payment of the stipulated damages, as set forth in sub-section (c) below and hereby agrees and accepts that time is of the essence of this Agreement.
- (c)(i) In the event that Project Completion is not achieved by the Scheduled Project Completion Date for any reason other than Force Majeure subject to the provisions of Section 18 or reasons attributable to the Concessions Authority or any Competent Authority, as certified by the Independent Engineer, the Concessionaire shall be liable to pay liquidated damage as per section 2.3 (c) of this Agreement.
- (ii) In the event that Project Completion does not occur within six months from the Scheduled Project Completion Date for any reason other than Force Majeure subject to the provisions of Article 18 or reasons attributable to the Concessions Authority or any Competent Authority, as certified by the Independent Engineer, and subject to any provisions of this Agreement providing for extension of time for performance or excuse from performance, as the case may be, the Concessions Authority shall be entitled terminate this Agreement for a Concessionaire Event of Default in accordance with the provisions of Article 20 and 21 hereof. Provided that instead of terminating this Agreement, the Concessions Authority may its sole discretion extend the time for achieving Project Completion on such terms and conditions, including payment of further liquidated damages, as it deems appropriate. It is clarified that delay on the part of the Concessionaire to achieve Construction Completion in accordance with the Project Implementation Schedule, where such delay is six (6) months or more, shall also entitle the Concessions

Authority to terminate this Agreement for a Concessionaire Event of Default in accordance with the provisions of Article 20 and 21.

- (d) Notwithstanding the foregoing, in the event of any unforeseen delay in the issuance of environmental clearances, if any, from the Ministry of Environment and Forests or the GOI, the Concessioneing Authority may, exercising reasonable discretion extend the Construction Period by the period of such delay.
- (e) The Concessionaire shall commence Operations of the Project Facilities / Project only upon issuance of the Provisional Certificate or the Completion Certificate, as the case may be; provided also that the applicable permits for commencing operations of the Five Star Hotel, International Convention cum Exhibition Centre & Commercial Space are in place. It shall be mandatory for the Concessionaire to commission and commence the Operations of the Project Facilities upon issuance of such certificate.

Section 8.2 Tests

- (a) At least 30 (thirty) days before the likely completion of the construction of Project Facilities, the Concessionaire shall notify the same in writing to the Independent Engineer and the Concessioneing Authority of its intention to conduct the Tests for completion of the Construction Works. Such notice will set out the place, date and time when such Tests will be performed (which shall not be on a date which is earlier than 10 (ten) days following the date of such notice and at least 7 (seven) days in case of any subsequent Tests or retests). The Concessioneing Authority shall have the right to attend such Tests. The Independent Engineer shall attend such tests with a view to determining whether completion of construction has occurred.
- (b) Within one month from the date of tests in accordance with sub-section (a) above, the Independent Engineer shall issue a Provisional Certificate on successful completion of the Tests if the Project Facilities, or any part thereof (provisional certificate for such part), to the Independent Engineer's reasonable satisfaction, can legally, safely and reliably be placed in operations despite certain items of Works or things forming part thereof (being within the Scope of Works) not being complete as such Works and things do not, in any manner whatsoever, affect the safety or operation of the Project in any material respect (the "**Punch List Items**"). The Punch List Items shall be appended to the Provisional Certificate signed jointly by the Independent Engineer and the Concessionaire. All Punch List Items shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the

- Provisional Certificate. The Provisional Certificate shall specify the date on which, in the Independent Engineer's opinion, the Project was substantially completed and ready for Operations. The Concessionaire may commence Operations with effect from such date (the "Operations Date").
- c) The Concessionaire shall complete or cause to be completed the Punch List Items appended to the Provisional Certificate within a period of 90 (ninety) days from the date of issue of the Provisional Certificate and, upon completion thereof, the Concessionaire shall notify the Independent Engineer and the Concessions Authority. The Independent Engineer shall, within 7 (seven) days of receipt of such notice, inspect the Project and issue the Completion Certificate, with a copy marked to the Concessions Authority, to confirm completion of such Punch List Items. The Completion Certificate shall specify the date on which, in the Independent Engineer's reasoned opinion, all parts of the Construction Works and the Project reached completion.
- (d) In the event of the Concessionaire's failure to complete the Punch List items within the stipulated period of 90 (ninety) days from the date of issue of the Provisional Certificate, the Concessions Authority may, without prejudice to any other rights or remedy available to it under this Agreement or at law, have such items completed at the risk and costs of the Concessionaire. The Concessionaire shall reimburse to Concessions Authority on demand the entire costs incurred by the Concessions Authority in completing the Punch List Items.
- (e) If the Independent Engineer certifies to the Parties that it is unable to issue the Completion Certificate or Provisional Certificate because of events or circumstances which excuse the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.
- (f) The Concessionaire shall bear all the expenses relating to Tests under this Agreement. Provided, however, if the Concessions Authority requires the Concessionaire to conduct any Test that is not specified in this Agreement, the Concessions Authority shall forthwith reimburse to the Concessionaire the expenses incurred by the Concessionaire thereon.

ARTICLE 9

OPERATION AND MAINTENANCE

Section 9.1O&M Works

- (a) The Operation and Maintenance period of the Project shall commence from the date of issue of Construction Completion Certificate and in its absence, from the date of Provisional Certificate and terminate at the Transfer Date.
- (b) the Concessionaire shall undertake or cause at its cost and risk the operation, maintenance and management of the Project/Project Facilities, including the Five Star Hotel, International Convention cum Exhibition Centre & Commercial space, the common access / areas, landscape, parking area and other areas, the infrastructure, works, fire-fighting and other systems and the common services and facilities, in accordance with the provisions of this Agreement, including the Specifications and Standards, Good Industry Practice, Applicable Laws and conditions of Applicable Permits, by itself or, subject to the provisions hereof, through O&M Contractor(s) or through suitable management/service contractors, without in any way relieving the Concessionaire of its obligations as set out in this Agreement; provided that the O&M Contractors shall be appointed not less than 2 (two) months before the Scheduled Project Completion, whichever is earlier. Within 2 (two) weeks of the appointment of such contractors the Concessionaire shall inform the Concessioning Authority of their appointment.
- (c) The Concessionaire shall exercise appropriate control over the O&M Contractors and shall manage, direct, administer and supervise their working.
- (d) During the Operations and Maintenance Period (“Operations and Maintenance Phase”) the Concessionaire shall be responsible for performing all the obligations and complying with the Performance Standards laid down in Schedule O of this Concession Agreement.
- (e) In the event of failure to perform the obligations or comply with the Performance Standards laid down in Schedule O, the Concessionaire shall be liable to a penalty which shall not exceed the Operation & Maintenance Performance Security and for the enforcement of which the Performance Security can be used. The amount of penalty payable by the Concessionaire for a default under this provision shall be determined by the Maintenance Board.

- (f) The Concessionaire shall at all times carry out or procure at its cost and expense the O&M Works and maintain (including routine, regular, periodic and preventive maintenance), provide, procure, manage, keep in good operating repair and condition, renew, replace, restore, rectify and upgrade to the extent reasonably necessary the Project Facilities, all equipment, capital items, machinery, furnishings, fixtures etc., normal wear and tear excepted, with the skill, diligence and expertise of operators of similar facilities and in conformity with the provisions hereof, including the Specifications and Standards and Good Industry Practice. All such maintenance, repair and O&M Works shall be carried out in such a way as not to cause inconvenience to Users of the Project.
- (g) The Concessionaire shall carry out the operation and maintenance of the Project with the objective of providing adequate service standards and ensuring that the Project Facilities and the buildings, infrastructure, equipment, systems etc. are maintained in a good state and kept in good operating condition, repair and sanitation and that the Project is transferred to the Concessioneing Authority upon expiry/termination of this Agreement in a good and working condition, normal wear and tear excepted, having regard to its construction, life and use.
- (h) The Concessionaire shall provide, manage, operate and maintain the support infrastructure, facilities and services in respect of the Project in accordance with the Specifications and Standards and Good Industry Practice such that the Project is operated and run smoothly, continuously and without any hindrance or inconvenience to the users thereof.
- (i) The Concessionaire shall employ qualified and skilled personnel and manpower, as per Staff Norms wherever applicable, to efficiently operate and manage the Project at its cost and consequence.
- (j) The Concessionaire shall make appropriate arrangements for security at the Site and abide by the security regulations/procedures prescribed by the Concessioneing Authority or any Competent Authority from time to time. The Concessionaire may secure assistance of the police force for maintaining security upon payment of routine charges for such services.
- (k) Subject to the provisions hereof the Concessionaire or the Persons claiming through or under it shall be free to determine the User Charges at market driven rates in respect of the services provided by/use of the Project/Project Facilities or the goods,

services, facilities or amenities provided thereat and shall have the right to demand, collect, retain and appropriate and revise the User Charges; provided that the same shall be in compliance with the requirements, if any, under the Applicable Laws, guidelines, rules, regulation, directions etc. of the concerned Competent Authorities, terms of Applicable Permits and Good Industry Practice; provided further the Concessionaire shall, effective from the signing date of this Agreement , be required to pay the Annual Concession Fee to the Concessioneing Authority in accordance with the provisions of this Agreement.

Section 9.2 Accreditation & Standards

- (a) The Concessionaire shall obtain for the Project Facility accreditation as a five star hotel from the concerned accreditation agency within six (6) months from the date of issue of Construction Completion Certificate and ensure that the said accreditation is renewed from time to time so that it remains valid and subsisting throughout the Operations Period. In the event the accreditation is withdrawn, and the same is not restored within a period of one (1) year from the date of such withdrawal, it shall constitute a Concessionaire's Event of Default and the Concessioneing Authority shall be entitled to terminate this Agreement in accordance with Articles 20 and 21 of this Agreement.

Section 9.3 No Liability of Concessioneing Authority for Concessionaire's Contracts with Third Parties

The Concessioneing Authority and the PIDB shall not be liable in any manner whatsoever to any Person in respect of or in connection with execution of documents/agreements, matters, understandings and/or disputes relating to the contracts, documents, understandings entered into between the Concessionaire and third parties/any person or otherwise. The Concessionaire shall indemnify and keep indemnified the Concessioneing Authority and their respective employees, agents, representatives and consultants from and against all costs, losses, damages, liabilities, proceedings, litigation, penalties etc. in this behalf.

Section 9.4 Cost of Remedying Defects

If any defect appears or damage occurs, the Maintenance Board/Concessioneing Authority shall promptly notify the Concessionaire in writing and the Concessionaire shall execute all work of amendment, reconstruction and remedying defects, imperfections or other faults or

damages, as may be instructed by the Maintenance Board/Concessions Authority. All works shall be executed by the Concessionaire at its own cost.

Section 9.5 Subsequent Tests

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

Section 9.6 Failure to Remedy Defects

- a. If the Concessionaire fails to remedy any defect or damage within a reasonable time, the Concessions Authority may fix a date on or by which to remedy the defect or damage, and give the Concessionaire reasonable notice of such date. If the Concessionaire fails to remedy the defect or damage by such date, the Concessions Authority may (at its sole discretion):-
 - i) Carry out the work itself or by others, in a reasonable manner and at the Concessionaire's cost, but the Concessionaire shall have no responsibility for such work. The costs properly incurred by the Concessions Authority in remedying the defect or damage shall be recoverable from the Concessionaire by the Concessions Authority, including recovery from the Performance Guarantees;
or
 - ii) If the defect or damage is such that the Concessions Authority has been deprived of substantially the whole of the benefit of the Works, it shall be entitled to terminate this Concession Agreement but without relieving the Concessionaire of liability for breach of this Concession Agreement.

ARTICLE 10

MONITORING AND REPORTING

Section 10.1 Independent Engineer

(a) Appointment, Functions and Remuneration

- (i) The Concessing Authority shall within 30 (thirty) days from the date of this Agreement submit to the Concessionaire a panel consisting of at least five reputed firms or companies or a combination thereof, having the necessary qualifications, experience and expertise, for appointment of the Independent Engineer, to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Schedule S and elsewhere in this Agreement. Within 30 (thirty) days of receipt of such panel, the Concessionaire shall shortlist three names from such panel of five and communicate the same to the Concessing Authority. The Concessing Authority shall, within 30 (thirty) days of receipt of such shortlist, appoint one entity from out of such three names short listed by the Concessionaire as the Independent Engineer for the period until issuance of the Completion Certificate.
- (ii) The Independent Engineer shall monitor the implementation of the Project, review and approve the Designs and Drawings, conduct on behalf of the Concessing Authority the periodic verification of the progress in the construction, issue the Provisional and/or the Completion Certificate and discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule S and elsewhere in this Agreement. The Independent Engineer shall submit periodic reports (at least once every month) in respect of its functions to the Parties in the form and manner as mutually agreed and provides the Parties such additional information as they may reasonably require from time to time fulfilling their obligations hereunder.
- (iii) The Independent Engineer shall approve and certify all financial computations, determinations, payments etc. required to be made by any Party or otherwise under this Agreement. The Independent Engineer shall issue and sign all certificates required at various stages during the

implementation of the Project. The Independent Engineer shall also determine the cost incurred in the implementation of the Project, at any stage of the project if required by the Parties.

- (iv) The Independent Engineer shall have no authority to relieve the Concessionaire of any of its obligations or responsibilities under this Agreement. Any proposal, inspection, examination, testing, consent, approval or similar act of or by the Independent Engineer (including absence of disapproval) shall not relieve the Concessionaire from its obligations and responsibilities hereunder.
- (v) The tenure of Independent Engineer shall be from the date of appointment to the date of issuance of the Construction Completion Certificate. The remuneration, cost and expenses of the Independent Engineer shall be borne entirely by the Concessions Authority.

