



Infrastructure Corporation of Andhra Pradesh Limited (INCAP)

**REQUEST FOR PROPOSAL (RFP)**  
**(International Competitive Bidding)**

*Volume 3: General Conditions of Lease cum Development Agreement (GCA) and Special Conditions of Lease cum Development Agreement (SCA)*

---

---

**SELECTION OF THE DEVELOPER FOR DEVELOPMENT OF INTERNATIONAL  
CONVENTION CENTRE AT APIIC GROUND, HARBOUR PARK LAND,  
VISAKHAPATNAM, ANDHRA PRADESH UNDER PUBLIC PRIVATE PARTNERSHIP  
(PPP) MODE**

---

---

**(February 2017)**

**(BID DUE DATE: 31-03-2017)**

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

**Vice Chairman and Managing Director,  
Infrastructure Corporation of Andhra Pradesh Limited (INCAP)  
# 10-2-1, III Floor, FDC Complex, AC Guards,  
Hyderabad – 500 028, India**

### LEASE CUM DEVELOPMENT AGREEMENT

THIS LEASE CUM DEVELOPMENT AGREEMENT is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ (Month) \_\_\_\_\_ (Year) at \_\_\_\_\_ .

By and Between

THE Andhra Pradesh Industrial Infrastructure Corporation Limited, a company incorporated under the Companies Act 1956, and having its registered office at \_\_\_\_\_ represented by its authorized representative the <<Name of Authority >>, hereinafter referred to as the “**Authority/Lessor**” (which expression shall unless repugnant to the context or meaning thereof, include its successors and assigns) on one hand,

AND

M/s. \_\_\_\_\_ a company incorporated under the Companies Act 1956, and having its registered office at \_\_\_\_\_ hereinafter referred to as the “**Lessee/Developer**” as the context would require, represented by its <<designation of authorized representative>> \_\_\_\_\_ s/o aged about \_\_\_\_\_ years resident of \_\_\_\_\_ Authorized signatory as per the Resolution passed by the Board of Directors Dt. \_\_\_\_\_, (which expression shall unless repugnant to the context or meaning thereof, shall include its successors and assigns) on the other hand.

**WHEREAS,**

- A. The Lessor is desirous of developing a <<project title with description as per GCA 1.1 (FF)>> (hereinafter referred to as the “Project”) and delineated in coloured boundary lines on the plan annexed hereto and marked as per Volume I of the bid document.
- B. <<Authority>> carried out a transparent competitive bidding process and after thoroughly evaluating the Bids received from the Bidders, the Bid submitted by ..... (Hereafter referred to as the “Selected Bidder”) has been accepted and communicated its offer to the Selected Bidder through its Letter of Intent (LoI) vide Lr. No..... dated.....(hereinafter referred to as the "Letter of Intent" or "LoI"). The LoI has been issued to the Selected Bidder for the award of the Project. The copies of the Request for Proposal ("RFP"), Selected (Successful) Bidder's bid documents, LoI and subsequent letter of acceptance sent by the Selected Bidder vide letter dated..... are collectively annexed hereto and marked as Addenda IV.
- C. The Selected Bidder (Lessee) has incorporated Special Purpose Company (SPC)/ Special Purpose Vehicle (SPV) by name \_\_\_\_\_ for the purpose of implementation of the Project and has requested <<Authority/Lessor>> to enter into the Lease-cum-Development Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

## CONTENTS

<b>Section I. General Conditions of Lease cum Development Agreement.....</b>	<b>4</b>
Table of Clauses.....	5
<b>Section II. Special Conditions of Lease cum Development Agreement.....</b>	<b>34</b>
<b>Schedule I. Minimum Development and Service Obligations.....</b>	<b>40</b>
<b>Schedule II. Payment schedule of Annual Land Lease Rent.....</b>	<b>41</b>
<b>Addenda I. Land Lease Deed.....</b>	<b>42</b>
<b>Addenda II. Performance Security.....</b>	<b>43</b>
<b>Addenda III. Substitution Agreement.....</b>	<b>46</b>
<b>Addenda IV. Copies of the Request for Proposal ("RFP"), Selected (Successful) Bidder's bid documents, LoI and subsequent letter of acceptance.....</b>	<b>57</b>

## **SECTION I. GENERAL CONDITIONS OF LEASE CUM DEVELOPMENT AGREEMENT**

## Table of Clauses

---

A.	ARTICLE A - DEFINITIONS AND INTERPRETATIONS .....	7
1.	Definitions.....	7
2.	Interpretations.....	11
3.	Contract Documents.....	13
B.	ARTICLE B - PROJECT DEVELOPMENT .....	13
4.	Right of Development .....	13
5.	Project Site .....	13
6.	Use of Project Site .....	13
7.	Peaceful Possession .....	13
C.	ARTICLE C - LEASE TERM/PERIOD .....	14
8.	Lease Term/Period.....	14
9.	Renewal of Lease Term/Period.....	14
10.	Non-renewal of Lease Term/Period.....	14
D.	ARTICLE D - PAYMENTS, GUARANTEES & USER CHARGES .....	15
11.	Performance Security.....	15
12.	Project Development Fee .....	15
13.	Annual Land Lease Rent .....	15
14.	User Charges/Fees .....	16
E.	ARTICLE E - OBLIGATIONS AND UNDERTAKINGS .....	16
15.	General obligations of the Lessee .....	16
16.	Conditions Precedent .....	18
17.	Shareholder Lock-in .....	18
18.	Obligations of the Lessee during Implementation Period .....	19
19.	Obligations of Lessee during Operations Period .....	19
20.	Obligations of the Lessor .....	20
21.	Capacity Augmentation and Additional Facilities .....	20
F.	ARTICLE F - INSURANCES.....	20
22.	Insurance during Operations Period.....	20
23.	Insurance Companies .....	21
24.	Evidence of Insurance Cover .....	21
25.	Application of Insurance Proceeds .....	21
26.	Validity of Insurance Cover .....	21
G.	ARTICLE G - FORCE MAJEURE .....	21
27.	Force Majeure Event.....	21
28.	Non-Political Events .....	21
29.	Indirect Political Events .....	22
30.	Political Events.....	22
31.	Effect of Force Majeure Event .....	22

---

32.	Allocation of costs during subsistence of Force Majeure.....	23
33.	Termination.....	23
34.	Dispute Resolution .....	23
35.	Liability for other losses, damages etc. ....	23
36.	Duty to report .....	23
37.	Excuse from performance of obligations .....	24
H.	ARTICLE H - EVENTS OF DEFAULT AND TERMINATION .....	24
38.	Events of Default .....	24
39.	Lessee Events of Default to issuance of notice.....	24
40.	Consequences of Events of Default to warning.....	24
41.	Lessee Events of Default.....	24
42.	Lessor Events of Default .....	26
43.	Termination due to event of default.....	26
44.	Rights of Lessor on Termination .....	26
45.	Termination with mutual consent .....	27
I.	ARTICLE I - HANDOVER AND DEFECT LIABILITY .....	27
46.	Handing over of Project Site and Project Assets .....	27
47.	Joint inspection and removal of deficiency (ies) .....	27
J.	ARTICLE J - DISPUTE RESOLUTION.....	27
48.	Amicable Resolution .....	27
49.	Arbitration.....	28
K.	ARTICLE K - REPRESENTATIONS, WARRANTIES AND DISCLAIMER.....	28
50.	Representation and warranties of the Developer .....	28
51.	Disclaimer .....	30
52.	Representations and warranties of Lessor .....	30
L.	ARTICLE L - OTHER MISCELLANEOUS PROVISIONS .....	30
53.	Assignment & Charges .....	30
54.	Liability and Indemnity.....	30
55.	Governing Law and Jurisdiction.....	33
56.	Waiver .....	33
57.	Survival.....	33
58.	Amendments .....	33
59.	Notices .....	33
60.	Severability .....	33
61.	Joint and several liability (for consortium) .....	33
62.	No Partnership.....	34
63.	Language.....	34
64.	Exclusion of implied warranties .....	34

## General Conditions of Lease cum Development Agreement

### A. ARTICLE A - DEFINITIONS AND INTERPRETATIONS

<b>1. Definitions</b>	<p>1.1 In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:</p> <p>A. "Accounting Year" means the financial year commencing from 1<sup>st</sup> April of any calendar year and ending on 31<sup>st</sup> March of the next calendar year.</p> <p>B. "Agreement" means this agreement including all Schedules hereto, and any amendments thereto made in accordance with the provisions of this Agreement.</p> <p>C. "Applicable Laws" means all laws, promulgated or brought into force and effect by Lessor or the State Government or the Government of India or any statutory or regulatory body affiliated directly or indirectly to these governments including regulations and rules made thereunder, and judgments, decrees, injunctions, and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.</p> <p>D. "Applicable Permits" means all clearances, permits, authorizations, consents and approvals under or pursuant to Applicable Laws, required to be obtained and maintained by the Developer, in order to design, finance, develop, operate and maintain the said Project</p> <p>E. "Arbitration Act" means the Arbitration and Conciliation Act, 1996 and shall include all amendments, modifications to or any re-enactment thereof as in force from time to time.</p> <p>F. "Change in Law" means the occurrence of any of the following after the date of this Agreement:</p> <ol style="list-style-type: none"> <li>a. the enactment of any new Indian law;</li> <li>b. the repeal, modification or re-enactment of any existing Indian law;</li> <li>c. the commencement of any Indian law which has not entered into effect until the date of this Agreement;</li> <li>d. a change in the interpretation or application of any Indian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement; or</li> <li>e. any change in the rates of any of the Taxes</li> </ol> <p>G. "COD" means the date on which a completion certificate is issued by the Authority post fulfilment of the Minimum Development Obligations of the Project by the Developer.</p> <p>H. "Commencement Date" means the date of handing over of possession of the Project Site to the Lessee by the Lessor, from which the Lease Period commences.</p>
-----------------------	---

