

**Development of Adventure Activities at Dassam, Jonha, Hundru and
Panchghagh Falls in Jharkhand on PPP mode**

Part II

Draft Development Agreement



Jharkhand Tourism Development Corporation Limited

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This Development Agreement mutually agreed and entered into on the ____ day of ____ (Month), Two Thousand and Seventeen at Ranchi,

BETWEEN

Jharkhand Tourism Development Corporation Limited, Government of Jharkhand (JTDCL Ltd.), having its principal office at 5, Mahatma Gandhi Marg, Ranchi, Jharkhand – 834001, Jharkhand represented by (Designation) (hereinafter referred to as “JTDCL”), which expression shall, unless the context otherwise requires, include its successors and assigns);

AND

_____, a company incorporated under provisions of the Companies Act, 1956/ Companies Act, 2013 having its registered office at _____, through its _____ (an authorised signatory) (hereinafter referred to as “**Developer**” which expression shall unless repugnant to the context include the successors and permitted assigns) of the other part.

WHEREAS,

- A The Government of Jharkhand intends to undertake Development of Adventure Activities at Dassam, Jonha, Hundru and Panchghagh Falls in Jharkhand (the “**Project**”) through Public Private Partnership (PPP)
- B Pursuant thereto, JTDCL had invited comprehensive proposals from interested parties for the Development of the Project through RFP document.
- C After a competitive bidding process, JTDCL has accepted the proposal submitted by the Developer and awarded the Project by its Letter of Acceptance (LoA) no. _____ dated _____ and the Developer has acknowledged the same vide its letter no. _____ dated _____.
- D In terms of the LoA the Parties hereto are required to enter into the Development Agreement being these presents to record the terms, conditions and covenants of the Right.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Affected Party” means the Party claiming to be affected by a Force Majeure Event in accordance with Article 8.1.

“Agreement” shall mean this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.

“Annuity/ Annual Fee” shall mean the amounts payable by the Developer to JTDCL in accordance with Article 7.

“Applicable Law” shall mean all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Developer in relation to the Project.

“Applicable Permits” shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Developer under Applicable Law, in connection with the Project during the subsistence of this Agreement.

“Appointed Date” shall mean the date of this Agreement.

“Arbitration Act” shall mean the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.

“Book Value” shall mean the value of the capital expenditure incurred on the Project as per the books of the Developer, net of depreciation charged on the basis of straight line method and amortized equally over the Operations Period, duly verified and certified by an independent auditor in accordance with IGAAP (Indian Generally Accepted Accounting Principles)

“**COD**” or “**Commercial Operations Date**” shall mean when the Developer at the project site enters into commercial service on obtaining the Completion Certificate.

“**Completion Certificate**” shall mean the certificate issued by the Third Party Inspector certifying, inter alia, that the Developer has provided the Project Facilities in accordance with its approved Development Plan, Detailed Project Report and Construction Requirements.

“**Right**” shall have the meaning ascribed thereto in Article 2.1 of this Agreement.

“**Agreement Period**” shall have the meaning ascribed to it in Article 2.2.

“**Construction Requirements**” shall mean the requirements as to construction of the Project Facilities set out in Schedule 2.

“**Construction Works**” shall mean all works and things required to be undertaken by the Developer, in accordance with the Construction Requirements.

“**Contractor**” shall mean any Person with whom the Developer has entered into/may enter into any of the Project Agreements.

“**Development Plan**” shall mean the following details of the Project;

- (i) Site layout plan, clearly indicating the placement of all structures
- (ii) Procurement and mobilization
- (iii) Installation, testing and commissioning
- (iv) Services – Power Supply, Drainage, Water Supply etc.
- (v) Landscape plans
- (vi) Environment management plan (waste disposal, rainwater harvesting, water recycling etc.)

“**Detailed Project Report**” means the conceptual and detailed designs, plans, backup technical information required for the Project and all calculations, samples, patterns, models, specifications and other technical information relating thereto based on which the Developer is required to construct the Project Facilities.

“**Drawings**” shall mean all of the drawings, designs, calculations and documents pertaining to the Project in accordance with the approved Development Plan, Detailed Project Report and Construction Requirements.

“**Due Date**” means each date for making the Annual Fee or the construction cost, as the case may be.