(b) Termination of Appointment

- (i) In the event the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient or diligent manner, it may make a written representation to the Concessions Authority, supported with necessary documents and specific instances of causes and grievances and seek termination of the appointment of such consultant. Within 7 (seven) working days of the date of such representation, the Concessions Authority shall hold a tripartite meeting with the Concessionaire and such consultant for resolving the matter amicably and giving a fair hearing to such consultant. In the event the matter is not amicably resolved within 7 (seven) days of such meeting, the appointment of the Independent Engineer shall be forthwith terminated; provided that prior to such termination the Concessions Authority shall have appointed another Independent Engineer to replace the existing one in accordance with the provision of Section 10.1 (a) above.
- (ii) The replacement of the Independent Engineer shall be effected so as to maintain the continuity in supervision and monitoring of construction of the Project by it.

(c) Qualified Personnel

- (i) The Independent Engineer shall designate and notify to the Parties up to 2 (two) persons employed in its firm/company to sign for and on its behalf, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of such designated persons; provided that the Independent Engineer may by notice in writing to the Parties substitute any such designated persons by any of its employees.
- (ii) The Independent Engineer shall employ appropriately qualified and experienced engineers/accountants and other professionals for discharging its responsibilities under this Agreement; provided such employees of the Independent Engineer shall have no right or claim against or create any obligation on the Parties in respect to their employment.

Section 10.2 Independent Auditor

- (i) Concessioneing Authority shall appoint a firm of chartered accountants out of a list of independent and reputable firms of chartered accountants in India/Punjab as the Independent Auditor, to audit the accounts of the Concessionaire for the Project on a yearly basis and have during the subsistence of this Agreement, as its auditors, a reputed firm of chartered accountants duly licensed to practice in India. All fees and expenses of the Independent Auditors shall be borne by the Concessioneing Authority.
- (ii) The Concessioneing Authority reserves the right from time to time to substitute a firm appointed as Independent Auditor by it with another reputed firm of chartered accountants, at anytime during the Project Term, without assigning any reason whatsoever.
- (iii) Any claim or document provided by the Concessionaire to the Concessioneing Authority relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, in connection with the Project shall be valid and effective only if certified by the Independent Auditors.

Section 10.3 Monitoring and Inspection

(a) Construction Period Reports

The Concessionaire shall, in addition to the reporting requirements set forth elsewhere in this Agreement, comply with the reporting requirements hereunder.

- (i) The Concessionaire shall within 30 (thirty) days after the execution of this Agreement with the Concessioneing Authority, provide the Independent Engineer a copy of the construction schedule created using precedence network techniques and a detailed explanation of the construction methodology, outlining the quality assurance, safety and surveillance plan etc.
- (ii) The Concessionaire shall provide to the Concessioneing Authority and the Independent Engineer a monthly progress report during the Construction Period, which shall contain the following information

Summary of Progress: summary of the progress of the Project for that month which shall detail:

- (1) any areas of significant concern and the action being taken to resolve any significant difficulties;
- (2) the actual progress made during that month against the construction schedule including a description in reasonable detail of the work carried out;
- (3) any matters which have come to light which are likely materially and adversely to affect the construction of the Project;
- (4) any potential or actual deviations from the construction schedule, the Specifications and Standards and Good Industry Practice or otherwise confirmation that construction is proceeding in accordance therewith;
- (5) a commentary on the progress of construction as against the business plan;
- (6) areas of concern or problem or bottlenecks, impact and corrective action plans, revised resource planning, details. The critical path schedules shall be updated and included as part of this report in order of priority.

Completion: details of any changes to the proposed date of completion of construction and the reasons for such changes; and

Government Approvals: written confirmation that all Applicable Permits then required are in full force and effect including a list of such permits.

- (iii) The Concessionaire shall promptly carry out at its cost such further Works as may be necessary to remove the defects and deficiencies observed by the

Independent Engineer/ Concessioning Authority and ensure construction of the Project/Project Facilities is in all respects in accordance with the provisions of this Agreement.

(b) Operation Period Reports

The Concessionaire shall provide to the Concessioning Authority and the Maintenance Board, a quarterly operation and maintenance progress report during the Operation Period, which shall contain the following information:

- (i) Summary of Progress: summary of operating and financial results for that quarter and explanations of any major variation between actual and projected results;
- (ii) Revenue: details of the revenue for the relevant quarter from each source
- (iii) Maintenance Plan: a maintenance plan for the Project for the next quarter and a report on maintenance carried out during the previous quarter (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan).

(c) Additional Information

The Concessionaire agrees to provide the Concessioning Authority, the GOP and the Independent Engineer such further information as any of them may reasonably request in order for them to monitor the progress and performance of the Project.

(d) Other Project and Financial Information

The Concessionaire will provide the following information to the Concessioning Authority promptly after becoming aware of it:

- (i) Force Majeure: details of any Force Majeure Event which has occurred or which is imminent and fortnightly updates with respect to it as long as it continues or is imminent;
- (ii) Litigation: details of any actual, pending or threatened material litigation, arbitration, claim or labor dispute relating to the Project; and

- (iii) Legislation: details of contravention of any Applicable Law or with the terms of any Applicable Permit and any fines or penalties that have or may thereby be incurred.
- (iv) Financial Condition: notification of any adverse material change in the financial condition of the Concessionaire or the Project promptly following such occurrence

(e) Inspection

The Concessions Authority/ Maintenance Board, the relevant Competent Authorities, and their representatives shall at all reasonable times and upon reasonable notice have access to the Project Site, the Project/Project Facilities and the Works and all related designs, documents, reports, records technology and workmanship to review progress of the construction, operation and maintenance of the Project/Project Facilities and to ascertain compliance with any of the requirements of this Agreement, including the Specifications and Standards and to check the progress of the Works or for performing statutory duties and the Concessionaire shall provide the necessary cooperation and assistance to them in this behalf

Provided that any failure on the part of the Concessions Authority, the concerned Competent Authorities and the Independent Engineer to inspect any work, material, equipment and workmanship etc. shall not, in relation to such work etc. (i) amount to any consent or approval of the Concessions Authority nor shall the same be deemed to be a waiver of any of the rights of the Concessions Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work etc.

Section 10.4 Maintenance Board:

- a. **Appointment:** On or prior to the, the Operations Date the Concessions Authority shall appoint a Maintenance Board. The Maintenance Board shall consist of representatives of the following and any other member to be nominated by Concessions Authority
 - i. Chief Administrator GMADA / Representative of Chief Administrator.
 - ii. Project Nodal Officer nominated by GMADA
 - iii. Nominee of Concessionaire
 - iv. Any other member nominated by GMADA, as required

- b. Each Party shall have the absolute right to appoint, re-appoint, remove, substitute or replace its nominee(s) in the Maintenance Board at any point of time. The representative of the Concessions Authority shall act as the Chairman of the Maintenance Board and the Project Nodal officer shall act as Convener. Wherever possible, the Maintenance Board shall act by consensus. If consensus is not reached, it shall take vote, and if there is a tie in such vote, the representative of the Concessions Authority shall have the casting vote.

The representative of the Concessions Authority shall act as the Chairman of the Maintenance Board and Project Nodal Officer nominated by GMADA would be the Convener.

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

- i) Compliance with the O & M Manual;
- ii) Review the Concessionaire's periodic reports;
- iii) Approve any modifications or capacity addition to the Project in synergy with the existing facility (interior/exterior/ façade) as per the byelaws/ Technical Specifications and Standards to consume maximum FAR, proposed by the Concessionaire;
- iv) Review Performance Security requirements;
- v) Any other matter which it deems necessary for the development, operation or maintenance of the Project Facility;
- vi) Review matters arising out of the Complaints Register;
- vii) grant waiver or extend time for performance (where appropriate, with or without conditions) and impose penalties on the Concessionaire as applicable in accordance with this Agreement.

- d. The Maintenance Board/Concessions Authority shall have the power to appoint an Independent Engineer in any area required, for a review of the operation, maintenance and planning of the Project. Such persons shall act as an "Engineer ", whose expert professional opinion, once confirmed by the Maintenance Board, shall be binding on the Parties and the Maintenance Board. During the Operations Period, such review of the operation, maintenance and

planning by an Independent Engineer shall not be more often than once in ten (10) years.

- e. The Maintenance Board shall, either through in house capability or by appointing any Engineer, carry out structural safety audit after every twenty five (25) years, during the Concession Period.
- f. The Concessionaire and the Concessioneing Authority shall extend full co-operation to the Maintenance Board and to any Engineer appointed by the Maintenance Board. All the expenses of the Maintenance Board shall be borne by the Concessioneing Authority.
- g. The Maintenance Board shall meet at least once every quarter of the calendar year at such time & venue as may be indicated by the Convener and notified to all the members of the Maintenance Board at least 14 (fourteen) days before the date of the meeting.

Section 10.5 Design Approval Committee

- a) For the approval of the design of the Project at MOHALI, the Concessioneing Authority shall constitute a Committee with following members and any other member to be nominated by the Concessioneing Authority:
 - i. Chief Administrator GMADA/Representative of Chief Administrator office
 - ii. Chief Town Planner/ Architect, GMADA
 - iii. Project Nodal Officer nominated by GMADA
 - iv. Chief Architect, Punjab or their representative or any other member as decided by GOP
 - v. Any other member nominated by GMADA, as required
- b) The members of the Committee shall be responsible for approving the design submitted by the Concessionaire and give suggestions, if any, for improving the design so as to craft a landmark facility with iconic exteriors/ facade.

- c) In addition to this, the Design Approval Committee shall be entitled to obtain opinion on the design submitted by the Concessionaire, from the Executive Committee of PIDB, if required. The Concessionaire may be asked to make power point presentation to the Executive Committee of PIDB, giving the artistic impression of the Project Facility particularly with regards to the façade of the Project Facility. The Concessionaire shall be required to incorporate the changes as suggested by Design Approval Committee and Executive Committee of PIDB.

ARTICLE 11

FINANCING

Section 11.1 Form of Finances

- a) Subject to restrictions specified elsewhere in this Agreement, the Concessionaire may, obtain financing for the Project in the form of equity, debt and other sources, from domestic and foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project.
- b) Save and except as otherwise provided herein, the Concessionaire shall not, without the prior written consent of the Concessions Authority, the grant of which shall be at the sole option and prerogative of the Concessions Authority and which may be denied by the Concessions Authority without assigning any reason, assign its rights, title or interest or create a Security Interest in favor of any person in respect of the Concessionaire's rights under this Agreement or any part thereof, including right, title and interest under this Agreement, in and to the Project, the Project Assets and the Project Site, in full or part. Provided any such assignment or Security Interest shall be subject to and in accordance with the applicable laws and requirements of Competent Authorities, if any.
- c) Provided that the Concessionaire may, with the prior written consent of the Concessions Authority, assign its right to receive User Charges (excluding the Annual Concession Fee payable to the Concessions Authority) in favor the Lenders (financial institutions) for securing the Financial Assistance provided or agreed to be provided by the Lenders under the Financing Documents; provided that any such assignment shall be consistent with the provisions hereof. The Concessionaire may, subject to such conditions as it may deem appropriate, allow provisions in the Financing Documents that authorize the Lenders to implement and execute the Project themselves, provided that such step in rights do not have an adverse impact on the rights and obligation of the Concessions Authority under this Agreement.
- d) The Concessions Authority shall render reasonable assistance to the Concessionaire as necessary and mutually agreeable, to enable the Concessionaire to

achieve Financial Closure as per Article 17.A Such assistance shall include discussion in good faith and the obligation of the Concessioneing Authority to consider reasonable modifications to this Agreement as may be required by the Lenders and execution of such further appropriate documentation or additional writings, in order to facilitate the process of achieving Financial Closure and which do not materially and adversely affect the rights and interests of the Concessioneing Authority hereunder or impose additional material liabilities on the Concessioneing Authority .

Section 11.2 Assignability

- (a) Except as otherwise provided in this Agreement, the Concessioneing Authority shall not assign its rights, title or interest in this Agreement in favor of any Persons without prior written consent of the Concessioneing Authority.
- (b) Notwithstanding anything to the contrary contained in this Agreement, the Concessioneing Authority may, after giving 60 (sixty) days notice to the Concessioneing Authority, assign this Agreement or any of its rights and benefits and/or obligations hereunder to any Person pursuant to any direction of GOI, GOP, by the operation of law or in the course of its business on such terms and conditions as the Concessioneing Authority may deem appropriate or as may be required by law.

Section 11.3 Interest and Right to Set Off

- (a) Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.
- (b) The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the

period of delay calculated at a rate equal to the prime lending rate of the State Bank of India plus 2% (two percent), and recovery thereof shall be without prejudice to the rights of the Parties under the Law and this Agreement, including termination thereof.

Section 11.4 Maintenance of Accounts

- (i) The Concessionaire shall, during the subsistence of this Agreement, maintain books of accounts in accordance with standard accounting practices and statutory requirements under the Indian laws recording all its receipts from all sources derived or on account of the Project, income, expenditure, payments and assets and liabilities, in accordance with this Agreement, the Applicable Laws and Good Industry Practice. The Concessionaire shall provide the Concessions Authority 2 (two) copies of its audited balance sheet and profit and loss account along with a report thereon by its statutory auditors, within 120 (one hundred and twenty) days of the close of the Accounting Year to which they pertain.
- (ii) The Concessionaire shall establish and maintain a daily and monthly reporting system to provide storage and ready retrieval of data related to the construction and operation of the Project, including all such information which is necessary to verify costs and expenses incurred or revenues earned to confirm that the Concessionaire is in compliance with its obligations under this Agreement. The Concessionaire shall provide copies of such reports to the Concessions Authority within 5 (five) days of the end of each month.
- (iii) **Maintenance of records** The Concessionaire agrees and undertakes that during the subsistence of this Agreement, it shall maintain accurate, up to date, complete financial records and books of accounts in English in accordance with Applicable Law, generally accepted accounting principles in India and in a manner acceptable to Concessions Authority, showing the Annual Gross Revenue of the business conducted at the Project.
- (iv) **Inspection** Concessions Authority/ its authorized officers and representatives shall have the right to inspect the records of the Developer during office hours and require copies of relevant extracts of books of

account, duly certified by auditors, and to be provided to Concessioneering Authority.