	<p>I. "Cure Period" means the period specified for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default.</p> <p>J. "Developer" is as specified in SCA and shall include its successors and permitted assignees. For the purpose of this Agreement, the Lessee shall be the Developer</p> <p>K. "Dispute" shall have the meaning ascribed thereto in Article J.</p> <p>L. "Dispute Resolution Procedure" means the procedure for resolution of Dispute set forth in Article J.</p> <p>M. "Emergency" means a condition or situation that is likely to endanger the security of the individuals on the said Project including users thereof or which poses an immediate threat of material damage to any of the Project Assets</p> <p>N. "Encumbrance" means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site.</p> <p>O. "Financial Closure" means the date on which the financing documents providing for financial assistance by the lenders have become effective and the Lessee has access to such financial assistance.</p> <p>P. "Force Majeure Event" shall have meaning ascribed thereto in Article G</p> <p>Q. "Good Industry Practice" means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced developer engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of the guidelines issued from time to time</p> <p>R. "Government Agency" means any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Developer or the project or any portion thereof, or the performance of all or any of the services or obligations of the Developer under or pursuant to this Agreement.</p> <p>S. "Indirect Political Event" shall have the meaning ascribed thereto in Article G.</p> <p>T. "Lease" shall have the meaning ascribed thereto in Article 8.1.</p> <p>U. "Lease Term/Period" shall be defined as specified in the SCA</p>
--	--



	<p>V. "Lock-In Period" shall be defined as specified in the SCA</p> <p>W. "Material Adverse Effect" means material adverse effect on (a) the ability of the Developer to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.</p> <p>X. "Material Breach" means a breach by either Party of any of its obligations under this Agreement which has/ likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure within the Cure Period.</p> <p>Y. "Non-Political Event" shall have the meaning ascribed thereto in Clause 28.1.</p> <p>Z. "Operator" means either the Developer itself or person/ agency with whom the Developer has entered into or may enter into Operations and Maintenance contract/ agreement for the said Project without being absolved of any liabilities and obligations mentioned in this Agreement. For the purpose of this Agreement, the obligations, rights and responsibilities of the Operator have not been distinguished from that of Developer unless specified otherwise in any communication or instruction from the Developer.</p> <p>AA. "Operations Period" means the period commencing from COD and ending at the expiry of the Lease Period.</p> <p>BB. "Parties" means the parties to this Agreement collectively and "Party" shall mean either of the Parties to this Agreement individually.</p> <p>CC. "Performance Security/ Performance Bank Guarantee" means the Performance Security for operation and maintenance as applicable in terms of Clause 11</p> <p>DD. "Person" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, special purpose vehicle, special purpose company, government or Government Agency or any other legal entity.</p> <p>EE. "Political Event" shall have the meaning ascribed thereto in Clause 30</p> <p>FF. "Project" - Lessor hereby grants and authorizes the Developer to design, finance, build, operate and maintain the Project i.e. <i>Development of International Convention Centre at APIIC Ground, Harbour Park Land, Visakhapatnam, Andhra Pradesh under Public Private Partnership (PPP) mode</i> 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 levy, demand, collect and appropriate fees from persons liable for payment of Fee for using the Project/Project Assets or any part thereof</p>
--	---

	<p>GG. "Project Assets" means all physical and other assets relating to and forming part of the Project including but not limited to (i) rights over the Project Site in the right of way or otherwise, (ii) tangible assets such as civil works including foundations, embankments, pavements, road surface, interchanges, drainage works, lighting facilities, sign boards, electrical works for lighting on the Project, telephone and other communication systems and equipment for the Project, rest areas, amenities, service facilities, and all connected infrastructure thereto etc. (iii) Service Facility situated on the Project Site, (iv) the rights of the Developer (v) financial assets, such as security deposits for electricity supply, telephone and other utilities, etc., (vi) insurance proceeds subject to Lenders' rights thereto and (vii) Applicable Permits and authorizations relating to or in respect of the Project.</p> <p>HH. "Rs." or "Rupees" or "INR" refers to the lawful currency of the Republic of India.</p> <p>II. "Statutory Auditors" means a reputed firm of Chartered Accountants duly licensed to practice in India acting as statutory auditors of the Developer.</p> <p>JJ. "Special Purpose Vehicle (SPV)/ Special Purpose Company (SPC)" means a separate legal entity formed by the successful bidder/ bidder consortium to undertake the Project as per the terms and conditions specified in this Agreement.</p> <p>KK. "Authority" means any Government Department/ Corporation/ Body which intends to develop a tourism project as per the conditions of Land Lease Policy for Tourism Projects, 2016 and its rules/ guidelines. For the purpose of this Agreement, Authority is also known as the Lessor unless specifically specified otherwise. For the purpose of executing/administering this Agreement, at any time in due course, the Government of Andhra Pradesh for administrative convenience may change the Authority, by assigning this Agreement to any other Government Corporation/Agency/Department to perform the role of "The Authority" in place of Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC), with the same terms and conditions as mentioned in this Agreement, and to perform the obligations of the Authority, and to implement the terms of this Agreement.</p> <p>LL. "Tendering Authority" means any Government Department/ Corporation/ Body which conducts a developer selection process as per the conditions of Land Lease Policy for Tourism Projects, 2016 and its rules/ guidelines on behalf of the Authority which is the Lessor for the duration of the Lease Period.</p> <p>MM. "Termination" means termination of this Agreement and the Service hereunder pursuant to a Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement due to expiry of the Lease Period in the normal course.</p>
--	---

	<p>NN. "Termination Date" means the date on which the Termination occurs which shall be the date on which Termination Notice has been delivered or deemed to have been delivered by a Party issuing the same to the other Party in accordance with the provisions of this Agreement.</p> <p>OO. "Termination Notice" means a communication in writing by a Party to the other Party containing the intent to Terminate in accordance with the applicable provisions of this Agreement.</p> <p>PP. "Annual Land Lease Rent" will be the rent paid by the Lessee/Developer to Lessor/Authority and shall be escalated at a rate of 5% every year on the rent paid during the previous year during the Lease Term/Period</p> <p>QQ. "Project Site" is spread over 9.12 acres in the survey number 1011/1A1&amp;A2 in TS. No. 1011 of Waltair Ward, Visakhapatnam District, Andhra Pradesh. In case of request from Lessee, the Authority may provide additional land for the Project during the Lease Period, if available and at the Authority's discretion</p> <p>RR. "Implementation Period" shall commence from the date of signing of the handover of the Project Site to the Developer by the Lessor until the COD for the Project during the Lease Period.</p>
<p><b>2. Interpretations</b></p>	<p>2.1 In this Agreement, unless the context otherwise requires:</p> <ol style="list-style-type: none"> <li>a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;</li> <li>b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Union of India;</li> <li>c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);</li> <li>d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;</li> <li>e) the words "include" and "including" are to be construed without limitation;</li> <li>f) references to "construction" include, unless the context otherwise requires investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;</li> <li>g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;</li> <li>h) any reference to a day shall mean a reference to a calendar day</li> <li>i) any reference to a month shall mean a reference to a calendar month;</li> </ol>

	<p>j) the Schedules/Addenda/Appendices/Annexures 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;</p> <p>k) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;</p> <p>l) references to recitals, Articles, sub-articles, clauses, or Schedules/Addenda/Appendices/Annexures in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules/Addenda/Appendices/Annexures of or to this Agreement;</p> <p>m) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing issued from a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;</p> <p>n) 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; and</p> <p>o) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages;</p> <p>p) unless otherwise expressly provided in this Agreement, any documentation required to be provided or furnished by the Developer to Lessor shall be provided free of cost and in three copies and if Lessor is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof;</p> <p><b>2.2 Measurements and Arithmetic Conventions</b></p> <p>All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down except in fee calculation which shall be rounded off to nearest rupee.</p> <p><b>2.3 In case of ambiguities or discrepancies within this Agreement, the following shall apply:</b></p> <p>a) Between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;</p> <p>b) Between the Articles and the Schedules/Addenda/Appendices/Annexures, the Articles shall prevail;</p> <p>c) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;</p> <p>d) Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;</p>
--	--

	e) Between any value written in numerals and that in words, the latter shall prevail.
<b>3. Contract Documents</b>	<p>3.1 The Lease cum Development Agreement, all documents forming part of the Contract (and all parts of these documents) are intended to be correlative, complementary, and mutually explanatory. The Agreement shall be read as a whole. The order of precedence of documents shall be:</p> <ol style="list-style-type: none"> <li>1. Vol III: Lease cum Development Agreement consisting of GCA and SCA, including any Schedules/Addenda made which includes the Land Lease Deed and Schedules/Addenda included pursuant to any amendments made.</li> <li>2. Vol II: ITB and BDS and any amendments thereof (including Vol I of the bid).</li> <li>3. Bidder's proposal submitted to the Authority.</li> </ol>

## B. ARTICLE B - PROJECT DEVELOPMENT

<b>4. Right of Development</b>	4.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, Lessor hereby grants and authorizes the Developer to design, finance, build, operate, maintain and manage the Project 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 levy, demand, collect and appropriate Fees from persons liable for payment of Fee for using the Project/Project Assets or any part thereof (collectively "the Project").
<b>5. Project Site</b>	<p>5.1 Lessor hereby undertakes to handover to the Developer, physical possession of the Project Site free from Encumbrance together with the necessary rights of way/easement /way leaves for the purpose of implementing the Project in accordance with this Agreement</p> <p>5.2 Lessor confirms that upon the Project Site being handed over pursuant to the preceding sub-article (5.1) the Developer shall have the exclusive right to enter upon, occupy and use the Project Site subject to and in accordance with the provisions of this Agreement.</p>
<b>6. Use of Project Site</b>	<p>6.1 The Developer shall not without prior written consent or approval of Lessor use the Project Site for any purpose other than for the purposes specified in this Agreement (including Minimum Development Obligations and Minimum Service Obligations, if any) and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Lessor.</p> <p>6.2 Any use of the Project Site for any purpose other than for the purpose specified under this Agreement shall be considered as a material breach and default on the part of the Lessee/Developer/Operator as the case may be.</p>
<b>7. Peaceful Possession</b>	<p>7.1 Lessor warrants that:</p> <ol style="list-style-type: none"> <li>a) the Project Site together with the necessary right of way/easement/ way leaves having been acquired through the due process of law belongs to and vested in Lessor, and that Lessor has full powers to hold, dispose of</li> </ol>

	<p>and deal with the same consistent, inter alia, with the provisions of this Agreement;</p> <p>b) the Developer shall have no obligation/liability as to payment of any compensation whatsoever to or the rehabilitation and resettlement of any Person from whom the Project Site or any part thereof had been acquired and that the same shall be the sole responsibility of Lessor; and</p> <p>c) the Lessor shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site during the Lease Period</p>
--	---

### C. ARTICLE C - LEASE TERM/PERIOD

<p><b>8. Lease Term/Period</b></p>	<p>8.1 Subject to and in accordance with the terms and conditions set forth in this Lease cum Development Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Developer possession of the Project Site on ‘as is where is basis’ for the sole purpose of the Project, and grants and authorizes the Developer the exclusive rights and privilege to develop, conceptualise, design, finance, construct, maintain and operate the Project Assets and to exercise or to enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement (the “Lease”) for the entire duration of the Lease Period or until the earlier Termination of the Lease in accordance with the provisions of this Agreement, and the Developer hereby accepts the Lease and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.</p> <p>8.2 Lease Term shall be 33 years from the date of handing over possession of Project Site to the Lessee.</p> <p>8.3 Unless terminated in accordance with the provisions of this Agreement, in consideration of the ‘Annual Land Lease Rent’ hereby reserved and in consideration of the observance of all the terms and conditions as set out in this Agreement by the Parties, the Lessor hereby unequivocally and irrevocably grants to the Lessee, the Lease in the Project Site, free from all encumbrances, costs, charges, claims, demands and any other liabilities whatsoever, to hold and enjoy, without any interruption, for a Lease Period as specified in the GCA 1.1 (U).</p>
<p><b>9. Renewal of Lease Term/Period</b></p>	<p>9.1 The Lease Term may be renewed for an additional period of 33 years subject to compliance to all terms and conditions of the Lease cum Development Agreement by the Lessee on First Right of Refusal basis on mutual agreement of conditions.</p> <p>9.2 If for any reason the Lessor and Lessee decide to exercise this option in positive manner leading to renewal of Lease for a period as specified in the SCA, then in that event, all the terms and conditions including Annual Land Lease Rent and aggregate period of extension shall be as per the prevailing Government policies at that time.</p>
<p><b>10. Non-renewal of Lease Term/Period</b></p>	<p>10.1 In case of non-renewal of the Lease beyond the Lease Term, the Lessor shall resume the Project Site, Project as specified in the GCA 1.1 (FF) and all Project Assets including structures appurtenant thereto along with all</p>

	fixtures and fittings shall stand vested in the Lessor with immediate effect upon expiration of Term and without any liabilities/ obligations towards the Lessee.
--	---

#### **D. ARTICLE D - PAYMENTS, GUARANTEES & USER CHARGES**

<b>11. Performance Security</b>	<p>11.1 The Developer shall, for due and punctual performance of its obligations during the Lease Period, deliver to Lessor, simultaneously with the execution of this Agreement a bank guarantee from a scheduled bank acceptable to Lessor, in the form set forth in format provided in Addenda II of Vol-III of the bid document, (the "Performance Bank Guarantee") for a sum as specified in the SCA.</p> <p>11.2 In the event of the encashment of the Performance Bank Guarantee by Lessor, pursuant to any act of the Lessee/Developer/Operator having a material adverse effect on the execution of the Project or due to the violation of any of the provisions of this Agreement, the Lessee/Developer/Operator, as the case may be shall within 15 (fifteen) days of the Encashment, replenish the same, or furnish fresh Performance Bank Guarantee failing which Lessor shall be entitled to terminate this Agreement in accordance with the provisions of Article H below. The provisions set forth in 11.1 above shall apply mutatis mutandis to such fresh Performance Bank Guarantee.</p>
<b>12. Project Development Fee</b>	<p>12.1 The Lessee shall deliver a demand draft from _____ bank, for Rs. _____ vide DD No. _____, Dt. _____ towards Project Development Fee as specified in the SCA to the Tendering Authority, as a precondition for signing of this Agreement.</p> <p>12.2 The Authority has to confirm that it has received a No-Objection Certificate (NOC) from Vice Chairman and Managing Director, INCAP Limited to enter into the Lease cum Development Agreement with the Lessee.</p>
<b>13. Annual Land Lease Rent</b>	<p>13.1 In consideration of the Lease of the Project Site and the development rights appurtenant thereto in favour of the Lessee, the Lessee shall, during the Lease Period, in terms of this Agreement, make payments to Lessor with respect to the Annual Land Lease Rent. The Annual Land Lease Rent for the first year of Lease Period is as specified in the SCA. The amount of Annual Land Lease Rent shall be escalated at a rate of 5% per every year on the rent paid during the previous year during the Lease Term.</p> <p>The schedule of Annual Land Lease Rent payable is appended at Schedule II.</p> <p>13.2 The First Annual Land Lease Rent shall be payable on the date of handover of possession of the Project Site to the Successful Bidder. Subsequent to the advance payment of the First Year Annual Land Lease Rent to the Lessor by the Lessee, payment of Annual Land Lease Rent from Second Year of the Lease Period until the end of the Lease Period shall be due as per the schedule/timelines provided in the SCA.</p> <p>13.3 In case of default in making the subsequent payment, penalties with interest shall be charged as specified in the SCA.</p>

	<p>13.4 In the event, the payments are delayed beyond the period specified in the SCA, it shall be construed as a Lessee default in payment of Annual Land Lease Rent. When such a default occurs, the Lessor shall issue a default notice to the Lessee to remedy the situation. If the situation is not remedied, at the end of the time specified in such notice, the Lessor may encash the Performance Bank Guarantee and may also issue, at its discretion, a Termination Notice.</p> <p>13.5 Annual Land Lease Rent shall be payable to the account specified in the SCA.</p>
<p><b>14. User Charges/Fees</b></p>	<p>14.1 Subject to the provisions of this Agreement, the Lessee shall during Operations Period be entitled to levy, demand and collect Fee or Tariff for its services to the end users, in accordance with the industry norms and practices for the use of the Project Assets as well as allied facilities.</p> <p>14.2 Lessor will not be involved in the determination of such Fee or Tariff that Developer will charge.</p> <p>14.3 The Lessee may formulate, publish and implement appropriate scheme(s) for frequent users as may reasonably be required by business requirements from time to time.</p> <p>14.4 Based on the Project and its components, Lessee may be entitled to incentives under Tourism Policy 2015-20 including exemption of entertainment tax, luxury tax, reduced VAT rate etc. In such cases, the Lessee shall not impose any/ excessive taxes, Fee or Tariff on the users as well. For e.g. if the Lessee is availing exemption on entertainment and luxury tax, the same cannot be charged from the users. Similarly, if the Lessee is eligible for reduced rate of VAT at 5%, the rate of VAT to users also shall be 5% and not more.</p> <p>In order to avail the benefits under the Tourism Policy, for clarity, it is to state that the Lessee shall have to fulfil all the requirements and also follow the set procedure thereon. Mere concluding of this Agreement will not guarantee the benefits under the Tourism Policy.</p> <p>14.5 In the event of non passing of any benefit to the end user availed by the Developer/Operator as a result of exemption as provided under 14.4 shall be deemed to be a violation of the provisions of this Agreement. Violation of the said condition as shall be treated as Event of Default as explained under Article H of this Agreement.</p>

## E. ARTICLE E - OBLIGATIONS AND UNDERTAKINGS

<p><b>15. General obligations of the Lessee</b></p>	<p>15.1 The Lessee shall at its own cost:</p> <p>i. should design, develop, finance, construct, implement, operate, and maintain all facilities developed as a part of the Project either through itself or through its contractors in accordance with the provisions of this Agreement, Minimum Development Obligations and Minimum Service Obligations specified, Good Industry Practices and Applicable Laws;</p>
---	--