- (v) The Concessionaire shall maintain the records for a period of at least 24 (twenty four) months after the expiry or earlier termination of the Agreement Term and shall notify Concessioneering Authority before any such disposal and provide Concessioneering Authority with a reasonable opportunity to take delivery of such records. The Parties agree that this clause shall survive the termination or expiry of this Agreement.

ARTICLE 12

USER CHARGES

Section 12.1 Levy of User Charges

- (a) Effective from Operations Date and during the Operations Period, the Concessionaire shall be:
 - (i) entitled to, determine, revise, charge, demand, collect, recover and revise the User Charges at market driven rates fixed by Concessionaire from time to time, from Users of the Project Facilities and for the goods, services, facilities and amenities etc. relating to the Project/Project Facilities/at the Project Site that are provided, arranged or procured by the Concessionaire;
 - (ii) provide separate customized service or tariff packages or differential rates or special or seasonal discounts for specific, bulk, regular Users or different category of Users or during different parts of the year or for timely or early payment.
- b) The Concessionaire shall have right to demand, charge, collect, enforce and revise the User Charges effective from Operations Date and during the Operations Period by itself or through any Person/collection agents appointed by it.
- (c) The Concessioning Authority expressly recognizes that if any User fails to pay User Charges, the Concessionaire may exercise all rights and remedies available under the Applicable Laws for recovery thereof, including the suspension, termination or cancellation of provision of the applicable service to the relevant defaulting User; provided that the same shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits, statutory or mandatory requirements of Competent Authorities, if any, and Good Industry Practice in this behalf.

Section 12.2 Appropriation of User Charges

- (a) On and from the Operations Date and during the Operations Period, the Concessionaire or its agents or servants shall levy, demand and collect the User Charges in respect of the Project Facilities and apply the same first for paying applicable Fee to the Concessioning Authority and thereafter retain and appropriate the balance to recover the Project Expenses.

Section 12.3 Collection & Handling

- (a) The Concessionaire shall be liable for the loss of any User Charges collected by it or its agents or servants whether by fraud, misappropriation, theft, accident, event of Force Majeure or any other event or circumstance whatsoever.

- (b) The Concessionaire shall put in place, prior to the receipt of any of the User Charges, security measures necessary for handling, deposit and protection of User Charges from loss, theft or destruction. Notwithstanding such security measures (i) all money being held by the Concessionaire shall at all times be insured against loss due to but no limited to theft, loss, fire and natural disasters and (ii) the Concessionaire shall remain liable for timely payment of Annual Concession Fee to the Concessioneing Authority in accordance with the terms of this Agreement.

ARTICLE 13

PAYMENTS TO CONCESSIONING AUTHORITY

Section 13.1 Annual Concession Fee

- iv. The Selected Bidder shall be liable to pay to the Concessioning Authority an Annual Concession Fee or a %age of the Annual Gross Revenue (as per the Table below) of a particular year, from the Project Facilities ('**Revenue share**'), whichever is higher.
- v. The Annual Concession Fee (amount quoted by the Bidder in its financial proposal), shall be subject to escalation @10% every three years;
- vi. The Annual Concession Fee shall be due from the Signing Date and accordingly the Concessionaire shall deposit the Annual Concession Fee on the same date every year. The first Annual Concession Fee shall be paid before the signing of Concession Agreement as a pre condition to execute the Agreement
- vii. However, in case, any time during the Operations Period, the amount equivalent to the %age of the Gross Revenue of Project Facility for particular financial year as per the Annual Report submitted by Statutory Auditor at the end of the Financial Year, during the 'Financial Year in which Annual Concession Fee is due, is higher than the amount of Annual Concession Fee payable in that particular financial year, the Concessionaire shall pay to the Concessioning Authority the difference amount (equivalent to %age of the Gross Revenue from the Project Facility for particular financial year *minus* Annual Concession Fee already paid for that particular financial year).

| Sr. No. | Period | %age of Gross Revenue |
|---------|---|-----------------------|
| 1. | For first 10 years of the Operations Period , | 6% |
| 2. | For next 10 years | 7% |
| 3. | Rest of the Operations Period | 8% |

- viii. The Concessionaire has to bear Service Tax, if applicable over and above the Annual Concession Fee, Annual Lease Rental and other charges payable by the Concessionaire as per applicable laws
- ix. Failure and /or neglect in making the payment of the Annual Concession Fee and /or the difference between the Revenue Share and Annual Concession Fee within sixty (60) days from the due date for such payment, shall constitute a

Concessionaire's Event of Default and shall entitle the Concessioneing Authority to terminate this Agreement in accordance with the provisions of Article 20 hereof.

Section 13.2 Lease Rental

In consideration of the lease of the Site and the rights appurtenant thereto in favour of the Concessionaire, the Concessionaire shall, pay Lease Rental to the Concessioneing Authority at the rate of Rs. 10,000/- (Rs. Ten Thousand Only) per acre per annum "on or prior to the execution of Project Site Lease Deed".

ARTICLE 14

INSURANCE

Section 14.1 Insurance Cover

The Concessionaire shall maintain or cause to be maintained, at its own expense, insurance policies as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained, consistent with similar facilities of the size and type of the Project and as may be required by the Lenders including but not limited to the insurance policies covering the following (the “**Insurance Cover**”):-

- (i) Construction/builders’/contractors’ all risk insurance during the Construction Period;
- (ii) Erection all risk policy during the Construction Period;
- (iii) Comprehensive third party liability insurance including injury or death to personnel of the Concessioneing Authority and others who may enter the Project Site during the Term of Agreement;
- (iv) workmen’s compensation insurance during the Term of Agreement;
- (v) public liability insurance during the Term of Agreement;
- (vi) loss, damage or destruction of the Project Facilities/Project at replacement value or full market value (including fire, burglary, standard and special peril) during the Term of Agreement;
- (vii) the Concessionaire’s general liability arising under this Agreement during the Term of Agreement;
- (viii) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (vii) during the Term of Agreement.

The Concessionaire shall not cancel or reduce in any manner the scope of the insurance polices taken in pursuance of this provision without first written permission from the Concessioneing Authority. Further, the liability towards

uninsured losses or damages shall remain solely and exclusive with the Concessionaire

Section 14.2 Evidence of Insurance

The Concessionaire shall, from time to time, furnish to the Concessioneing Authority copies of all insurance policies in respect of the Insurance Cover (or appropriate endorsements, certification of other satisfactory evidence of insurance) as soon as reasonably practical after they are received by the Concessionaire and furnish evidence to Concessioneing Authority that all premiums have been paid and that the relevant policies remain in existence. In the event the Concessionaire does not maintain any Insurance Cover pursuant hereto, the Concessioneing Authority may, at its option, effect such insurance and the Concessionaire shall reimburse all the costs and expenses incurred in this behalf by the Concessioneing Authority within 15 (fifteen) days of receipt of the Concessioneing Authority 's claim in respect thereof

Section 14.3 Application of Insurance Proceeds

Unless otherwise provided herein, the Concessionaire shall apply the proceeds from all insurance claims, except for life and injury, for the repair, renovation, restoration or re-instatement of the Project or any part thereof, which may have been damaged or destroyed. The Concessionaire may designate the Lenders/ Lenders' Representative the loss payees under the insurance policies or assign the insurance policies in their favor as security for the Financial Assistance provided by the Lenders.

Section 14.4 Distribution of Insurance Proceeds upon Termination

Whenever this Agreement is terminated following a Force Majeure Event and insurance proceeds are available in connection with the insurance policies to which the Concessionaire is entitled or should be entitled pursuant to this Agreement with respect to the Project, such proceeds shall, if not used to effect a restoration or to make repairs to the Project, be distributed first, (a) for the payment towards indebtedness (actual or contingent) owing to the Lenders; (b) payment of dues, if any, to the Concessioneing Authority; and (c) the residual amount, if any, to the Concessionaire.

Section 14.5 Insurance Companies and Waiver of Subrogation

- (a) The Concessionaire shall insure all insurable assets comprised in the Project Assets and/or the Project through Indian insurance companies and if so permitted by GoI, through foreign insurance companies, to the extent that insurances can be affected with them.
- (b) The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Concessionaire.
- (c) All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers there under against, *inter alia*, the Concessioneing Authority and its assigns, subsidiaries, affiliates, employees, insurers and underwriters 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.
- (d) The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, *inter alia*, the Concessioneing Authority and its affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

Section 14.6 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 Term of Agreement and furnish certified true copies of the same to the Concessioneing Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 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 Agreement, the Concessioneing Authority may at its option purchase and maintain such insurance and all sums incurred by the Concessioneing Authority therefore shall be reimbursed 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.

ARTICLE 15

INTELLECTUAL PROPERTY

Section 15.1 Intellectual Property Rights

- (a) the Concessionaire accepts and agrees that the Concessions Authority shall be the absolute and exclusive owner and proprietor of the all details, plans, specifications, schedules, programs, budget, reports, calculations and other work relating to the Project hereafter referred to as "**Proprietary Material**", which have been or are hereafter written, originated or made by any of the Concessionaire or the Persons claiming through or under it or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. All Proprietary Material shall be clearly marked as such in capital letters and in bold face print.
- (b) The Concessions Authority shall own all the intellectual property rights in or relating to the Proprietary Material and all rights, privileges, entitlements, interests, title, property and benefits and associated rights whatsoever therein for the full period in accordance with the Applicable Laws and with all the reservations and extensions thereof and together with the exclusive right of the Concessions Authority to use such information and intellectual property/authorize the use thereof by Third Parties in India and abroad in any form, including without limitation the right to reproduce, translate, edit, modify, distribute, sell or assign such rights, with or without consideration.
- (c) The Concessions Authority shall have the exclusive right to apply for/procure registration of the intellectual property rights at its cost with relevant competent authorities in India and abroad.
 - (c) The Concessionaire and the Concessions Authority hereby grant to each other royalty-free, non-exclusive license to use all proprietary material owned by any of them or any of their respective employees, contractors, consultants or agents in connection with this Agreement or the design, construction, insurance and financing of the Project. Such license shall carry the right to use such material for all purposes connected with the Project; however, it shall not be transferable to any Person other than to the permitted assignee under this

Agreement. Such license shall discontinue on the termination or expiry of this Agreement or the discharge by any Party of its duties hereunder.

ARTICLE 16

CONFIDENTIALITY

Section 16.1 Confidentiality

No Party shall, without the prior written consent of the other Party, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any Person or use for any purpose unconnected with the Project any information which is by its nature or is marked as Proprietary Material or “confidential”, concerning the other (including any information concerning the contents of this Agreement) except to its officers, directors, employers, agents, representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process; provided, however, that a Party, with the written consent of the other Party, may issue press releases containing non-sensitive information in relation to the progress of the Project. This provision shall not apply to information:

- (i) already in the public domain, otherwise than by breach of this Agreement;
- (ii) already in the possession of the receiving Party on a lawful basis before it was received from the other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality;
- (iii) obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality;
- (iv) disclosed to the Lenders under terms of confidentiality; or
- (v) which is required to be disclosed by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by or under any Applicable Law or by any Competent Authorities.

ARTICLE 17

LIABILITY AND INDEMNIFICATION

Section 17.1 Liability of Concessionaire

Notwithstanding anything to the contrary contained in this Agreement,

- (a) in addition to the Concessionaire's liability and obligations and the Concessioneing Authority remedies provided elsewhere in this Agreement, the Concessionaire shall be solely responsible for any loss of or damage to the Project/Project Facilities and the Project Assets, damage to environment, death or injury to person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by the Concessioneing Authority:
 - (i) during the Term of Agreement resulting from any negligent act or omission of the Concessionaire, the Contractors or any other Person and their respective employees, agents, contractors and representatives.
 - (ii) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Concessionaire or Contractor or non-performance of any term, condition, covenant or obligation to be performed by the Concessionaire or Contractor under this Agreement and the Transaction Documents.
- (b) The Concessionaire shall also be liable for any loss or damage which occurs as a result of any act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with building bye laws, other Applicable Laws, regulatory requirements of Competent Authorities, Specifications and Standards or any other matter) for which the Concessionaire is liable or which is attributable to the Concessionaire and, in turn, the Persons claiming through or under the Concessionaire.

Section 17.2 Indemnification

- (a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Concessionaire agrees to indemnify and

hold harmless Concession Authority and its officers, employees, agents, trustees and consultants (each a “Concession Authority **Indemnified Party**”) promptly upon demand at any time and from time to time, from and against any and all losses, claims, demands, damages, liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, “**Losses**”) to which the Concessioneing Authority Indemnified Party may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by Concessionaire or (ii) the failure by Concessionaire to fulfill any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Concessionaire Person claiming through or under the Concessionaire or (iii) any claim or proceeding by any Third Party against the Concession Authority arising out of any act, deed or thing done or omitted to be done by Concessionaire or (iv) as a result of failure on the part of the Concessionaire to perform any of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or (v) on the failure of the Concessionaire to perform any of its statutory duties and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any user of the Project or the Concessionaire’s Contactors or employees or any Third Party or Competent Authorities or (vi) 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 Agreement and/or arising out of or, in connection with the Concessionaire’s use and occupation of Project Site and/or construction, operation and maintenance of the Project.