	<ul style="list-style-type: none"> <li>ii. obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance with thereof at all times during the Lease Period;</li> <li>iii. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;</li> <li>iv. provide all assistance to the Lessor officials as they may reasonably require for the performance of their duties and services under this Agreement;</li> <li>v. appoint, supervise, monitor and control the activities of Contractors / Staff or any other service provider under their respective Agreements as may be necessary;</li> <li>vi. make efforts to maintain harmony and good professional relations among the personnel employed in connection with the performance of the Lessee's obligations under this Agreement;</li> <li>vii. take all reasonable precautions for the prevention of accidents on or about the Project, Project Assets and provide all reasonable assistance and emergency medical aid to accident victims;</li> <li>viii. not to place or create nor to permit any contractor or vendor or service provider or any other person claiming through or under the Lessee to create or place any Encumbrance over all or any part of the Project Assets, or on any rights of the Lessee therein, save and except as expressly set forth in this Agreement;</li> <li>ix. be responsible for safety, soundness and durability of the Project Asset including all structures forming part thereof and their compliance with the Specifications and Standards;</li> <li>x. ensure that the Project Site &amp; Project Assets remain free from all encroachments, encumbrances. It shall take all steps necessary to remove encroachments, if any;</li> <li>xi. make timely payment to Government Agencies, if required, for provision of such services as are not provided in the normal course or are available only on payment;</li> <li>xii. remove promptly according to Good Industry Practice, from the Project Site, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) and keep the Project Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits</li> <li>xiii. Provide access to the auditors and inspectors of Lessor whenever Lessor chooses to conduct such audit or assessment</li> <li>xiv. Provide waste management as per laws in force, and provide 5 star hotel standard food and services.</li> <li>xv. Operate and maintain the Project Assets at its cost in accordance with the prudent utility practices and the terms and conditions of this Agreement, with the objective of providing adequate service standards to the users and ensuring that at the end of the Lease Period,</li> </ul>
--	---

	<p>including extension thereof, the Project is transferred to the Lessor or its nominated agency in fair condition, subject to normal wear and tear having regard to the terms and conditions of this Agreement.</p> <p>xvi. In order to fulfil its obligations under this Agreement and the Project Agreements, the Lessee may at its discretion appoint Construction Contractor(s) and the O&amp;M Contractor(s) by entering into Construction Agreement(s) and O&amp;M Agreement(s). The Lessee may undertake the operations and maintenance of the Project on its own, through its consortium member or through any other agency/company. The operations and maintenance agency can be finalized even after signing of this Agreement with the Lessor. However, the Lessee shall finalize the O&amp;M operator within 1 year from the date of signing of the Agreement</p> <p>xvii. Shall organize the supervision, monitoring and control of the construction, operation and maintenance of the Project by the Contractor (s) as may be necessary to ensure the proper performance of their respective obligations under the Construction Agreement(s), the O&amp;M Agreement(s) and other relevant Project Agreements in accordance with the conditions of Clearances and the terms and conditions of this Agreement.</p> <p>xviii. Ensure Payment of all taxes including Service Tax, Property Tax, Fees, Levies or Cess, User Charges (Electricity, water supply), and other statutory or other dues incurred during the Lease Period, without any pending liabilities.</p> <p>xix. Ensure that any arrangement with the users of the Project Assets is in line with the provisions of this Lease cum Development Agreement and is subject to the rights and obligations of the Parties under this Lease cum Development Agreement.</p> <p>xx. Ensure compliance with all labour, statutory requirements, environment, mining, and health and safety laws as applicable to the Project in the State of Andhra Pradesh and India.</p> <p>xxi. Promptly intimate in writing to 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 Lessee or its employees, agents and Contractors</p>
<p><b>16. Conditions Precedent</b></p>	<p>16.1 Save and except as may otherwise be expressly provided herein, the obligations of the Lessee under this Agreement shall be subject to the satisfaction in full of the Conditions Precedent by the Lessee. These would be as specified in the SCA.</p> <p>16.2 Upon successful compliance to the Conditions Precedent specified above, the possession of the Project Site shall be given to the Lessee and the Land Lease Deed may be registered with the Stamps and Registration Department of the State.</p> <p>16.3 The Lessee at its cost shall register the Land Lease Deed on its execution by paying the necessary Stamp Duty and Registration Fee as applicable.</p>
<p><b>17. Shareholder Lock-in</b></p>	<p>17.1 The shareholding of Bidder (s) in the SPC/ SPV shall be governed by the Lock-In Period as defined below and specified in the SCA.</p>

	<p>17.2 In case of sole Bidder, it shall retain minimum of 51% as equity contribution in the SPC/ SPV throughout the Lock-In Period.</p> <p>17.3 In the SPC/ SPV formed by the consortium of two members, the total equity contribution put together by both the consortium members shall not be less than 51% throughout the Lock-In Period.</p> <p>17.4 Further, in the Consortium, the equity contribution from Lead Member of the consortium shall not be less than 51% throughout the Lock-In Period and equity contribution from second member of the consortium shall not be less than 10% throughout the Lock-In Period.</p> <p>17.5 Violation of any condition specified under 17.2, 17.3 and 17.4 shall be treated as Event of Default as dealt with in Article H of this Agreement.</p>
<p><b>18. Obligations of the Lessee during Implementation Period</b></p>	<p>18.1 The Lessee shall, before commencement of construction has requisite organization and competent personnel and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project development and to deal with the Lessor's officials and to be responsible for all necessary exchange of information required pursuant to this Agreement.</p> <p>18.2 Within the time specified in the LoI, the Lessee shall promptly sign the Lease cum Development Agreement with the Lessor and take the possession of the Project Site without any delay.</p> <p>18.3 Financial Closure of the Project, as evidenced by a letter from a scheduled bank/ financial institution, should be done within the timeline stipulated in the SCA. The Agreement shall be registered with the Stamps and Registration Department only after Financial Closure.</p> <p>18.4 Physical grounding of works on Project Site (as verified by Lessor by means of physical inspection) should be done within the timeline specified in the SCA.</p> <p>18.5 Lessee should achieve COD (including fulfilment of Minimum Development Obligations and other terms under this Agreement) within the timeline specified in the SCA.</p> <p>18.6 In the case the Lessee is unable to meet the conditions specified above, the Lessor, at its discretion and upon merit of request given by the Lessee, after due consideration of the prevailing circumstances, may extend the timelines for the milestones specified in the SCA upto three (3) months or beyond as per the discretion of the Lessor.</p> <p>18.7 Deleted</p> <p>18.8 Violation of any of the above conditions will be treated as an Event of Default as dealt with in Article H of this Agreement</p>
<p><b>19. Obligations of Lessee during Operations Period</b></p>	<p>19.1 The Lessee, on its own or through a contracted agency for operations and maintenance of the Project, shall ensure that the Minimum Development Obligations and Minimum Service Obligations are met throughout the lease period.</p> <p>19.2 The Lessee, on its own or through a contracted agency for operations and maintenance of the Project, shall ensure that all terms and conditions relating to O&amp;M of this Lease cum Development Agreement are complied with throughout the Lease Period.</p> <p>19.3 Any changes/ deviations shall be only after written approval of the Lessor</p>

	<p>19.4 It is also clarified that the conditions above are applicable during and after the Lock-In Period i.e. throughout the Lease Period.</p> <p>19.5 Violation of any of the above conditions will be treated as an Event of Default as dealt with in Article H of this Agreement.</p>
<b>20. Obligations of the Lessor</b>	<p>20.1 Lessor shall:</p> <ol style="list-style-type: none"> <li>i. hand over the physical possession of Project Site together with necessary right of way/ way leaves to the Lessee, free from any Encumbrance;</li> <li>ii. ensure peaceful use of the Project Site by the Lessee under and in accordance with the provisions of this Agreement without any let or hindrance from Lessor or persons claiming through or under it;</li> <li>iii. upon written request from the Lessee, assist him (as an owner of the project site only) in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Lessee than those generally available to commercial customers receiving substantially equivalent facilities/utilities;</li> <li>iv. Observe and comply with all its obligations set forth in this Agreement.</li> <li>v. Lessor shall undertake periodic inspection of the Project jointly with the Lessee to determine the condition of the Project including its compliance or otherwise with the statutory food, safety, hygiene norms and this Agreement</li> </ol>
<b>21. Capacity Augmentation and Additional Facilities</b>	<p>21.1 The Lessee is mandated to provide and maintain all Project Assets as per the Minimum Development Obligations &amp; Minimum Service Obligations specified and as per terms of this Agreement.</p> <p>21.2 The Lessee may undertake capacity augmentation and development of additional facilities, with written approval from the Lessor, for the Project at the specified project site if:</p> <ol style="list-style-type: none"> <li>i. The augmentation / increase in capacity does not alter the basic nature and objective of the Project, Project Site and Project Assets.</li> <li>ii. Does not adversely impact the ability of Lessee to fulfil its Minimum Development Obligations &amp; Minimum Service Obligations.</li> </ol>

## F. ARTICLE F - INSURANCES

<b>22. Insurance during Operations Period</b>	<p>22.1 The Lessee shall, at its cost and expense, purchase and maintain during the Operations Period insurance to cover against:</p> <ol style="list-style-type: none"> <li>a. loss, damage or destruction of the Project Assets, at replacement value;</li> <li>b. the Lessee's general liability arising out of the Service, including damages caused to other parts of the hotel facility and guests during provision of Services;</li> <li>c. liability to third parties; and</li> <li>d. Any other insurance that may be necessary to protect the Lessee, Operator and their employees, including all Force Majeure Events including natural calamities that are insurable and not otherwise covered in items (a) to (c).</li> </ol>
---	--

<b>23. Insurance Companies</b>	23.1 The Lessee shall insure all insurable assets comprised in the Project and Project Assets through Indian insurance companies and if so permitted by Lessor, through foreign insurance companies, to the extent that insurances are necessary to be effected through them.
<b>24. Evidence of Insurance Cover</b>	24.1 The Lessee shall, from time to time, provide to Lessor copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Lessee in accordance with this Agreement.
<b>25. Application of Insurance Proceeds</b>	25.1 All moneys received under insurance policies shall be promptly applied by the Lessee towards repair or renovation or restoration or substitution of the Project Assets or any part thereof which may have been damaged or destroyed under written intimation to Lessor. The Lessee shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Assets or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.
<b>26. Validity of Insurance Cover</b>	26.1 The Lessee shall pay the premium payable on such insurance policy (ies) so as to keep the policy (ies) in force and valid throughout the Lease Term and furnish copies of the same to Lessor. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 Days' clear notice of cancellation is provided to Lessor in writing.

## G. ARTICLE G - FORCE MAJEURE

<b>27. Force Majeure Event</b>	27.1 As understood in this Agreement, a Force Majeure Event shall mean occurrence in India of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in clauses 28, 29 and 30 below which prevent the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event (i) is beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event even after the exercise of due diligence and reasonable efforts, skill and care, and (iii) has a Material Adverse Effect on the Project.
<b>28. Non-Political Events</b>	28.1 Non-Political event shall mean one or more of the following acts or events: <ul style="list-style-type: none"> <li>(i) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably be expected to occur or anticipate, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Project Site and Project Assets or beyond design specifications for the Construction Works) or landslide;</li> <li>(ii) radioactive contamination or ionizing radiation</li> <li>(iii) strikes or boycotts (other than those involving the Lessee, Operator, Contractors or their respective employees/representatives for reasons not attributable to the Lessee, Operator, or Contractors or any act or omission interrupting supplies and services to the Project Site for reasons not attributable to the Lessee, Operator, or Contractors and for a period</li> </ul>

	<p>exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 29;</p> <p>(iv) any failure or delay of a Contractor but only to the extent caused by another Non Political Event and which does not result in any offsetting compensation being payable to the Lessee by or on behalf of such Contractor;</p> <p>(v) any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Lessee in any proceedings for reasons other than failure of the Lessee to comply with any Applicable Law or 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 Lessor;</p> <p>(vi) Deleted</p>
<b>29. Indirect Political Events</b>	<p>29.1 Indirect Political Event shall mean one or more of the following acts or events:</p> <p>i. An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion, or politically motivated sabotage which prevents collection of Fee by the Lessee for a period exceeding a continuous period of 7 (seven ) days in an Accounting Year;</p> <p>ii. Industry wide or state wide or India wide strikes or industrial action which prevent collection of Fees by the Lessee for a period exceeding a continuous period of 7(seven) days in an Accounting Year; or</p> <p>iii. Any public agitation which prevents collection of Fee by the Lessee for a period exceeding a continuous period of 7 (seven) days in an Accounting Year</p>
<b>30. Political Events</b>	<p>30.1 Political Event shall mean one or more of the following acts or events by or on account of Lessor or any other Government Agency:</p> <p>i. Change in Law, only when provisions of this Agreement cannot be applied;</p> <p>ii. Expropriation or compulsory acquisition by any Government Agency of any Project Assets or rights of the Lessee or of the Contractors</p>
<b>31. Effect of Force Majeure Event</b>	<p>31.1 Upon the occurrence of a force majeure event, the following shall apply:</p> <p>a. There shall be no Termination of this Agreement except as provided in Clause 33 hereinafter;</p> <p>b. Where the Force Majeure Event occurs before COD, the dates set forth in the Implementation Period, and the Lease Period may be extended by the period for which such Force Majeure Event shall subsist;</p> <p>c. Where a Force Majeure Event occurs after COD, the Lessee shall continue to make all reasonable efforts to operate the Project and/or to collect Fee, but if it is unable or prevented from doing so, the Lease Period shall, having due regard to the extent of the impact thereof as determined by the Lessor officials, be extended by the period for which collection of Fee remains affected on account thereof; and</p>

	d. Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of the Clause 32 hereinafter
<b>32. Allocation of costs during subsistence of Force Majeure</b>	<p>32.1 Upon occurrence of a Force Majeure Event, the costs arising out of such event shall be allocated as follows:</p> <p>a. When the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event;</p> <p>b. Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the "Force Majeure Costs") shall be borne by the Lessee;</p> <p>c. For avoidance of doubt, Force Majeure Costs shall not include loss of Fee revenues or any debt repayment obligations but shall include interest payments on such debt, O&amp;M expenses and all other costs directly attributable to the Force Majeure Event</p> <p>d. During the occurrence of Force Majeure Event, the Lessee shall continue to pay the Annual Land Lease Rent to the Authority. However, the Lessee will be permitted to postpone the payments for a period of Force Majeure event not exceeding 120 days without interest.</p>
<b>33. Termination</b>	<p>33.1 If a Force Majeure Event continues or is in the reasonable judgment of the Parties is likely to continue beyond a period as specified in the SCA, the Parties may mutually decide to terminate this Agreement. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period, be entitled to terminate this Agreement by issuing Termination Notice.</p> <p>33.2 Anything related to the Project which conflicts or contradicts with the duties and obligations of the Government of Andhra Pradesh will lead to the Termination of the Lease cum Development Agreement including the Land Lease Deed entered between the Lessor and the Lessee.</p>
<b>34. Dispute Resolution</b>	34.1 In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.
<b>35. Liability for other losses, damages etc.</b>	35.1 Save and except as expressly provided in this Agreement, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Agreement.
<b>36. Duty to report</b>	<p>36.1 The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:</p> <p>a. The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the</p>

	<p>probable material affect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.</p> <p>b. Any notice pursuant to Force Majeure shall include full particulars of:</p> <ol style="list-style-type: none"> <li>i. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under Article 14 with evidence in support thereof;</li> <li>ii. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;</li> <li>iii. the measures which the Affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and</li> <li>iv. any other information relevant to the Affected Party's claim.</li> </ol> <p>c. For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this clause and such other information as the other Party may reasonably request the Affected Party to provide.</p>
<b>37. Excuse from performance of obligations</b>	37.1 Deleted

## H. ARTICLE H - EVENTS OF DEFAULT AND TERMINATION

<b>38. Events of Default</b>	38.1 Event of Default means the Lessee Event of Default to Issuance of Notice or the Lessee Event of Default or the Lessor Event of Default or all three as the context may admit or require.
<b>39. Lessee Events of Default to issuance of notice</b>	39.1 Deleted
<b>40. Consequences of Events of Default to warning</b>	<p>40.1 If during the course of an inspection Lessor finds the occurrence of an Event of Default to warn, Lessor shall issue a first warning in the form of a letter or email, (the, "First Warning") to the Lessee and levy a fine as specified in the SCA.</p> <p>40.2 If during the course of an inspection, Lessor observes the repeat occurrence of an Event of Default to Warning for which a First Warning has already been issued, Lessor shall issue a final warning in the form of a letter or email to the Lessee, (the, "Final Warning") and levy a fine as specified in the SCA.</p> <p>40.3 If during the course of an inspection, Lessor observes the third occurrence an Event of Default for which a Final Warning has been already been issued, such an occurrence will qualify as a Lessee Event of Default.</p>
<b>41. Lessee Events of Default</b>	<p>41.1 Any of the following events shall constitute an event of default by the Lessee ("Lessee Event of Default") unless such event has occurred as a result of Lessor Event of Default or a Force Majeure Event:</p> <ol style="list-style-type: none"> <li>1) The Lessee fails to meet the various implementation timelines specified.</li> </ol>



	<ol style="list-style-type: none"> <li>2) The Lessee fails to pay the Annual Land Lease Rent as per the terms specified in this Agreement.</li> <li>3) Any representation made or warranties given by the Lessee under this Agreement is found to be false or misleading.</li> <li>4) The Lessee creates any Encumbrance on the Project Site/ Project Assets including the structures constructed.</li> <li>5) A resolution is passed by the shareholders of the Lessee for the voluntary winding up of the Lessee</li> <li>6) Lessee violates the terms of Shareholding Pattern/equity contribution during the Lock-In Period</li> <li>7) Any petition for winding up of the Lessee is admitted by a court of competent jurisdiction or the Lessee is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Lessee are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Lessee under this Agreement, and provided that: <ol style="list-style-type: none"> <li>(i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement;</li> <li>(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Lessee as at Commencement Date; and</li> </ol> </li> <li>8) The Lessee suspends or abandons the operations of the Project without the prior consent of Lessor, provided that the Lessee shall be deemed not to have suspended/abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under this Agreement by the Lessor.</li> <li>9) The Lessee repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.</li> <li>10) The Lessee suffers an attachment being levied on any of its assets causing a Material Adverse Effect on the Project and such attachment continues for a period exceeding 45 days</li> <li>11) The Lessee is otherwise in Material Breach of this Agreement</li> <li>12) Lessee non-conformance to food quality, safety, health or hygiene statutory requirements leading to the revocation of a license necessary for the Project</li> <li>13) The Lessee fails to meet the Conditions Precedent</li> <li>14) The Performance Security has been encashed and appropriated and the Successful Bidder fails to replenish or provided fresh Performance Security within the period specified.</li> <li>15) The Lessee utilizes the Project Site/Project Assets for purposes other than for specified purpose/s.</li> </ol>
--	--