For the avoidance of doubt, indemnification of Losses pursuant to this Article 17 shall be made in an amount or amounts sufficient to restore each Concession Authority Indemnified Party to the financial position it would have been in had the Losses not occurred.

- (b) Without limiting the generality of sub-section (a) of this Section 17.2,

- (i) the Concessionaire shall fully indemnify and defend the Concession Authority Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Concessionaire and the Persons claiming through or under the Concessionaire to comply with Applicable Laws and Applicable Permits, (2) payments of Taxes relating to the Concessionaire and the Persons claiming through or under the Concessionaire, including contractors, suppliers and representatives, including the income or other taxes required to be paid by the Concessionaire/such Persons without reimbursement hereunder, or (3) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any Person claiming through or under the Concessionaire, which are payable by the Concessionaire or such Person.

- (ii) the Concessionaire shall fully indemnify, and defend the Concession Authority Indemnified Party harmless from and against any and all Losses which the Concession Authority Indemnified Party may hereafter suffer or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Persons claiming through or under the Concessionaire in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for Concessioning Authority Indemnified Party, a license, at no cost to Concessioning Authority Indemnified Party, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense and without impairing the Specifications and Standards either replace the affected work, or part, or process thereof with non-

infringing work or parts or process, or modify the same so that it becomes non-infringing.

(iii) the Concessionaire shall further indemnify, defend and hold harmless the Concession Authority Indemnified Party from any and all Third Party claims for loss of or physical damage to property or for death or injury and against all Losses for personal injury and for damage to or loss of any property arising out of or in any way connected with the Concessionaire's performance of this Agreement or arising out of any act or omission of the Concessionaire, and in turn of the Persons claiming through or under the Concessionaire.

(c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

Section 17.3 Indirect or Consequential Losses

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to the other Party for any matter arising out of or in connection with this Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by such other Party.

Section 17.4 Business Risks

Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the other Transaction Documents at its own cost and risk. The Concessionaire shall be fully responsible for and shall bear the financial, commercial and business risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the other Transaction Documents.

Section 17A

FINANCIAL CLOSURE

Section 17A.1 Financial Close

- i. The Concessionaire hereby agrees and undertakes that it shall achieve the Financial Closure within 180 (One Hundred and Eighty) days from the date of execution of this Agreement;
- ii. The Concessionaire shall, upon occurrence of Financial Closure, notify the Concessioneing Authority forthwith, and shall have provided to the Concessioneing Authority, atleast 2 (two) days prior to Financial Closure, three true copies of the Financial Documents and the Financial Model, duly attested by a Director or authorised representative of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the senior Lenders.

17A.2 Termination due to failure to achieve Financial Closure

- i. Notwithstanding anything to the contrary contained in this Agreement, but subject to Section 18, in the event that Financial Closure does not occur, for any reason whatsoever, within the period set forth in Section 17A.1 (i), all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual Agreement by the Parties. For the avoidance of doubt, it is agreed that in the event that the Parties hereto have, by mutual consent in writing, extended the time for achieving the Financial Closure, the provisions of this Section 17A.2 (i) shall not apply.
- ii. Upon termination under Section 17A.2 (i), the Concessioneing Authority shall be entitled to encash the Construction Performance Security and appropriate the Proceeds thereof as Damages.

Section 17B

SUSPENSION

17B.1 Suspension

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

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

17B.2Consequences of Suspension

- i. If the Concessionaire suffers delay or incurs cost in following Concessioneing Authority's instructions under Section 17B.1, and in resumption of the work, the Concessionaire shall give notice to Concessioneing Authority. After receipt of such notice, Concessioneing Authority shall proceed in accordance with Section 7.2 and 7.3 to agree or determine any extension of construction time and Concession Period.

- ii. The Concessionaire shall not be entitled to extension of time, or Concession Period, if the suspension is due to a cause attributable to the Concessionaire.

17B.3 Suspension for over 30 (thirty) days

- i. Subject to Section 17B.2, if suspension under Section 17B.1 has continued for more than 30 (thirty) days, and the suspension is not due to a cause attributable to the Concessionaire, the Concessionaire may by notice to Concessioneing Authority require permission to proceed within 30 (thirty) days. If permission is not granted within that time, and if such suspension affects substantially the whole of the Works, the Concessionaire shall be entitled to treat the suspension as a Concessioneing Authority Event of Default under Section 19.1.(b), and the Concessionaire may proceed to terminate the Concession under Section 19.1.(b).

17B.4 Resumption after Suspension

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

ARTICLE 18

FORCE MAJEURE

Section 18.1 Force Majeure Event

Force Majeure Event shall mean any event or circumstance or a combination of events and circumstances (occurring in India) set out hereunder or the consequence(s) thereof which affect or prevent the Party (Concessionaire and/or Concession Authority, as the case may be) claiming Force Majeure ("**Affected Party**") from performing its obligations in whole or in part under this Agreement and which event or circumstance is (a) beyond the reasonable control of the affected party, (b) such party could not have prevented or reasonably overcome with the exercise of due diligence, reasonable efforts, skill and care, (c) does not result from the negligence of such party or the failure of such party to perform its obligations hereunder, (d) of an incapacitating nature and prevents or causes a delay or impediment in performance that has Material Adverse Effect and (e) all or any of the following circumstances:

(A) Non-Political Events

- (a) Acts of God or natural disasters beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, including but not limited to storm, cyclone, typhoon, hurricane, flood, landslide, drought, lightning, earthquakes, volcanic eruption, fire or exceptionally adverse weather conditions affecting the implementation of the Project.
- (b) Radio active contamination, ionizing radiation
- (c) Epidemic, famine.
- (d) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, military action, nuclear blast.
- (e) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings (which are non collusive and duly prosecuted by the Concessionaire) for reasons other than failure of the Concessionaire or of any Person claiming through or under it to comply with any Applicable Law or terms of Applicable Permits or on account of breach thereof, or of any contract, or

enforcement of this Agreement or exercise of any of its rights under this Agreement by Concession Authority.

- (f) Strikes or boycotts or industrial action or any public agitation of any kind;
- (g) Any event or circumstances of a nature analogous to any of the foregoing.

(B) Political Event

- (a) Change in Law, other than any Tax laws, rules and regulations, to which the provisions of Section 24.15 cannot be applied;
- (b) Expropriation or compulsory acquisition by any Competent Authority of the Project or part thereof or any material assets or rights of the Concessionaire; provided the same has not resulted from an act or default of the Concessionaire or such person;
- (c) Any unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any Applicable Permit required by the Concessionaire or any Contractor to perform their respective obligations hereunder (other than a consent the obtaining of which is condition precedent) and such delay, modification, denial, refusal or revocation that has a material adverse effect on the Project/Concessionaire; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or Contractor's (i) inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits; or (ii) breach or failure in complying with the provisions hereof, including the Specifications and Standards, any judgment or order or directive of any Competent Authority or of any contract to which the Concessionaire or any Contractor, as the case may be, is bound.

Section 18.2 Exceptions to Force Majeure

(a) For Concessioneing Authority:

The Concessioneing Authority will not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement:

- (i) the expropriation, confiscation or nationalization of the Project /Project Facilities/Project Assets by the Concessioneing Authority or any Competent Authority;
- (ii) any delay or difficulty in handing over Vacant Possession of the Site.

(b) For Concessionaire

The Concessionaire and/or persons claiming through or under it will not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement:

- (i) late delivery of any equipment or materials where such delivery is not attributable to Force Majeure events mentioned in section 18.1;
- (ii) breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Project Facilities;
- (iii) delays in performance by Contractors, employees, agents or representatives of the Concessionaire;
- (iv) economic hardship including insufficiency of funds; or
- (v) general economic slowdown.

Section 18.3 Notice of Force Majeure Event

- (a) The Affected Party shall give 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 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 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 under Section 18.2 (b) and such other information as the other Party may reasonably request.

Section 18.4 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 Section 18.5; or
- (b) termination of this Agreement pursuant to Section 18.8 hereof

Section 18.5 Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this 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.

Section 18.6 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 Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this 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.

Section 18.7 Costs, Revised Timetable

(a) Costs

Each Party shall bear its costs, if any, incurred as a consequence of the Force Majeure Event.

(b) Extension of Time

The Affected Party shall be granted by the other Party, extension of time specified in this Agreement for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. Such extension may include extension of the Term of Agreement by the Concessioning Authority in appropriate cases.

Section 18.8 Termination Due to Force Majeure Event

If the Period of Force Majeure continues or is in the reasonable judgment of the Parties is likely to continue beyond a period of six months, the Parties may mutually decide to terminate this Agreement or continue this 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 period of 120 (one hundred and twenty) days be entitled to terminate the Agreement in which event, the provisions of Articles 20 and 21 shall, to the extent expressly made applicable, apply.

ARTICLE 19

EVENTS OF DEFAULT

Section 19.1 Events of Default

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

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

(a) Concessionaire Event of Default

Without prejudice to any Concessionaire Event of Default not listed herein below, but described elsewhere in this Agreement, the Concessionaire Event of Default shall include any of the following events, unless such an event has occurred as a consequence of the Concessing Authority Event of Default or a Force Majeure Event:

- i) The Concessionaire is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Concessing Authority or the Project.
- ii) The Concessionaire is in breach of any representation or warranty made under this Agreement, or it repudiates this Concession Agreement.
- iii) The Concessionaire fails to meet the progressive milestones set forth in the Project Implementation Schedule or amendments thereto as provided for this Agreement.
- iv) The Concessionaire abandons the Project or any of its material obligations under this Agreement.

- v) The Concessionaire fails to maintain Performance Security under Section 3.4 & 3.5 or replenishment or furnishing of fresh performance security in the event of partial appropriation by the Concessioneing Authority.
- vi) The Concessionaire fails to pay Annual Concession Fee, as applicable.
- vii) The Concessionaire fails to achieve Financial Close within the time period stipulated in Section 17A.1 (i), unless expressly in writing extended by the Concessioneing Authority.
- viii) A senior Lender recalls its loan under the Financing Documents on the ground that the Concessionaire has defaulted on its obligations to the senior Lender under the Financing Documents.
- ix) The Concessionaire creates any Encumbrances, charges or lien in favour of any Person saves and except as otherwise expressly permitted in this Agreement.
- x) The Selected Bidder / Consortium / Concessionaire does not comply with requirements under Section 6.6 of this Agreement.
- xi) The Concessionaire fails to pay Liquidated Damages (LD) within 60 days of issuing of Payment Notice, but no later than the extension period of six months, as per the section 2.3 of this agreement.
- xii) The Concessionaire fails to complete the overall structural framework including the Construction of Project Facility within the Construction Period.
- xiii) The transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire under this Agreements, or (b) all or material part of the assets or undertaking of the Concessionaire; except (i) to the extent permitted by this Concession Agreement or (ii) where such transfer, in the reasonable opinion of the Concessioneing Authority, does not affect the ability of the Concessionaire to perform its obligations under this Agreement.
- xiv) In the event a resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire.

- xv) The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project.

- xvi) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by court, , or a resolution of the members is adopted for voluntary winding up, except if, in the event a petition for winding up is admitted by a court, such petition is for the purpose of amalgamation or reconstruction provided that as part of such amalgamation and reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and Project Agreements, and provided that:
 - (a) The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under the Agreement and Project Agreements;
 - (b) The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Agreement and Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as on the Compliance Date;
 - (c) And all the Project Agreements remain in full force and effect;

- xix) The Concessionaire assigns this Concession Agreement or any of its rights or obligations under this Agreement, where such assignment is not in accordance with the terms of the Concession Agreement.

b) Termination by Concessions Authority.

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

- a. The Concessioneing Authority shall be entitled to issue a Termination Notice to the Concessionaire. The Termination Notice shall grant the Concessionaire 30 (thirty) days (the "Termination Period") to make a representation, and if, during the Termination Period the Concessionaire takes suitable steps to remedy the default/ situation, the Concessioneing Authority may, if fully satisfied with the remedial steps taken by the Concessionaire, to withdraw the Termination Notice.
- b. If the Termination Notice is not withdrawn within the Termination Period, the Concessioneing Authority shall send a copy of the Termination Notice to the senior Lender, thereby granting the senior Lender a 30 (thirty) day "Suspension Period" in accordance with the terms of the Substitution Agreement. During the Suspension Period the senior Lender may exercise its Step-In Rights in accordance with the Substitution Agreement such that the senior Lender may nominate an 'Additional Obligor'. In the Step-In Period the senior Lender may procure that the default stated in the Termination Notice is cured, and upon curing of the default, the Concessioneing Authority shall withdraw its Termination Notice and grant permission to the Concessionaire to resume its work under this Concession Agreement.
- c. At the sole discretion and full satisfaction of the Concessioneing Authority, the Concessioneing Authority may extend the Suspension Period up to a maximum of 180 (One hundred and eighty) days.
- d. During the Suspension Period the senior Lender may request the Concessioneing Authority to replace the Concessionaire with a "substitute" named by the senior Lender, who shall be a Person capable of discharging the roles and responsibilities of the Concessionaire under the Concession. Upon receipt of such a request the rights and obligations of the Concessionaire under this Concession Agreement shall be assigned to the substitute, who shall step into the shoes of the Concessionaire from the date of the assignment.
- e. If, upon receipt of a copy of the Termination Notice, the senior Lender fails to exercise its rights under this Article 19 and procure that either:
 - (i) The Concessionaire Event of Default is cured within the Suspension Period, or

- (ii) The Concession is assigned under Section 19. 1 (b) to a substitute capable of discharging the roles and responsibilities of the Concessionaire,

The Concessioneing Authority shall be entitled to terminate this Concession with no liability towards the Concessionaire or the senior Lender save what is provided in Article 20 hereof.