	<p>16) The Lessee is in violation of provisions of Land Lease Policy for Tourism Projects, 2016</p> <p>17) Continued non-compliance to Events of Default to warning as if during the course of an inspection, Lessor observes the third occurrence an Event of Default for which a Final Warning has been already been issued.</p> <p>18) The Lessee seeks revision of Annual Land Lease Rent during the Lease Period.</p> <p>19) The Lessee has not paid applicable taxes including the Property Tax, Income Tax, Service Tax; cess and surcharges etc.</p>
<b>42. Lessor Events of Default</b>	<p>42.1 The following events shall constitute events of default by Lessor (each a "Lessor Event of Default"), unless any such Lessor Event of Default has occurred as a result of Lessee Event of Default or due to a Force Majeure Event:</p> <ol style="list-style-type: none"> <li>1. Lessor repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.</li> <li>2. Any representation made or warranties given by the Lessor under this Agreement is found to be false or misleading.</li> </ol>
<b>43. Termination due to event of default</b>	<p>43.1 Termination for Lessee Event of Default: Without prejudice to any other right or remedy which Lessor may have in respect thereof under this Agreement, upon the occurrence of a Lessee Event of Default, the Agreement and the associated Land Lease shall stand terminated without any need of the Lessor to issue a Termination Notice or without providing any cure period</p> <p>43.2 Termination for Lessor's Event of Default: The Lessee may, upon the occurrence and continuation of any of Lessor Event of Default terminate this Agreement by issuing Termination Notice to Lessor.</p>
<b>44. Rights of Lessor on Termination</b>	<p>44.1 Upon Termination of this Agreement for any reason whatsoever, Lessor shall have the power and authority to:</p> <ol style="list-style-type: none"> <li>i. take possession and control of Project Site and Project Assets forthwith without, at its discretion, the need to give a Cure Period or Notice of Termination.</li> <li>ii. prohibit the Developer and any person claiming through or under the Developer from entering upon the Project Site or Project Assets or any part thereof;</li> <li>iii. encash the Performance Bank Guarantee/ Performance Security</li> <li>iv. complete the development in progress by handing over the Project Assets (movable and immovable) to the new Lessee or undertake fresh development, as the case may be. In case the completion of development is in progress and is handed over to a new Lessee based on Annual Land Lease Rent which is lower than the Annual Land Lease Rent agreed with the original Lessee, the original Lessee shall be liable to meet the gap as on date between the NPV of Annual Land Lease Rent agreed by him and the NPV of Annual Land Lease Rent agreed with the new Lessee. The NPV shall be calculated on the discount rate plus three percent (3%) which shall be the prevailing Bank Rate as notified by the Reserve Bank of India. The duration for which the NPV will be calculated shall be from</li> </ol>

	the date of handing over of Project Assets until the end of the Lease Period.
<b>45. Termination with mutual consent</b>	45.1 Both parties can terminate the contract through issue of a notice, not exceeding the time stipulated in SCA, with mutual consent without being required to pay termination related charges. Rights of Lessor for liquidated damages for actions of the Developer will not be effected by termination through mutual consent.

## I. ARTICLE I - HANDOVER AND DEFECT LIABILITY

<b>46. Handing over of Project Site and Project Assets</b>	46.1 Upon the expiry of the Lease Period by efflux of time and in the normal course, the Developer shall at the end of the Lease Period, hand over vacant and peaceful possession of the Project Site and Project Assets at no cost to Lessor
<b>47. Joint inspection and removal of deficiency (ies)</b>	47.1 The handing over process shall be initiated at least 3 months before the actual date of expiry of the Lease Period by a joint inspection by the Lessor officials and the Lessee. The Lessor officials shall, within 15 days of such inspection prepare and furnish to the Developer a list of works/jobs/additions/alterations, if any, to be carried out to bring the Project to the prescribed level of service condition at least two months prior to the date of expiry of the Lease Period. In case the Developer fails to carry out the above works, within the stipulated time period the Lessor shall be at liberty to have these works executed by any other Person at the risk and cost of the Developer and any cost incurred by Lessor in this regard shall be reimbursed by the Developer to Lessor within 7 days of receipt of demand. For this purpose, Lessor shall without prejudice to any other right/remedy available to it, under this Agreement, have the right to appropriate the Performance Security and/or to set off any amounts due, if any, and payable by Lessor to the Developer to the extent required/ available and to recover deficit amount, if any, from the Developer.

## J. ARTICLE J - DISPUTE RESOLUTION

<b>48. Amicable Resolution</b>	<p>48.1 Either Party agrees to comply with its contractual obligations and meet respective financial commitments in the interest of speedy execution of the Project irrespective of pending adjudication of the claims, unless such claim is directly and substantially linked to the issue under adjudication. In addition, the monies which are being claimed against each other, shall be subject to result of the adjudication.</p> <p>48.2 Save where expressly stated otherwise in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably and failing resolution of the same in accordance with the procedure set forth in clause 48.2 below.</p> <p>48.3 Either Party may require the Dispute to be referred to the Lessor's Management, for the time being for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably</p>
--------------------------------	--

	resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of clause 49 below.
<b>49. Arbitration</b>	<p>49.1 Any dispute for the purpose of this clause shall in all respects be connected to the project. No dispute shall be construed under this Agreement which is beyond the scope of this Agreement.</p> <p>49.2 Any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996 or any other law, time being in force as to arbitrations. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. A Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If the other Party fails to appoint its arbitrator, the Party appointing arbitrator shall take steps in accordance with Arbitration and Conciliation Act, 1996.</p> <p>49.3 The place of arbitration shall be as specified in the SCA but by agreement of the Parties.</p> <p>49.4 The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in the language specified in the SCA.</p> <p>49.5 The procedure to be followed within the arbitration, including appointment of arbitrator / arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the Arbitration and Conciliation Act, 1996 or any other law relating to arbitration which is in force.</p> <p>49.6 Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto agree that the arbitral award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found and that a judgment upon the arbitral award may be entered in any court having jurisdiction thereof, as per law, time being in force.</p> <p>49.7 The fees and expenses of the arbitrators and all other expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the arbitration claim, including legal fees and expenses incurred by Party. The fee for the third arbitrator shall be borne equally by the Parties.</p> <p>49.8 Deleted</p>

## **K. ARTICLE K - REPRESENTATIONS, WARRANTIES AND DISCLAIMER**

<b>50. Representation and warranties of the Developer</b>	<p>50.1 The Developer represents and warrants that:</p> <p>(i) it is duly organized, validly existing and in good standing under the laws of India</p>
---	--

	<p>(ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;</p> <p>(iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;</p> <p>(iv) it has the financial standing and capacity to undertake the Project;</p> <p>(v) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;</p> <p>(vi) it is subject to civil and commercial laws of India and Andhra Pradesh with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;</p> <p>(vii) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Developer's Memorandum and Articles of Association or any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;</p> <p>(viii) there are no actions, suits, proceedings, or investigations pending or, to the Developer'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 Developer under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;</p> <p>(ix) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in any material adverse effect or impairment of the Developer's ability to perform its obligations and duties under this Agreement;</p> <p>(x) 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;</p> <p>(xi) subject to receipt by the Developer from Lessor of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Developer in the Project shall pass to and vest in Lessor on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Developer or Lessor;</p> <p>(xii) no representation or warranty by the Developer contained herein or in any other document furnished by it to Lessor or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and</p> <p>(xiii) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Developer, to any person by way of fees, commission or otherwise for entering into of this Agreement or for influencing or attempting to influence any officer or employee of Lessor in connection therewith.</p>
--	---

<b>51. Disclaimer</b>	<p>51.1 Without prejudice to any express provision contained in this Agreement, the Developer acknowledges that prior to the execution of this Agreement, the Developer has after a complete and careful examination made an independent evaluation of the guest volumes, specifications and standards, Project Site and all the information provided by Lessor, and has determined to the Developer's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Developer in the course of performance of its obligations hereunder.</p> <p>51.2 The Developer further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in (a) above and hereby confirms that Lessor shall not be liable for the same in any manner whatsoever to the Developer.</p>
<b>52. Representations and warranties of Lessor</b>	<p>52.1 Lessor represents that:</p> <ol style="list-style-type: none"> <li>i. Lessor has full power and authority to grant the Project Site;</li> <li>ii. Lessor has taken all necessary action to authorize the execution, delivery and performance of this Agreement;</li> <li>iii. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.</li> </ol>

## **L. ARTICLE L - OTHER MISCELLANEOUS PROVISIONS**

<b>53. Assignment &amp; Charges</b>	<p>53.1 Subject to sub-articles 53.2 and 53.3 herein below, this Agreement shall not be assigned by the Developer save and except with prior consent in writing of Lessor, which consent Lessor shall be entitled to decline without assigning any reason whatsoever.</p> <p>53.2 Subject to sub-article (c) herein below, the Developer shall not create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement to which Developer is a party except with prior consent in writing of Lessor, which consent Lessor shall be entitled to decline without assigning any reason whatsoever.</p> <p>53.3 Restraint set forth in 53.1 and 53.2 above shall not apply to:</p> <ol style="list-style-type: none"> <li>(i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business</li> <li>(ii) mortgages/pledges/hypothecation of goods/assets, as security for indebtedness, in favour of the Lenders and working capital providers for the Project;</li> <li>(iii) assignment of Developer's rights, title and interest under this Agreement to or in favour of the Lenders pursuant to and in accordance with the Substitution Agreement as security for their financial assistance.</li> </ol> <p>53.4 Upon occurrence of the Developer Event of Default the Lenders shall have the right of substitution.</p>
<b>54. Liability and Indemnity</b>	<p>54.1 General Indemnity</p> <ol style="list-style-type: none"> <li>i. The Developer shall indemnify, defend and hold Lessor harmless against any and all proceedings, actions and, third party claims arising out of a</li> </ol>

	<p>breach by Developer of any of its obligations under this Agreement except to the extent that any such claim has arisen due to Lessor Event of Default.</p> <p>ii. Deleted</p> <p>54.2 Without limiting the generality of this Article, the Developer shall fully indemnify, save harmless and defend Lessor including its officers servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (a) failure of the Developer to comply with Applicable Laws and Applicable Permits, (b) payments of taxes relating to the Developer's Contractors, suppliers and representatives income or other taxes required to be paid by the Developer without reimbursement hereunder, or (c) non payment of amounts due as a result of materials or services furnished to the Developer or any of its Contractors which are payable by the Developer or any of its Contractors.</p> <p>54.3 Without limiting the generality of the provisions of this Article, the Developer shall fully indemnify, save harmless and defend the Lessor from and against any and all damages which the Lessor 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 Developer or by the Developer's Contractors in performing the Developer'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 Developer 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 Developer shall promptly make every reasonable effort to secure for Lessor a license, at no cost to Lessor, authorizing continued use of the infringing work. If the Developer is unable to secure such license within a reasonable time, the Developer 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.</p> <p>54.4 The Developer shall fully indemnify Lessor for incidental damages to other parts of the hotel facility or guests outside the Project Site/ Assets occurring on account of negligence/accidents on the part of the Developer</p> <p>54.5 In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Article (the 'Indemnified Party') it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) 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 subject to the Indemnified Party being secured against any costs involved to its reasonable satisfaction.</p> <p>54.6 Defense of Claims</p> <p>(i) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting</p>
--	---

	<p>from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Article, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure, the loss to be indemnified hereunder to the extent so compromised or settled.</p> <p>(ii) If the Indemnifying Party has exercised its rights under Article, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the indemnifying Party (which consent shall not be unreasonably withheld or delayed).</p> <p>(iii) If the Indemnifying Party exercises its rights under Article, then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, as and when incurred, unless:</p> <ol style="list-style-type: none"> <li>1) the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or</li> <li>2) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or</li> <li>3) the indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action and shall have been so notified by the Indemnified Party; or</li> <li>4) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either       <ol style="list-style-type: none"> <li>a) That there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or</li> <li>b) That such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement</li> </ol> </li> </ol> <p>provided that if sub-articles (2), (3) or (4) above shall be applicable, counsel for the Indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.</p>
--	--



<b>55. Governing Law and Jurisdiction</b>	55.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Vijayawada, Andhra Pradesh, India shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.
<b>56. Waiver</b>	56.1 Waiver by either Party 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. 56.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.
<b>57. Survival</b>	57.1 Termination of this Agreement (a) shall not relieve the Developer or Lessor of any obligations hereunder which expressly or by implication survives Termination hereof, and (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.
<b>58. Amendments</b>	58.1 This Agreement and the Schedules/Addenda together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.
<b>59. Notices</b>	59.1 Deleted
<b>60. Severability</b>	60.1 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 upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.
<b>61. Joint and several liability (for consortium)</b>	61.1 Members of the Consortium which is found successful, shall be jointly and severally liable to the Authority for execution of the Project/Agreement in accordance with the Conditions of the Agreement. Consortium members shall also be liable jointly and severally for the loss, damages caused to the Authority during the course of execution of the Agreement or due to non-execution of the Agreement or part thereof.

<b>62. No Partnership</b>	<p>62.1 Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.</p> <p>62.2 Nothing in this Agreement, whether express or implied, constitutes the Lessee as the agent of the Lessor in respect of any matter or action taken, or vice-versa.</p>
<b>63. Language</b>	<p>63.1 All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in the language specified in the SCA</p>
<b>64. Exclusion of implied warranties</b>	<p>64.1 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.</p>

**SECTION II. SPECIAL CONDITIONS OF LEASE CUM DEVELOPMENT AGREEMENT  
(SCA)**

**A. DEFINITIONS AND INTERPRETATIONS**

GCA 1.1 (J)	The Developer (a sole Bidder/ consortium of M/s _____ and M/s_____) is M/s _____, a Special Purpose Company (SPC) formed for the Project mentioned below in GCA 1.1 (FF)
GCA 1.1 (U)	Lease Period shall commence from the date of handing over possession of Project Site to the Lessee and shall be valid for _____ months from such date.
GCA 1.1 (V)	For the purpose of this RFP, “Lock-In Period” shall be defined as a period of 5 (five) years post the COD
GCA 1.1 (FF)	<b>Title of the Project:</b> Selection of the Developer for Development of International Convention Centre at APIIC Ground, Harbour Park Land, Visakhapatnam, Andhra Pradesh under Public Private Partnership (PPP) mode

**D. PAYMENTS, GUARANTEES & USER CHARGES**

GCA 11.1	Performance Security to be submitted by the Lessee would be INR _____
GCA 12.1	Project Development Fee to be submitted by the Lessee would be INR _____
GCA 13.1	The Annual Land Lease Rent for the first year shall be INR _____  [ Note: The Annual Land Lease Rent shall be the amount quoted by the Successful Bidder ]
GCA 13.2	The Annual Land Lease Rent for the first (1 <sup>st</sup> ) year of the Lease Period shall be payable on the date of handing over possession of Project Site to the Successful Bidder. Payment of advance Annual Land Lease Rent for the first 6 months of second (2 <sup>nd</sup> ) year shall be payable on the 366 <sup>th</sup> day post the date of start of Lease Period to the Successful Bidder/Lessee. Subsequent advance Annual Land Lease Rent payments shall be due within 15 days of lapse of every 6 months cycle from the previous Lease payment
GCA 13.3	In case of default in making the Annual Land Lease Rent payment as per clause GCA 13.2, interest will be payable at 24% per annum rate for the number of days of delay calculated from the day following the deadline for payment of such Annual Land Lease Rent. While arriving at the amounts due to be paid at a given point of time, the interest component will be adjusted first and the balance towards the principal amount
GCA 13.4	30 days
GCA 13.5	Bank name and branch: Account number: Type of account: IFSC Code:

**E. OBLIGATIONS AND UNDERTAKINGS**

GCA 16.1	The Conditions Precedent would be: <ul style="list-style-type: none"> <li>i. Save and except as may otherwise be expressly provided herein, the obligations of a Lessor and the Lessee under this Agreement shall be subject to the satisfaction in full of the Conditions Precedent by the Lessee. These include: <ul style="list-style-type: none"> <li>a. Achieved Financial Closure and provided notarized true copies of the Financing Documents to the Lessor along with the Project profile</li> <li>b. Fulfilment of conditions specified in the Letter of Intent (LoI)</li> </ul> </li> <li>ii. Upon successful compliance to the Conditions Precedent specified above, the possession of the Project Site shall be given to the Lessee</li> </ul>
GCA 17.1	5 years
GCA 18.3	As per the conditions mentioned in the Volume II of the RFP
GCA 18.4	As per the conditions mentioned in the Volume II of the RFP
GCA 18.5	As per the conditions mentioned in the Volume II of the RFP

**G. FORCE MAJEURE**

GCA 33.1	120 days
----------	----------

**H. EVENTS OF DEFAULT AND TERMINATION**

GCA 40.1	2% (two percent) of the Performance Security for each type of default
GCA 40.2	5% (two percent) of the Performance Security for each type of default
GCA 45.1	6 months

**J. DISPUTE RESOLUTION**

GCA 49.3	_____ <p>[Note: Place of Arbitration should be a mutually convenient location in the State of Andhra Pradesh, preferably Vijayawada]</p>
GCA 49.4	English

**L. OTHER MISCELLANEOUS PROVISIONS**

GCA 63.1	English
----------	---------

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of Developer/Lessee by:

SIGNED SEALED AND DELIVERED

For and on behalf of Lessor by

(Signature)

(Name)

(Designation)

In the presence of (Witnesses).

1)

2)

## SCHEDULE – I

### MINIMUM DEVELOPMENT AND SERVICE OBLIGATIONS

#### I. Minimum Development Obligations which are part of the Project:

S. No.	Minimum Development Obligations	Details of the Minimum Development Obligation
1	<b>Convention Centre</b>	<ul style="list-style-type: none"> <li>i. <b>5,000 pax capacity</b> appropriate seating, Wi-fi connected spaces, lounge spaces, kiosks, plenary hall, kitchen, utilities, docks, stores, good equipment and audio visual system etc.</li> <li>ii. Other basic facilities such as Reception, Information Counters, Public Facilities, Eating Stalls as per the requirement and norms.</li> <li>iii. Facility to interpret 6 languages and wireless IR receivers of minimum 2000 numbers</li> <li>iv. Convention Centre shall be maintained by the Hotel Chain operating the Hotel component</li> </ul>
2	<b>Exhibition Centre</b>	<ul style="list-style-type: none"> <li>i. Exhibition space of minimum <b>50,000 sq. ft.</b> having covered air conditioning is to be developed</li> <li>ii. Exhibition Centre should have public utility zone, stalls, tap point for electricity, cables etc., for each stall</li> <li>iii. Exhibition Centre shall be maintained by the Hotel Chain operating the Hotel component</li> </ul>
3	<b>5 Star Hotel</b>	<b>200 rooms</b> , banquet areas, lobby spaces, restaurants, gym, health centre, pool etc.
3.1	Rooms & Suites Amenities	Typical room shall include the following minimum features: <ul style="list-style-type: none"> <li>a. Air conditioned rooms</li> <li>b. Bathrooms with bathtubs or cubical glass showers</li> <li>c. Telephone lines with direct dial</li> <li>d. Electronic safes</li> <li>e. Tea / coffee maker</li> <li>f. LCD television</li> <li>g. Mini bar</li> <li>h. Writing table</li> <li>j. Hair Dryer in room</li> </ul>
3.2	Restaurants and Bar Amenities	The hotel should have following dining options (for at least 75 pax per restaurant/ bar): <ul style="list-style-type: none"> <li>a. One all-day multi-cuisine coffee shop cum restaurant</li> <li>b. Two specialized cuisine restaurants</li> <li>c. One Lounge Bar serving wine and liquor</li> </ul>
3.3	Health Club and gymnasium	Executive Health Club which includes Gymnasium, Swimming Pool, Spa & Health Club.
3.4	Other amenities/facilities	<ul style="list-style-type: none"> <li>a. Room service</li> <li>b. Travel desk</li> <li>c. Money Changer</li> <li>d. Laundry facilities</li> <li>e. Business centre</li> <li>f. Meeting rooms</li> <li>g. Kids entertainment centre</li> <li>h. First aid facilities including doctor on call</li> </ul>