(c) Concessioneing Authority Event of Default:

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

- i) The Concessioneing Authority is in breach of its obligations under this Agreement, which has a Material Adverse Effect upon the Concessionaire or the Project and this breach is not cured within a Remedial Period of 60 days from the date of Default Notice.
- ii) The Concessioneing Authority is in breach of any representation or warranty made under this Agreement, or it repudiates this Agreement.
- iii) GoP or any Competent Authority have by an act of commission or omission created circumstance that has a Material Adverse Effect on the Concessionaire, and the Concessioneing Authority has failed to compensate the Concessionaire for the same through an adjustment to the Annual Concession Fee.
- iv) Any defect in the title, ownership and possession of the Concessioneing Authority with respect to the Project Site.
- (v) Change in Law to which the provisions of Section 24.15 cannot be applied;
- (vi) Expropriation or compulsory acquisition by any Competent Authorities of the Project/Project Facilities or part thereof or any material assets or rights of the

Concessionaire; provided the same has not resulted from an act or default of the Concessionaire.

(d) Termination by Concessionaire.

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

Section 19.2 Parties Rights

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

Provided that before proceeding to terminate this 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 Agreement and the circumstances in which the same has occurred.

Section 19.3 Consultation Notice

Either Party exercising its right under Section 19.2, 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 Lenders to consider

possible measures of curing or otherwise dealing with the underlying Event of Default (the “**Consultation Notice**”).

Section 19.4 Remedial Process

Following the issue of Consultation Notice by either Party, within a period not exceeding 60 days or such extended period as they may agree (the “**Remedial Period**”) the Parties shall, in consultation with the 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 Parties shall in consultation with the 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:

- (a) the change of management or control/ownership of the Concessionaire;
- (b) the replacement of the Concessionaire by a new Concessionaire (“Substitute Entity”) on terms no less favorable than those contained in this Agreement, proposed by either of them or the Lenders and the specific terms and conditions of such replacement which shall include:
 - (i) the criteria for selection of the Substitute Entity,
 - (ii) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Substitute Entity,
 - (iii) handing over/ transfer of the Project Assets and the Project to the Substitute Entity,
 - (iv) assumption by the Substitute Entity of the outstanding obligations of the Concessionaire under the Financing Documents and preserving Lenders’ charge on the Concessionaire’s assets ,
 - (v) assumption by Substitute Entity of any amounts due to the “Concessioneing Authority” from the Concessionaire under this Agreement.

Section 19.5 Obligations during Remedial Period

During the Remedial Period, the Parties shall continue to perform their respective obligations under this 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.

Section 19.6 Revocation of Consultation Notice

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties and the Lenders agree upon any of the measures set out in Section 19.4, the Consultation Notice shall be withdrawn by the Party who has issued the same.

Section 19.7 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 Lenders have agreed upon any of the measures in accordance with Section 19.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Articles 20 and 21 shall, to the extent expressly made applicable, apply.

Section 19.8 Step-in-rights

The Concessionaire agrees that the GMADA shall be entitled to operate the Project on the occurrence of a Concessionaire Event of Default. In the event of a Concessionaire Event of Default, the GMADA may (but shall not be obliged to) operate, or procure and cause operation of the Project upon the issue of the Termination Notice. In the event the senior Lender fails / neglects to exercise its rights under Article 19 and procure that either:

- (i) The Concessionaire Event of Default is cured within the Suspension Period, or
- (ii) The Concession is assigned under Section 19.1 (b) to a substitute, capable of discharging the roles and responsibilities of the Concessionaire,

The lenders step-in rights shall be GMADA's step-in rights in accordance with the Substitution Agreement and as referred in Sections 19.1.(b) of this agreement

ARTICLE 20

TERMINATION OF AGREEMENT

Section 20.1 Termination Procedure

The Party entitled to terminate this Agreement either on account of a Force Majeure Event or on account of an Event of Default (Concessionaire and/or Concessioneing Authority, as the case may be) shall do so by issue of a notice in writing ("**Termination Notice**") to the other Party and simultaneously deliver a copy thereof to the Lenders. The Termination Notice shall be of not less than 60 days and not ordinarily be more than 180 days, ("**Termination Period**") and at the expiry of the Termination Period, this Agreement shall stand terminated.

Section 20.2 Obligations during Termination Period

During Termination Period, the Parties shall subject to the provisions of Article 19 wherever applicable, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project 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.

Section 20.3 Requisition

Upon issue or receipt, as the case may be, of the Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, 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 GOP to the Concessionaire and/or to finalize the items of Concessionaire's assets comprised in the Project and the Project Assets to be handed over to/taken over by the Concessioneing Authority:

- (a) the particulars of Debt Due supported by Lenders' certificate ;
- (b) data or records (to be specified by Concessioneing Authority) regarding the operation and maintenance of the Project and the Project Assets; and

- (c) any other information or records (to be specified by Concessioneing Authority) regarding Concessionaire, its business, assets and liabilities.

The Concessionaire shall within a period of 45 days of receipt of Requisition furnish the particulars called for by the Concessioneing Authority.

Section 20.4 Condition Survey

- (a) The Concessionaire agrees that six months prior to the expiry of the Term of Agreement by efflux of time or on the service of a Termination Notice, as the case may be, it shall conduct or cause to be conducted by the Independent Engineer/Expert under the Concessioneing Authority's supervision, a condition survey of the Project and the Project Assets to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project.
- (b) If, as a result of the condition survey, the Concessioneing Authority shall observe/notice that the Project Assets and/or the Project or any part thereof have/has not been operated and maintained in accordance with the requirements thereof under this 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 Agreement, the Concessioneing Authority may itself cause the condition survey and inventory of Project Assets and the Project to be conducted. The Concessioneing 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 and the Project Assets in good working condition.

Section 20.5 Consequences of Termination

Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the Term of Agreement by efflux of time or due to a Force Majeure Event or an Event of Default.

(a) Handing Over of Assets

- (i) On the Transfer Date, the Concessionaire shall subject to the provisions of this Agreement:

- (1) Handover/surrender vacant and peaceful possession of the Project Assets, Project Site and the Project to the Concessioneing Authority free of cost.
 - (2) transfer all its rights, titles and interest in or over the tangible assets comprised in the Project (including movable assets which the Concessioneing Authority agrees to take over) to the Concessioneing Authority and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
- (ii) On the Transfer Date, the GOP shall subject to the provision of this Agreement, pay to the Concessionaire the compensation (for and on behalf of the Concessioneing Authority in accordance with the provisions of Article 21.
- (iii) The Concessioneing Authority and the Concessionaire shall at least six months prior to the expiry of the Term of Agreement or upon commencement of Termination Period, as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets and payment of compensation, as the case may be on the Transfer Date. During this period, the designated key personnel of the Concessioneing Authority shall be associated with the operations of the Project (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth take over of the same by the Concessioneing Authority on the Transfer Date.
- (iv) It is clarified that only the assets of the Concessionaire shall be taken over and no liabilities, including without limitation liabilities relating to labor and personnel related obligations of the Concessionaire shall be taken over by the Concessioneing Authority. The liabilities, if any, have to be met by the Concessionaire from its own sources.

(b) Project Contracts

The Concessionaire shall at the cost of the (Concessionaire) Concessioneing Authority transfer/assign such of the Project Contracts which the Concessioneing Authority may require to be transferred in its favor subject to the counter parties to such contracts consenting to such transfer/ assignment. The Concessionaire shall

entirely at its cost, terminate all such Project Contracts which are not transferred/assigned to the Concessioneing Authority provided, if the termination is on account of the Concessioneing Authority Event of Default, the Concessioneing Authority shall compensate the Concessioneaire to the extent of the termination payments, if any, made or to be made by the Concessioneaire to the counter parties to such contracts.

(c) Applicable Permits

The Concessioneaire shall, at its cost, transfer to the Concessioneing Authority all such Applicable Permits which the Concessioneing Authority may require and which can be legally transferred. Provided if the termination is on account of Concessioneing Authority Event of Default, the cost of such transfer shall be borne/ reimbursed by the Concessioneing Authority.

(d) Guarantees

The Concessioneing Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessioneaire, if the termination is on account of a Concessioneaire Event of Default.

(e) Transfer of Risk

Until the Transfer Date, all risks shall lie with the Concessioneaire for loss of or damage to the whole or any part of the Project and the Project Assets unless the loss or damage is due to an act or omission of the Concessioneing Authority in contravention of its obligations under this Agreement. On and from the Transfer Date all risks in relation to the Project and the Project Assets shall be deemed to have been transferred to and lie with the Concessioneing Authority or its nominated agency.

ARTICLE 21

COMPENSATION ON TERMINATION

Section 21.1 Termination Due to Force Majeure Event

- (a) An amount equal to 90% of the Debt Due shall be payable to the Concessionaire by the Concessioneing Authority in the event the termination of this Agreement is due to a Non-Political Force Majeure Event set forth in Section 18.1 (A) above. The Concessioneing Authority shall return the Performance Security provided there are no outstanding claims of the Concessioneing Authority against the Concessionaire / Selected Bidder under this Agreement.
- (b) If the termination is due to a Political Force Majeure Event, set forth in Section 18.1 (B) above, the compensation payable by the Concessioneing Authority to the Concessionaire shall be:
- (i) Debt Due plus 100% of the Equity subscribed and paid in cash and actually spent on the Project if the termination occurs during the Construction Period but prior to the Construction Completion/Operation Date being achieved.
 - (ii) Debt Due plus 125% of the Equity subscribed and paid in cash and actually spent on the project if the termination occurs upon Construction Completion/Operation Date being achieved.

Provided that the compensation shall in no event include the value of the portion of any asset affected by Force Majeure Event, to the extent of the insurance claim received or admitted in relation to such Force Majeure Event.

All payments due to the Concessionaire as calculated under Section 21.1 (b) shall be made within 30 (thirty) days of the receiving Termination Notice.

The Concessioneing Authority shall return the Performance Security provided there are no outstanding claims of the Concessioneing Authority on the Concessionaire / Selected Bidder under this Agreement.

Section 21.2 Termination due to Concessionaire Event of Default

- a) Upon Termination by the Concessioneing Authority on account of a Concessionaire Event of Default in accordance with the provisions of Section 19.1 (a) & 19.1 (b) , the Concessionaire shall not be entitled to receive any Termination Payment from the Concessioneing Authority.
- b) In addition, the Concessioneing Authority shall encash and appropriates the entire amount of the Performance Security.

Section 21.3 Termination Due to Concessioneing Authority Event of Default

If the termination is due to a Concessioneing Authority Event of Default (by the Concessionaire), the compensation payable by the Concessioneing Authority shall be the aggregate of the Debt Due and 100% of the Equity subscribed and paid in cash and actually spend on the project LESS amounts if any due to the Concessioneing Authority from the Concessionaire under the provisions of this Agreement if the termination occurs during the Construction Period but prior to the Construction Completion/Operation Date being achieved.

If the termination is due to a Concessioneing Authority Event of Default (by the Concessionaire), the compensation payable by the Concessioneing Authority shall be the aggregate of the Debt Due and 125% of the Equity subscribed and paid in cash and actually spent on the project LESS amounts if any due to the Concessioneing Authority from the Concessionaire under the provisions of this Agreement if the termination occurs upon Construction Completion/Operation Date being achieved.

After Construction Completion, for each successive year thereafter, such amount shall be reduced by 1.2 % (One point two per cent) per annum.

The Concessioneing Authority shall return the Performance Security provided there are no outstanding claims of the Concessioneing Authority on the Concessionaire/Selected Bidder under this Agreement.

Section 21.4 Project Value

In the event of expiry of this Agreement by efflux of time (the Agreement having run its full course), or the Concessionaire Event of Default, the Concessionaire shall hand over/ transfer the vacant possession of the Project/Project Facilities, including all moveable property, to the Concessioneing Authority free of cost.

Section 21.5 Payment of Compensation to Lenders

The Concessionaire hereby irrevocably authorizes Concessioneing Authority to pay to the 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 Agreement. The Concessionaire further confirms that payment of compensation to the Concessionaire in accordance with this Section 21.5 shall be a valid discharge to the Concessioneing Authority in respect of the Concessioneing Authority obligation regarding payment of compensation to the Concessionaire under this Agreement:

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

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

Section 21.6 Remedies Cumulative

The exercise of right by either Party to terminate this 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.

ARTICLE 22

TRANSFER ON EXPIRY OF TERM OF AGREEMENT

Section 22.1 General Scope of Transfer/Payment

The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Agreement on the Transfer Date in entirety and unless otherwise provided in this Agreement, the cost involved in transfer contemplated shall be shared by the respective Parties.

Section 22.2 Concessionaire's Obligations

Without prejudice to the generality of the provision contained in Section 22.1, the transactions to be consummated and the formalities to be completed by the Parties on the Transfer Date shall be the following:

The Concessionaire shall:

- (a) hand over vacant and peaceful possession of the Project Assets, the Project Site and the Project to the Concessioning Authority free of cost, including all fittings, fixtures, movable goods, property, assets and things relating to or in respect of the Project Facilities;
- (b) transfer all its rights titles and interests in the assets comprised in the Project, the Project Site and the Project Assets which are required to be transferred to the Concessioning Authority in accordance with this 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) handover to the Concessioning Authority all documents including as built drawings, manuals and records relating to operation and maintenance of the Project and the Project Assets;
- (d) transfer technology and up-to-date know-how relating to operation and maintenance of the Project Assets and/or the Project;

- (e) transfer or cause to be transferred to the Concessioneing Authority any Project Contracts which are (i) valid and subsisting, (ii) capable of being transferred to the Concessioneing Authority and (iii) those the Concessioneing Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessioneing Authority; and

- (e) at its cost remove from the Project Site all such moveable assets which are not taken over by or transferred to the Concessioneing Authority.