		i. Indoor & Outdoor Recreation Facilities
4	Mega Commercial Complex	i. Total area should be a minimum of <b>6,00,000 square feet</b> ii. Shall necessarily include space for Retail Shopping, Showrooms, Cinema screens & Food Court.
5	Parking	With a parking for minimum 1500 cars and appropriate parking for buses, two wheelers etc.
6	Services	Transformer yard, STP, electrical switch yard, DG sets etc.
7	Landscape	Gardens & lawns, pathways & social spaces
8	Gate Entrance Complex	Administration, tickets counters, security etc.
9	Administration offices	Office spaces for stakeholders

*II. Minimum Service Obligations which are part of the Project:*

Indicator	SLA
Star rating	Maintenance of minimum 5 Star rating throughout the Lease Period as certified by The Hotel & Restaurant Approval & Classification Committee (HRACC) of Ministry of Tourism, Government of India
Cleanliness	Waste Bin every 25 metres
	Litter free premises
Accessibility	Hotel should be 100% compliant to the needs of differently-abled



**SCHEDULE – II**  
**PAYMENT SCHEDULE OF ANNUAL LAND LEASE RENT**

Lease Year	Annual Land Lease Rent	Semi Annual Land Lease Rent payable			
		S1 Date	S1 Amount	S2 Date	S2 Amount
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
26					
27					
28					
29					
30					
31					
32					
33					

[The above schedule shall be filled prior to signing of the Lease cum Development Agreement]

## **ADDENDA - I LAND LEASE DEED**

*[The Land Lease Deed to be entered between the Lessor/Authority and the Selected Bidder will be communicated at a later stage]*

**ADDENDA – II**  
**PERFORMANCE SECURITY**  
(See Clause 11.1)

The.....  
.....  
.....

**WHEREAS:**

- (A) ..... (the “**LESSEE**”) and the ....., ..... (the “**AUTHORITY**”) have entered into a Lease cum Development Agreement dated ..... (the “**Agreement**”) whereby the Authority has agreed to the Lessee undertaking the development of the Project on Lease cum Development basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the LESSEE to furnish a Performance Security to the Authority in a sum of Rs. .... cr. (Rupees ..... crore) (the “Performance Bank Guarantee”) as security for due and faithful performance of its obligations, under and in accordance with the Lease cum Development Agreement, during the Lease Period (as defined in the Lease cum Development Agreement).
- (C) We, ..... through our Branch at ..... (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Lessee’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Lessee, such sum or sums up to an aggregate sum of the Performance Bank Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of ..... in the Authority, that the Lessee has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Lessee is in default in due and faithful performance of its obligations during the Lease Period under the Lease cum Development Agreement and its decision that the Lessee is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Lessee, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Lessee for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Lessee and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Lessee before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under

this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Lessee contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Lessee, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Lease cum Development Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Lessee or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Lessee under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Performance Bank Guarantee Amount and this Guarantee will remain in force for a period of three (3) years initially from the date of submission to the Authority and post that the Performance Security in the form of a bank guarantee for each subsequent year should be submitted to the Authority by the Selected Bidder at least 30 days before the expiry of the existing bank guarantee, thereby ensuring that the Performance Security is valid during the Lease Period and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period equivalent to the Lease Period mentioned in the Lease cum Development Agreement or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

**ADDENDA – III**  
**SUBSTITUTION AGREEMENT**  
(See Clause 53.4)

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

**AMONGST**

- 1 The ....., established under ....., represented by ..... and having its principal office at ..... (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 ..... LIMITED, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....., (hereinafter referred to as the “**Lessee**” 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 authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

**WHEREAS:**

- (A) The Authority has entered into a Lease cum Development Agreement dated ..... with the Lessee (the “**Agreement**”) for Selection of the Developer for development of International Convention Centre at APIIC Ground, Harbour Park Land, Visakhapatnam in the State of Andhra Pradesh under Public Private Partnership mode in Lease cum Development model, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Lease to a Nominated Company in accordance with the provisions of this Substitution Agreement and the Lease cum Development Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation, and maintenance, the Authority has agreed and undertaken to transfer and assign the Lease to a Nominated Company in accordance with the terms and conditions set forth in this Substitution Agreement and the Lease cum Development Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be

legally bound hereby, the Parties agree as follows:

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

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

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Lessee 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, 1956/2013, including any re-enactment or modification thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Lease as provided in this Agreement;

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

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

### 1.2 Interpretation

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

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

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

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Lease cum Development

Agreement shall apply, *mutatis mutandis*, to this Agreement.

## **2 ASSIGNMENT**

### **2.1 Assignment of rights and title**

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

## **3 SUBSTITUTION OF THE LESSEE**

### **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 Lessee by a Nominated Company under and in accordance with the provisions of this Agreement and the Lease cum Development Agreement.

3.1.2 The Authority hereby agrees to substitute the Lessee by endorsement on the Lease cum Development 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 Lessee 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 Lessee (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Lessee 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 Lessee by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Lessee and undertake the operation and maintenance of the Project in accordance with the provisions of Article H of the Lease cum Development Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Lease cum Development Agreement. The aforesaid Suspension shall be revoked upon substitution of the Lessee by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Lease cum Development Agreement forthwith by issuing a Termination Notice in accordance with the



provisions of the Lease cum Development Agreement; provided that upon written request from the Lenders' Representative and the Lessee, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Lease cum Development Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

### **3.3 Substitution upon occurrence of Lessee Event of Default**

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

### **3.4 Procedure for substitution**

- 3.4.1 The Authority and the Lessee hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Lease cum Development Agreement to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Lessee towards the Authority under the Lease cum Development Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Lessee, the Nominated Company shall be required to fulfil the Eligibility Criteria that were laid down by the Authority for shortlisting the Bidders for award of the Lease; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such Eligibility Criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority

to:

- a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Lease cum Development Agreement;
- b) endorse and transfer the Lease to the Nominated Company, on the same terms and conditions, for the residual Lease Period; and
- c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Lease 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 Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Lease within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Lessee.

3.4.5 The transfer of Lease hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Lease cum Development Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Lessee to the Nominated Company, and upon such transfer hereunder, the Lessee shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Lease cum Development Agreement.

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

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

## **4 PROJECT AGREEMENTS**

### **4.1 Substitution of Nominated Company in Project Agreements**

The Lessee 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 Lessee in the event of such Nominated Company's assumption of the liabilities and obligations of the Lessee under the Lease cum Development Agreement.

## **5 TERMINATION OF LEASE CUM DEVELOPMENT AGREEMENT**

### **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Lease cum Development Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Clause 33 and Clause 43 of the Lease cum Development Agreement.

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

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Lease cum Development Agreement forthwith in accordance with the provisions thereof.

### **5.3 Realisation of Debt Due**

The Authority and the Lessee hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Lessee, without any further reference to or consent of the Lessee, the Debt Due upon Termination of the Lease cum Development 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 and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

## **7 INDEMNITY**

### **7.1 General indemnity**

- 7.1.1 The Lessee will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Lessee of any of its

obligations under this Agreement or on account of failure of the Lessee to comply with Applicable Laws and Applicable Permits.

7.1.2 Deleted

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

**7.2 Notice and contest of claims**

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

**8 DISPUTE RESOLUTION**

**8.1 Dispute resolution**

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Lessee and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to 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 place of arbitration shall be Delhi 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 Andhra Pradesh preferably Vijayawada shall have jurisdiction over all

matters arising out of or relating to this Agreement.

## **9.2 Waiver of sovereign immunity**

The Authority unconditionally and irrevocably:

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

## **9.3 Priority of agreements**

In the event of any conflict between the Lease cum Development Agreement and this Agreement, the provisions contained in the Lease cum Development 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:

a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

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

## **9.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

## **9.9 Successors and assigns**

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective

successors and permitted assigns.

#### **9.10 Notices**

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

#### **9.11 Language**

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

#### **9.12 Authorised representatives**

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

#### **9.13 Original Document**

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

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS**

**AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

THE COMMON SEAL OF LESSEE has been SIGNED, SEALED AND DELIVERED affixed pursuant to the resolution passed by the Board of Directors of the Lessee at its meeting held on the ..... day of 20..... hereunto ..... Authority by: affixed in the presence of ....., Director, who has signed these presents in token thereof and ....., Company Secretary /Authorised Officer who has countersigned the same in token thereof \$:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

**SIGNED, SEALED AND DELIVERED**

For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax)  
(e-mail address)

In the presence of:

- 1. 2.

\_\_\_\_\_



## ADDENDA – IV

*[The copies of the Request for Proposal ("RFP"), Selected (Successful) Bidder's bid documents, LoI and subsequent letter of acceptance sent by the Selected Bidder vide letter dated..... are collectively annexed hereto]*