Section 22.3 Concessionaire's Responsibility

The employees of the Concessionaire, Contractors, their agents, representatives and persons claiming through or under them shall be their responsibility even after the expiry of the Term of Agreement.

Section 22.4 Risk

Until transfer in accordance with this Article 22, the Project Assets and the Project shall remain 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 Concessioneing Authority under this Agreement.

ARTICLE 23

DISPUTE RESOLUTION

Section 23.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Parties in connection with construction, 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 Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether before or after the Termination of this Agreement, and so notified in writing by either Party to the other, (the "Dispute"), the Dispute shall, in the first instance, be attempted to be resolved amicably by a senior representative of Parties available at Chandigarh and familiar with the Project within 30 (thirty) days of receiving such notice.

In the event the Dispute is not so resolved, as evidenced by the signing of the written terms of settlement, within 30 (thirty) days of such notice, or such longer period as may be mutually agreed by the Parties in writing, then either Party may refer the Dispute to arbitration in accordance with the provisions of Section 23.2 hereof.

Section 23.2 PIRA

23.2.1 If the Dispute is not amicably settled, as evidenced by the signing of the written terms of settlement by the Parties, within 30 (thirty) days of the notice in writing referred to in Clause 23.1 or such longer period as may be mutually agreed by the Parties, the dispute shall compulsorily be referred to PIRA for adjudication in accordance with the Applicable Laws.

23.2.2 The decision or order passed by PIRA with regard to any such dispute shall be final and binding upon the Parties and the same shall be executable as a decree in a court having jurisdiction thereof.

34.3.5 All the expenses relating to the adjudication of the dispute by PIRA shall be borne equally by the Parties.

34.3.6 Pending the submission of and/or decision/ order on a dispute, difference or claim or until the order is passed and executed; the Parties shall continue to perform all of

their obligations under this Agreement without prejudice to a final adjustment in accordance with such order.

ARTICLE 24

MISCELLANEOUS PROVISIONS

Section 24.1 Governing Law and Jurisdiction

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

Section 24.2 Waiver of Remedies

- (a) The waiver by either Party, including conditional or partial waiver, of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) No failure on the part of any Party to exercise, and no delay in exercising, any right, power, obligation or privilege hereunder or time or indulgence granted by a Party to the other Party shall operate or be treated or deemed as a waiver thereof or a consent thereto or the acceptance of any variation or relinquishment of any such right hereunder; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by the Applicable Laws.
- (c) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

Section 24.3 Survival

The Termination/expiry of this Agreement

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

Section 24.4 Entire Agreements and Amendments

- (a) This Agreement constitutes the complete, exclusive and entire statement of the terms of the agreement between the Parties on the subject hereof and supersede all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof.
- (b) No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be valid and effective unless the same is in writing and signed by the Parties or their duly authorized representative especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

Section 24.5 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to Concessioning Authority:

Fax No. -----

Attn:

If to Concessionaire:

Fax No. -----

Attn:

If to Concessioning Authority:

Fax No. -----

Attn:

If to Lenders/Lenders Representative:

Fax No. -----

Attn:

Or such 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 courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Party in writing prior to the adoption thereof.

Section 24.6 Severability

- (a) If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.

- (b) The Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement or otherwise.

Section 24.7 No Partnership

Nothing contained in this 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 Agreement. Neither Party shall have any authority to bind the other in any manner whatsoever.

Section 24.8 Language

The language of this Agreement is English. All notices, correspondence, Project Contracts, documentation, Designs and Drawings, design data, test reports, certificates, specifications and standards and information in respect of this Agreement, under or in connection with this Agreement shall be in the English language. All other written and printed matter, communications, documentation, proceedings and notices etc. pursuant or relevant to this Agreement shall be in the English language.

Section 24.9 Exclusion of Implied Warranties etc.

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

Section 24.10 Counterparts

This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document.

Section 24.11 Further Assurances

At all times after the date hereof the Parties shall execute all such documents and do such acts, deeds and things as may reasonably be required for the purpose of giving full effect to this Agreement.

Section 24.12 Remedies Cumulative

The exercise of right by either Party to terminate this 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.

Section 24.13 Joint Responsibility

In the event that any damage is caused in part only due to the negligence or default or omission on the part of the Concessioneing Authority and in part only 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 proportion to its respective degree of negligence or default or omission as the case may be.

Section 24.14 No Liability for Review

Except to the extent expressly provided in this Agreement,

- (a) no review, comment or approval by the Concessioneing Authority Independent Engineer of the Designs and Drawing, the Transaction Documents or the documents submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

- (b) the Concessioneing Authority or any Competent Authorities or GOP shall not be liable to the Concessionaire by reason of any review, comment, approval observation or inspection referred in sub-section (a) above.

Section 24.15 Change in Law

In the event of a Change in Law results in a Material Adverse Effect, the Concessioneing Authority or the Concessionaire may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Concessionaire and the Concessioneing Authority shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure described under Article 23 of this Agreement.

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

Section 24.16 Joint and Several Liabilities of Selected Bidder/ Consortium Members

In case the Selected Bidder is a consortium of two or more Persons, all such Persons shall be jointly and severally liable to the Concessioneing Authority for compliance with the terms of this Agreement. The lead member (M/s--) shall have the authority to bind all the members of the consortium comprising the Selected Bidder.

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 Concessioneing Authority through its Chairman by

_____ (Signature)

_____ (Name)

_____ (Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessionaire by:

_____ (Signature)

_____ (Name)

_____ (Designation)

In the presence of

1. _____ (Signature)

_____ (Name)

_____ (Designation)

2. _____ (Signature)

_____ (Name)

_____ (Designation)

SECTION 5:

Schedules to Draft Concession Agreement

Schedule A

SCOPE OF THE PROJECT

The Scope of the Project (the “**Scope of the Project**”) shall mean and include during the Concession Period, but not limited to:

- a) Taking over of the Vacant Possession of the site to Plan, Design, Finance, Engineer, Construct, Market, Operate, Maintain and Manage the project facility, including Clearances/approvals, ancillary services and amenities related to the Project namely a Five Star Hotel, International Convention & Exhibition Centre and the Commercial/ Business complex as per applicable Building Bye-Laws, Ministry of Tourism (MoT), Federation of Hotel Restaurant Association of India (FHRAI) guidelines and standards & Schedules of the Concession Agreement.
- b) Site clearance and cordoning off the site; providing and deputing of Security including Dismantling of existing structures if any, cutting of trees, removal of debris etc.
- c) Construction, operation and maintenance of The Project as per the Conceptual design approved by the Design Approval Committee and in conformity to the Technical Specifications and Standards including, providing installation of all internal and external services.
- d) Construction of Project Facility including all internal and external services; providing and installation of fire detection; fire alarm and fire fighting system and electrical system.
- e) Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement and to meet the requirements laid down by the Competent Authority.
- f) Incorporating Special Purpose Company (SPC) for implementation of the project,

- g) The fulfillment of conditions by the Concessionaire, where applicable, as set out in the NIT eligibility criteria regarding tie-up with an International /National hotel chain, for successful implementation and operation of the Project, and submission of an agreement evidencing the tie-up between the Concessionaire and International/National Five Star or above hotel chain , within 6 (six) months of signing of Concession Agreement.
- h) The Concessionaire shall obtain for the Hotel / Project Facility accreditation as a five star hotel from the concerned accreditation agency within 6(six) months from the date of issue of Construction Completion Certificate.
- i) To recover the investment through appropriate applicable revenue streams as per contractual arrangements/as per permitted revenues over the concession period.
- j) All the open spaces in the Project Facility shall be landscaped.
- k) Hand over the Five Star Hotel cum International Convention & Exhibition Centre and Commercial Complex Facility along with assets at the end of the Concession Period.

Schedule B

Request for Proposal Document

(Request for Proposal document as issued to interested bidders and with clarifications/addendum if any)

Schedule C
Consortium Agreement

(to be submitted by Bidder in case, the Bidder is a Consortium)

Schedule D

Technical Proposal

(As submitted by Selected Bidder's at the Proposal submission)

Schedule E

Financial Proposal

(As submitted by Selected Bidder's at the Proposal submission)

Schedule F
Notice of Award

(as issued to the Selected Bidder)

Schedule G

Project Implementation Schedule

(to be extracted from Bidders Proposal)

Schedule H
Indicative List of Clearance/Permit

The Concessionaire shall obtain or cause to be obtained the following Applicable Permits necessary to commence construction works. The indicative list is given below:

- (1) Approval of building plans:
 - Chief Architect, Town and Country Planning, Punjab
- (2) Approval of safety aspects in the buildings:
 - Fire and Emergency Services Department
- (3) Batching plant:
 - License from inspector of factories
 - NOC consent from pollution department
- (4) Borrow earth:
 - Permission for cutting of trees, if required
- (5) Cutting of trees:
 - Permission for Cutting of Trees from the Forest Department, District Administration
- (6) Electricity connection:
 - Permission required from State Electricity Board for installation of DG
 - Permission for electrical connection, if power source is available.
- (7) Employment of labor:
 - Permission from Labor Commissioner for employing labor
- (8) Quarrying permits
 - Permit for extraction of boulder from quarry
 - Permit for installation of crusher from Pollution Control Board
 - Explosive license for storing Diesel
- (9) Shifting of services and utility lines:
 - Electricity Department/Municipal Corporation for shifting of Electric Poles

- PWSSB for Shifting of Water and Sewerage utility lines
- For other services – concerned government agencies

(10) Water connection:

- If water has to be taken from river or reservoir, permission has to be obtained from the State Irrigation Department
- Permission for water connection if water supply is required from the municipality

Schedule I

Environmental Management Plan

The Environmental Management Plan is based on provisions from the Environmental Impact Assessment Report.

| S N | Issues | Action to be Taken |
|----------------|---|--|
| 1. | Clearing of Vegetation during construction at Sites | <ul style="list-style-type: none"> ▪ The detailed layout plans for construction of facilities at Sites shall be prepared considering avoidance of tree felling to the extent possible without additional cost. ▪ In order to augment aesthetics and considering the need for afforested buffer area, a minimum level of tree plantation to be undertaken |
| 2. | Use of Excavated Earth | <ul style="list-style-type: none"> ▪ Excavated earth generated construction shall be collected and disposed at proper locations ▪ Minimize the use of soil from borrow area by using excavated soil |
| 3. | Dust Control at Facility | <ul style="list-style-type: none"> ▪ The open areas in facility and to be watered at least twice a day during construction except on days when it has rained and adequate dust suppression is achieved in accordance with local industry practice. ▪ Trucks carrying construction material such as soil, sand, gravel and stone during construction and during operation to be adequately covered to minimize negative impacts during transportation in accordance with local industry practice. |

| S N | Issues | Action to be Taken |
|--------|-----------------|--|
| 4. | Air Pollution | <ul style="list-style-type: none"> ▪ Construction machinery & vehicles used during construction to meet relevant emission standards and to be maintained adequately in accordance with local industry practice. ▪ Routine check of vehicles used for transportation and their proper maintenance to minimize vehicular pollution |
| 5. | Noise Pollution | <ul style="list-style-type: none"> ▪ Ear Plugs shall be provided to operators of heavy machinery and workers in near vicinity ▪ Use the construction equipment and their operation that complies with the regulations prescribed by the Ministry of Environment and Forests (MoEF) ▪ Noise standards of 75 dB(A) for construction equipment like compactor (roller), front loader, concrete mixers, crane at manufacturing stage <ul style="list-style-type: none"> ▪ Noise Standards for DG sets (15-500 KVA) ▪ Mandatory acoustic enclosure for stationary DG sets (5 KVA and above) |

Schedule J

Project Site Lease Deed

THIS PROJECT SITE LEASE DEED made on the _____ day of _____ 2009 by and among

Greater Mohali Area Development Authority (GMADA) is a statutory body constituted on 14-8-2006 under the Punjab Regional and Town Planning and Development Act 1995 (Punjab Act No.11 of 1995), and having its registered office at Puda Bhavan, Sector 62 SAS Nagar, Mohali (hereinafter referred to as the "Concessing Authority", which expression shall, unless the context otherwise requires, include its successors and assigns);

And

M/s _____, a Special Purpose Company (SPC) incorporated under the Companies Act, 1956 / a Trust Act / Society Act and having its registered office at _____, (hereinafter referred to as the "**Concessionaire**", which expression shall, unless the context otherwise requires, include its successors and permitted assigns);

WHEREAS:

- A. The Concessing Authority has vide the Draft Concession Agreement dated _____ (hereinafter "**Draft Concession Agreement**") granted Development Rights to _____ (the Concessionaire or the Lessee herein) to implement the Project at Project Site, involving development, financing, design, construction, operation and maintenance of the Project on the Design-Build-Operate-Transfer Basis (DBOT) and the charging, demanding, collection, retention and appropriation of Fee/ user charges from Students/ Guests by the Concessionaire in accordance with the provisions of the Draft Concession Agreement.
- A B. Pursuant to and under the Draft Concession Agreement the Lessor is required to vest with the Lessee the land comprising the Project Site and all rights relating thereto for a period co-terminus with the Term of the Agreement (as defined

in Section 4.3 of the Draft Concession Agreement) under a valid and binding Project Site Lease Deed for the purpose of implementing the Project.

- C. Being the owner of the Project Site with a good title thereto and having lawful possession thereof, the Lessor is desirous of leasing the Project Site unto the Lessee and vesting unencumbered possession thereof with the Lessee, on the terms and conditions hereinafter contained.

NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:

1. The words and expressions used in this Deed but not defined shall, unless the context otherwise requires, have the meaning as defined/assigned to them respectively in the Draft Concession Agreement.
2. The interpretation Section 1.2 of the Draft Concession Agreement shall be deemed to be incorporated in this Deed in extenso mutatis mutandis.
3. The following words and expressions shall, except where the context otherwise requires, have the meaning as hereunder:
 - (a) **"Project Site Lease Deed" or "Deed"** means this Project Site Lease Deed;
 - (b) **"Concession Agreement"** shall mean the Draft Concession Agreement dated _____ entered into between the Concessions Authority and Concessionaire;
 - (c) **"Term of the Agreement"** means the period specified under Article 4 of the Concession Agreement;
 - (d) **"Premises"** means all the lands comprising the Project Site, more particularly delineated in Annexure 5 of Section 1 of the RFP document and demarcated in green line on the site plan attached thereto;
 - (e) **Parties** shall mean Lessor and Lessee herein, and where the context admits or requires, the Selected Bidder;
 - (f) **"Concessions Authority"** means GMADA;
 - (g) **"Concessionaire"** means the Developer/Bidder;
 - (h) **"Annexure"** means any of the Annexure, supplements and documents annexed to this Agreement.

4. The Concessioneing Authority hereby leases the Premises unto the Concessionaire on an "as is where is basis" under the terms of this Deed from the _____ day of 2010 (the Compliance Date) for a period of Fifty (50) Years, which period shall be co-terminus with the Term of the Agreement and shall be extended or terminated at a prior date to coincide with the Term of Agreement. The Concessioneing Authority hereby undertakes that it shall not terminate this Deed, except upon the due and valid termination of the Term of Agreement.
5. In consideration of the Draft Concession Agreement between the Concessioneing Authority and the Concessionaire , with the Selected Bidder, and in consideration of the lease rental herein reserved and the covenants on the part of the Concessionaire, the Concessioneing Authority hereby leases unto the Concessionaire the Premises without interruption or interference, free from Encumbrances and together with the full and free right and liberty of way and passage, the Easementary Rights and other rights in relation thereto with delivery of vacant possession thereof.
6. In consideration of the Concessioneing Authority leasing the Project Site to the Concessionaire, the Concessionaire shall,
 - (i) simultaneously with or prior to the execution of the Project Site Lease Deed, pay to the GMADA, the lease rental at the rate of Rs. (10,000) per acre per annum for the duration of the Term of the Agreement.
 - (ii) the Annual Concession Fee as given in Section 13.1 of the Draft Concession Agreement.
7. The Lessor hereby vests the Premises with the Concessionaire along with all Easementary Rights, free from any Encumbrance. Any liability arising out of providing the Premises free of Encumbrances shall be borne solely by the Concessioneing Authority.
8. The Concessioneing Authority hereby vests the Premises with the Concessionaire under this Deed for the purpose of implementing the Project, including the design, finance, construction, and operation and maintenance of the Project Facility thereat in accordance with the terms and conditions of the Draft Concession Agreement.
9. The Concessionaire shall not sub-lease the whole or any part of the land comprising the Project Site, leased to it by Concessioneing Authority under this Deed, to any person in any form or under any arrangement, device or method, provided that the Concessionaire shall be entitled to:

- (a) enter into Contractual Arrangements, including the sub-leasing, letting, subletting, licensing, franchising or similar arrangements in respect of the built up area, which, however, shall not involve the transfer of the leasehold rights therein or thereof
 - (b) appoint Subcontractors for the implementation of the Project at the Premises in accordance with the provisions of the Draft Concession Agreement.
- 10. The Concessioneing Authority hereby agrees that for the purpose of raising financial assistance for the Project, the Concessionaire may assign all its rights, title, interest and benefits under the Draft Concession Agreement, limited to the extent of such rights therein, to or in favor of the Lenders in accordance with the provisions of the Draft Concession Agreement, provided that:
 - (a) in the event of the termination of the Draft Concession Agreement such assignment shall stand extinguished.
 - (b) the Concessionaire shall not have the right and authority to mortgage, encumber or create any security interest whatsoever on the Project Site, the Project Facility or any other built up area thereat or therein, in full or part, in favor of the Lenders or any person in any form, manner, device or method.
- 11. Upon the occurrence of an Event of Default under the Draft Concession Agreement, the Parties shall in consultation with the Lenders and in accordance with the provisions of the Draft Concession Agreement have the right to replace the Concessionaire by the Substitute Entity for performing the Concessionaire's obligations hereunder. Upon appointment of the Substitute Entity, the Substitute Entity shall be deemed to be the Concessionaire for all the purposes and shall be entitled to all the rights and be bound by all the representations, covenants and obligations of the Concessionaire under this Deed.
- 12. In the event of termination of the Draft Concession Agreement by efflux of time or otherwise, this Deed shall be terminated and the lease of the Premises and all rights in relation thereto shall be determined, the Concessionaire, the Transferees and Persons claiming through or under it/them shall hand over the vacant possession of the Premises to the Concessioneing Authority and forthwith vacate the Premises without any demur or delay.
- 13. The Concessioneing Authority hereby covenants with the Concessionaire as under:

- (a) That it shall not increase the lease rental due and payable by the Concessionaire under Section 6 hereof;
 - (b) That the Annual Concession Fee is paid by the Concessionaire to the Concessions Authority as per Section 13 of the Draft Concession Agreement;
 - (c) That it shall not interfere with or impede in any manner or otherwise limit, restrict or impose conditions in relation to: (i) the complete, free and full enjoyment of the Premises by the Concessionaire for the purpose of the implementation of the Project and all rights related thereto; (ii) the design, construction, operation and maintenance of the Project Facility; (iii) the implementation of the Project by the Concessionaire ; and (iv) the possession, control and use by the Concessionaire of the Premises, the Project Facility constructed thereon and any other facilities developed in the course of implementation of the Project; provided that the same are in compliance with the terms and conditions of the Draft Concession Agreement and this Deed.
 - (c) That it shall not terminate this Deed, except upon the due and valid termination of the Draft Concession Agreement in accordance with the terms thereof;
 - (d) That there are no litigations, claims, demands or any proceedings pending before any authority in respect of acquisition of the Premises or in respect of any other land-dispute, and that the Concessionaire shall have complete, lawful and uninterrupted possession, control and use of the Premises.
14. The Lessee hereby covenants with the Concessions Authority as follows:
- (a) That it shall develop, establish, design, construct and operate and maintain the Project Facility/Project at the Premises as per its obligations under and the terms and conditions of the Draft Concession Agreement;
 - (b) That it shall operate and maintain the Project Facility or cause it to be operated and maintained in accordance with the Draft Concession Agreement;

- (c) That it shall observe and perform all terms, covenants, conditions and stipulations of this Deed and the Draft Concession Agreement;
 - (d) That it shall keep the Premises free from encroachments during the Term of this Agreement and carry out its maintenance and repairs in accordance with the provisions of the Draft Concession Agreement;
 - (e) That in respect of the Premises it shall pay/cause payment of all municipal rates (other than property tax, the payment of which shall be exempted), levies, taxes, rents, including penalties etc for late payment, at the applicable rates from time to time, to the concerned Competent Authorities/persons and be liable for payments of all rates and charges for the use of utilities and services at the Premises.
15. Each Party hereto represents and warrants that:
- (a) It has full power and authority to execute, deliver and perform its obligations under this Deed and to carry out the transactions contemplated hereby;
 - (b) It has taken all necessary actions to authorize the execution, delivery and performance of this Deed; and
 - (c) This Deed constitutes its legal, valid and binding obligations that shall be enforceable against it in accordance with the terms hereof.
16. The Parties agree that
- (a) The failure of the Concessionaire to perform its obligations under this Deed and any breach of covenants or undertakings given and provided for in this Deed by the Concessionaire shall amount to a Concessionaire's Event of Default under this Draft Concession Agreement.
 - (b) Any dispute, controversy or claim arising out of or in relation to this Deed or the interpretation of any of its provisions shall be settled in accordance with the provision of Article 23 of this Draft Concession Agreement.

- (c) The stamp duty and registration charges for the execution and registration of this Deed shall be borne by the Lessee in accordance with the provisions of the Applicable Laws.
- (d) In case of ambiguities, conflicts or discrepancies between the Draft Concession Agreement and this Deed, the Draft Concession Agreement shall prevail.
- (e) All notices under the terms of this Deed shall be sent either by hand, facsimile or courier to the following addresses:

_____ :
Concessioning Authority
Concessionaire :

17. The Selected Bidder agrees to and confirms the provisions of this Deed and undertakes that it shall ensure, at its cost and consequence, that the Concessionaire abides by the provisions hereof. The Selected Bidder is a confirming Party to this Deed.

IN WITNESS WHEREOF the Parties have executed and delivered this Deed by their duly authorized representative on the date first above written:

| | |
|---|--|
| <p>SIGNED ON BEHALF OF CONCESSIONING AUTHORITY _____(Signatur e) _____(Name) _____(Designation)</p> | <p>SIGNED, SEALED AND DELIVERED Concessionaire by the hand of its authorized representative _____(Signature) _____(Name) _____(Designation) pursuant to Resolution dated..... of its board of directors.</p> |
|---|--|

Signed, Sealed and Delivered

For and on behalf of the Concessionaire
 We agree to be bound by the terms and conditions of this Deed
 _____ (Signature)
 _____(Name)
 _____ (Designation)

_____ (Signature)
_____ (Name)
_____ (Designation) []

In the presence of

Witnesses:

(i)

(ii)

Date:

Place:

Schedule K

Payment Schedule of Annual Concession Fee

(as per Concessionaire Proposal)

Schedule L

Project Site and Development Control

(same as Annexure 5 & 2 of the Project Information Memorandum, Section 1 of RFP document)

Schedule M

**Essential and Optional Facilities or
Minimum Development Obligations**

(same as Annexure 1 of the Project Information Memorandum, Section 1 of RFP document)

Schedule N

Technical Specifications

(same as Annexure 3 of the Project Information Memorandum, Section 1 of RFP document)

Schedule O

Performance Standards

(same as Annexure 4 of the Project Information Memorandum, Section 1 of RFP document)

Schedule P

**Performa for bank guarantee for
CONSTRUCTION PERFORMANCE SECURITY**

Bank Guarantee No.:

Dated: _____

Issuer of Bank Guarantee:

_____ (Name of the Bank)

(hereinafter referred to as the "Bank")

Beneficiary of Bank Guarantee:

Greater Mohali Area Development Authority (GMADA)

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Construction Period in respect of Concession Agreement (hereinafter referred to as the "Agreement" to be executed between the **Greater Mohali Area Development Authority** ("hereinafter referred to as the "GMADA") and M/s (hereinafter referred to as the "Concessionaire") for the Development of International Convention cum Exhibition Center and Five Star Hotel, Mohali (hereinafter referred to as the "**Project**"), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The titles of this Guarantee i.e. "Performance Bank Guarantee" shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and Greater Mohali Area Development Authority and is not dependent upon execution or performance of any Contract between Greater Area Mohali Development Authority and M/s.....

Operative part of the Bank Guarantee:

1. At the request of the Concessionaire, we _____,
_____ (name and address of the bank), hereinafter referred to as the

“Bank”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the GMADA i.e. the beneficiary on behalf of the Concessionaire, upto a total sum of Rs. 12.5 Crores only (Rupees Twelve Crores and Fifty Lacs Only), such sum being payable by us to GMADA immediately upon receipt of first written demand from the GMADA.

2. We unconditionally and irrevocably undertake to pay to the GMADA on an immediate basis, upon receipt of first written demand from the GMADA and without any cavil or argument or delaying tactics or reference by us to Concessionaire and without any need for the GMADA to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Concessionaire or to show grounds or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. 12.5 Crores only (Rupees Twelve Crores and Fifty Lacs Only).
3. We hereby waive the necessity of the GMADA demanding the said amount from Concessionaire prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the GMADA that the GMADA shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the GMADA by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Concessionaire. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the GMADA.
6. We unconditionally and irrevocably undertake to pay to the GMADA, any amount so demanded not exceeding Rs. 12.5 Crores only (Rupees Twelve Crores and Fifty Lacs Only) notwithstanding any dispute or disputes raised by Concessionaire or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the GMADA, shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Rs. 12.5 Crores only (Rupees Twelve Crores and Fifty Lacs Only).
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ to _____.
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the GMADA serves upon us a written claim or demand on or before _____.

Schedule Q

OPERATION PERFORMANCE SECURITY

Bank Guarantee No.:

Dated: _____

Issuer of Bank Guarantee:

(Name of the Bank)

(hereinafter referred to as the "Bank")

Beneficiary of Bank Guarantee:

Greater Mohali Area Development Authority (GMADA), Government of Punjab

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Operation Period in respect of Concession Agreement dated..... (hereinafter referred to as the "Agreement" between the Greater Mohali Area Development Authority (GMADA) ("hereinafter referred to as the "Concessing Authority ") and M/s (hereinafter referred to as the "Concessionaire") for the Development of International Convention cum Exhibition Center and Five Star Hotel, Mohali (hereinafter referred to as the "Project"), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner to relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. "Performance Bank Guarantee" shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and Greater Mohali Area Development Authority (GMADA) and is not dependent upon execution or performance of any Contract between Greater Mohali Area Development Authority (GMADA) and M/s

Operative part of the Bank Guarantee:

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

under this Guarantee and the Concessionaire shall be a valid discharge of our liability for payment under this Guarantee and the Concessionaire shall have no claim against us for making such payment.

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

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. 5 Crores (Rupees Five Crores Only), whichever is higher.
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ to _____.
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the GMADA serves upon us a written claim or demand on or before _____.

Authorized Signatory
For Bank

Schedule R

Intentionally Left Blank

Schedule S

Terms of Reference for Independent Engineer

The tenure of the IE shall be till the end of the Term of Agreement, when the Concessionaire receives the Completion Certificate. The IE shall undertake the following functions:

1. The IE shall review the designs and drawings submitted by the Concessionaire and certify the same is as per the Specifications and Standards and shall also submit the design review report to the Design Approval Committee.
2. The IE shall submit to the Steering Group reports at least once every month or more frequently as the situation may warrant on the progress of implementation of the Project.
3. For the purposes of determining that Construction Works are being undertaken in accordance with Specifications and Standards and Good Industry Practice and for quality assurance, IE shall require the Concessionaire to carry out such Tests at such time and frequency and in such manner as may be necessary in accordance with Good Industry Practice.
4. Ensure that the Concessionaire submits to the IE with due regard to the Project Implementation Schedule and Scheduled Construction Completion Date, its design, engineering and construction time schedule and shall formulate and provide Critical Path Method (CPM)/ Project Evaluation and Review Technique (PERT) charts for the completion of the said activities.
5. Provide supervision to ensure that the Concessionaire carries out with due diligence the Tests in accordance with the IE's instructions in this behalf. The IE shall monitor the results of the Tests to determine the compliance of the Project with the Specifications and Standards and shall provide to the Maintenance Board of all Test data including detailed Test results.
6. The IE shall furnish the results of Tests and Tests Data to the Maintenance Board within the specified period in the Term of Agreement and also promptly report to the Maintenance Board the remedial measures taken by the Concessionaire to cure the defects/deficiencies, if any, indicated in the Test results.

7. Recommend to the Maintenance Board /the suspension of the whole or any part of the Construction Works.
8. Inspect and check the quality and quantity of the materials and their storage in compliance with the Draft Concession Agreement
9. The IE shall inspect periodically or at random the records, documents and data etc. of the Concessionaire and verify the samples or take measurements as per the Draft Concession Agreement.
10. Inspect the Project Site during the Construction Period at all reasonable times and upon reasonable notice and the Concessionaire and have access to all parts of the Project Site as per the Agreement.
11. Perform such functions as may be provided in the Agreement or authorized by GMADA during the Construction Period from time to time.
12. To monitor progress of the Works and compliance by the Concessionaire with the PERT charts, CPM and the project milestones set forth in the Project Implementation Schedule
13. To seek explanations from the Concessionaire for delays or non-compliance with the quality control parameters;
14. To notify GOP, the Steering Group and the Engineer of delays and non-compliances and the explanations relating thereto provided by the Concessionaire along with the IE's suggestions and recommended remedial measures in this behalf.

Schedule T

SUBSTITUTION AGREEMENT

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

AMONGST

1. **Greater Mohali Area Development authority (GMADA)** is a statutory body formed on 14-8-2006 under the Punjab Regional and Town Planning and Development Act 1995 (Punjab Act No.11 of 1995), and having its registered office at Puda Bhavan, Sector 62, SAS Nagar, Mohali (hereinafter referred to as the “GMADA” “Concessioneing Authority “, which expression shall, unless the context otherwise requires, include its successors and assigns)
2. [*****Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at ****, (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. ****[NAME AND PARTICULARS OF Lenders’ Representative] and having its registered office at ****, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or relation to this Agreement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Concessioneing Authority has entered into a Concession Agreement dated -----with the Concessionaire (the “Concession Agreement”) State on design, build, operate and transfer basis (DBOT)/ (Development of Five Star Hotel cum International Convention Centre, Mohali), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Concessioneing Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and

substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

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

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

Definitions

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

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

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

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

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Concessions Authority for assignment/transfer of the Concession as provided in this Agreement;

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

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

1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in the Section 1.2,1.3 and 1.4 of the concession agreement shall apply , *mutatis mutandis*, to this agreement

2 ASSIGNMENT

2.1 Assignment of rights and title

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

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Concessioning Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Concessions Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessions Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Concessions Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Concessions Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessions 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 Concessions Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Concessions Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Concessions Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessions 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 Concessions Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessions Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Concessions Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Concessions Authority for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Concessions Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessions Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Concessions Authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
- (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Concessions Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Concessions Authority, the Nominated Company shall be deemed to have been accepted. The Concessions Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Concessions Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

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

4. PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

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

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Concessions Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessions Authority shall - undertake Termination under and in accordance with the provisions of Articles 20, 21 and 22 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Concessions Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Concessions Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realization of Debt Due

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

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

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

7 INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Concessioneing Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Concessioneing Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessioneing Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Concessioneing Authority, its officers, servants and agents. The Concessioneing Authority shall not be liable for any of the acts or omissions in connection with the sub lease deed entered into between the Concessionaire and the sub lessee for the Project and nor would the sub lessee derive any right, title or interest which is derogatory to the rights of the Concessioneing Authority under this Agreement.

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

of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

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

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Concessioning Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [Mohali] and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Concessioneing Authority unconditionally and irrevocably:

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

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

9.6 No third party beneficiaries

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

9.7 Survival

9.7.1 Termination of this Agreement:

- (d) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (e) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

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

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any

other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorized representatives

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

9.13 Original Document

The Agreement may be executed in three counterparts, each of which where executed and delivered shall constitute an original of the Agreement.

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

SIGNED, SEALED AND
DELIVERED

SIGNED, SEALED AND
DELIVERED

For and on behalf of
CONCESSIONAIRE by:

For and on behalf of
CONCESSIONING AUTHORITY OF [***] by:

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of
SENIOR LENDERS by the Lenders' Representative:

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

In the presence of:

- 1.
- 2.

Schedule V

ENGINEER

The Engineer i.e. Superintending Engineer/Nodal Person of GMADA shall be designated by Concessioneing Authority-under the Agreement.

The Engineer shall, in principle, be responsible for review of construction, progress monitoring reports and affirmation and approval of all certifications done by the Independent Engineer under the agreement.

The Engineer shall supervise that all the arising obligations of the Independent Engineer with respect to the requirements of the Concession Agreement and that of various schedules are met with by the concessionaire and in case of any discrepancy, shall inform GMADA instruct the Independent Engineer and inform the Concessioneing authority.

The main responsibility of the Engineer will be to supervise the work and services rendered by the Independent Engineer under the Agreement and shall, visit the site and carry out the requisite tests/ inspections to verify and confirm the inspection reports, progress reports, findings and recommendation etc, as submitted by the Independent Engineer and accordingly, after the verification, submit the same to the Concessioneing Authority.

The responsibility of the Engineer during various stages of Design and Construction shall be but not limited to the following:-

1. Review the report prepared and submitted by the Independent Engineer, with respect to the progress and construction works carried out at the project site by the Concessionaire.
2. Review the implementation schedule of engineering, design, procurement and construction of the project as submitted by the Independent Engineer.
3. To oversee the works submitted by the Independent Engineer and hence, to approve and submit the same to Concessioneing Authority.
4. For avoidance of doubt, the fees of the Independent engineer shall be release only after the Reports of Independent Engineer have been approved by the Engineer as stated in the Concession Agreement, Engineer shall have no authority to relieve the Independent Engineer of any of its duties or to impose additional obligations.

5. To review the Maintenance manual, compliance to operations and Maintenance requirements and approval of annual periodic Maintenance Program as submitted by the amenities.
6. To carry out joint inspection with Independent engineer to monitor the operation and maintenance as per Agreement.
7. to conduct joint inspection with Independent Engineer before termination and to point out defects and deficiencies in which action is to taken by the Concessionaire as per as provided under the Agreement.

The Engineer shall be required to firmly confirm the works being submitted by the Independent Engineer, in order to avoid any kind of discrepancy. The Engineer shall be required to submit the approved report of the Independent Engineer to the Concessioneing Authority. Till the time the works submitted by the Independent Engineer to the Engineer is not approved, the fees shall not be released.

Schedule W

Parent / Holding Company Guarantee

FORMAT OF PARENT / HOLDING COMPANY GUARANTEE (TO BE MADE ON STAMP PAPER REQUISITE VALUE AND NOTARISED)

DEED OF GUARANTEE

THIS DEED OF GUARANTEE executed at _____ this _____ day of _____ by M/s _____ (mention complete name) a company duly organized and existing under the laws of _____ (insert jurisdiction / country), having its Registered Office at _____ hereinafter called "the Guarantor" which expression shall, unless excluded by the repugnant to the subject or context thereof, be deemed to include its successors and permitted assigns.

WHEREAS:

Greater Mohali Area Development authority (GMADA) is a statutory body formed on 14-8-2006 under the Punjab Regional and Town Planning and Development Act 1995 (Punjab Act No.11 of 1995), and having its registered office at Puda Bhavan, Sector 62, SAS Nagar, Mohali (hereinafter referred to as the "Concessions Authority", which expression shall, unless the context otherwise requires, include its successors and assigns);

M/s _____, a Special Purpose Company incorporated under the Companies Act, 1956 / a Trust Act / Society Act and having its registered office at _____, (hereinafter referred to as the "**Concessionaire**", which expression shall, unless excluded by or repugnant to the subject or context thereof, be deemed to include its successor and permitted assigns, is a Subsidiary of the Guarantor, which had in response to the above mentioned RFP document (including its addendums) invited by the PIDB had submitted its Bid / proposal _____ to Punjab Infrastructure Development Board (PIDB) (hereinafter called "PIDB") with one of the condition that the Subsidiary shall arrange a guarantee from its Parent / Holding company, guaranteeing due and satisfactory performance of the work covered under the said

RFP document (including its addendums if any) or any change made in may be deemed appropriate by the PIDB / GMADA at any stage.

- A. The Bid / proposal submitted by _____, _____ & _____, to which the Subsidiary is a part of, was accepted by PIDB and this Consortium was declared as the "Successful Bidder". Accordingly, the Guarantor is executing this Deed of Guarantee towards / in favour of its Subsidiary after the issuance of Notice of Award (NOA) dated _____ by PIDB to the Successful Bidder.
- B. The Guarantor represents that they have gone through and understood the requirement of the above said RFP document (including its addendums if any) and are capable of and committed to provide technical, financial, and such other supports as may be required by the Subsidiary for the successful execution of the same.
- C. The Guarantor is executing this Deed of Guarantee in favour of GMADA, wherein the Guarantor and the Subsidiary shall be jointly and severally liable towards the Project and the Guarantor shall also be pledging / providing technical, financial and other such supports as may be necessary to the Subsidiary for the performance of the work relating to the said project as per the RFP document (including its addendums if any) and as per the Concession Agreement contained in the RFP document.
- D. Accordingly, at the request of the Subsidiary and in consideration of and as a requirement for GMADA to enter into agreement(s) with the Subsidiary, the Guarantor hereby agrees to give this guarantee and undertakes as follows:

**Subsidiary shall mean and include – in case of a company or corporation, which is directly or indirectly owned by the Guarantor / Parent / Holding Company, by way of ownership of more than 51% (Fifty One percent) of the voting share of such Subsidiary company. In case of a person (which is not a company or corporation), the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.*

1. The Guarantor (Parent / Holding Company) unconditionally agrees that in case of non-performance by the Subsidiary of any of its obligations in any respect, the Guarantor shall, immediately on receipt of notice of demand by GMADA, take up the Project without any demur or objection, in continuation and without loss of time and without any cost to GMADA and duly perform the obligations and responsibilities of the Subsidiary to the satisfaction of GMADA. In case the

Guarantor also fails to discharge its obligations herein and is not able to complete the Project satisfactorily; GMADA shall have absolute rights for effecting the execution of the Project from any other person at the risks and costs of the Guarantor. The Guarantor also undertakes to make good any loss that may be caused to GMADA for any non-performance or unsatisfactory performance by the Guarantor or the Subsidiary of any of their obligations.

2. The Guarantor agrees that the Guarantee herein contained shall remain valid and enforceable till the satisfactory execution and completion of the project (including discharge of Warranty obligations) awarded to the Subsidiary till the completion of the Concession Period (including any extension).
3. The Guarantor shall be jointly with the Subsidiary, as also severally responsible for the satisfactory execution and performance of the project during the currency of the "Concession Agreement" to be entered amongst the Subsidiary, GMADA and PIDB.
4. The liability of the Guarantor, under this Guarantee, shall be limited to the value / scope of Concession Agreement to be entered amongst the Subsidiary, GMADA and PIDB. In case the Subsidiary is part of any SPC (to be so formed for the Project), the liability of the Guarantor shall be limited to its Subsidiaries proportional share in any such SPC. In no event shall the Guarantor's liability hereunder either in its capacity of Guarantor or as a Concessionaire - should it perform the Contract Agreements in the event of the Subsidiaries non- performance as per Para / 0.1 hereinabove exceed that of the Subsidiary's liability under the mutually agreed contract awarded to the Subsidiary. This will, however in addition to the forfeiture of the Performance Guarantee furnished by the Subsidiary
5. The Guarantor represents that this Guarantee has been issued after due observance of the appropriate Laws enforced in India. The Guarantor hereby undertakes that the Guarantor shall obtain and maintain in full force and effect all the governmental and other approvals, permits and consents that are necessary and do all other acts and things necessary or desirable in connection therewith or for the due performance of the Guarantor's obligations hereunder.
6. The Guarantor also agrees that this Guarantee shall be governed and construed in accordance with the laws in force in India and subject to the exclusive jurisdiction of the courts of only Mohali, India.
7. The Guarantor hereby declares and represents that this Guarantee has been given without any undue influence or coercion from any person and that the Guarantor has fully understood the implications of the same.
8. The Guarantor represents and confirms that the Guarantor has the legal capacity, power and authority to issue this Guarantee and that giving of this Guarantee and

the performance and observations of the obligations hereunder do not contravene any existing law or any judgment.

9. The Guarantor represents and confirms that in pursuance to Para / Point 8, the Guarantor has submitted and provided to GMADA (with this Deed of Guarantee), a valid Board Resolution duly authorizing the Guarantor to pledge / provide technical, financial, and such other supports as may be necessary for the performance of the work relating to the said Project as per the RFP and Concession Agreement.

For & on behalf of (Parent / Holding Company)

M/s _____

Witnesses

- 1.
- 2.