“Emergency” shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facilities including the safety of the users thereof or which poses an immediate threat of material damage to the Project Facilities.

“Encumbrance” shall mean 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, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facilities.

“Expiry” means expiry of the Right by efflux of time at the end of 5 years from the Appointed Date.

“Expiry Date” shall mean the date on which the Expiry of this Agreement occurs.

“Financial Year” shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.

“Force Majeure” or **“Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 8.

“Force Majeure Period” means, as determined by the Third Party Inspector if existing or mutually decided between the Parties, the period commencing from the date of occurrence of a Force Majeure Event and ending on (i) the date on which the Affected Party, acting in accordance with the Good Industry Practice, resumes or should have resumed such of its obligations the performance of which was excused in terms of Article 8.3 or (ii) the Termination Date, as applicable.

“Good Industry Practice” shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.

“GoJ” shall mean the Government of Jharkhand, its respective departments or any other authorities, agencies and instrumentalities functioning under the

direction or control of the Government of Jharkhand and its administrators, successors and assigns.

“Government Agency” shall mean any governmental department, commission, board, body, bureau, agency, JTDCL, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Developer, the Project Facilities 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.

“Handover Requirements” shall have the meaning ascribed thereto in Article 10.

“Construction Period” means the period beginning from the Appointed Date and ending on the COD.

“Material Adverse Effect” shall mean a material adverse effect on (a) the ability of the Developer to exercise any of its rights or perform/dischage any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

“Material Breach” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

“Operations Period” shall mean the period commencing from the COD until the expiry of the Right/ Termination.

“O&M Requirements” shall mean the requirements as to operation and maintenance of the Project Facilities as set forth in Schedule 4.

“Parties” shall mean the parties to this Agreement and **“Party”** means either of them, as the context may admit or require.

“Person” shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or Government Agency or any other legal entity.

“Preliminary Notice” shall mean the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

“**Project**” means design, construction and operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement.

“**Project Agreements**” shall mean collectively this Agreement, contracts for engineering, procurement, construction, operation, maintenance and any other material contract (other than Financing Documents) entered into or may hereafter be entered into by the Developer in connection with the Project.

“**Project Site**” means where the Developer will develop facilities for conducting Adventure Sport as permitted by the JTDCL .

“**Third Party Inspector**” shall mean a reputed Person being a firm, company or a body corporate appointed in accordance with Article 4 for supervision and monitoring of compliance by the Developer with the Construction Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Schedule 5.

“**Project Facilities**” shall mean collectively the following facilities to be constructed, operated and maintained by the Developer on Project Site:

Sl.no	Project Site	Activities to be developed
1	Dassam Falls	low rope courses, zip lining
2	Hundru Falls	low rope courses
3	Jonha Falls	low rope courses, high rope courses
4	Panchghagh Falls	low rope courses

“**Rupees**” or “**Rs**” refers to the lawful currency of the Republic of India.

“**SBI PLR**” means the prevailing medium term prime lending rate of the State Bank of India.

“**Scheduled Project Completion Date or SPCD**” means 3 months from the Appointed Date.

“**Successful Bidder**” shall mean _____

“**Tax**” shall mean and includes all taxes, cesses, duties, levies that may be payable by the Developer under Applicable Law.

“**Termination**” shall mean early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

“**Termination Date**” shall mean the date specified in the Termination Notice as the date on which Termination occurs.

“Termination Notice” shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

“Tests” shall mean the tests to be carried out in accordance with the Construction Requirements, and if not expressly specified in either of the said requirements, as instructed by the Third Party Inspector, in accordance with this Agreement.

1.2 Interpretation

In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- (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, organisations or other entities (whether or not having a separate legal entity);
- (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;
- (e) the words "include" and "including" are to be construed without limitation;
- (f) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- (g) 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;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST);
- (i) the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- (j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement,

- deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (k) references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- (l) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or by Third Party Inspector shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or Third Party Inspector in this behalf and not otherwise;
- (m) references to “Construction” include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental thereto;
- (n) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the “Damages”).

ARTICLE 2 RIGHTS

2.1 Grant of Rights

Subject to and in accordance with the terms and covenants set forth in this Agreement, JTDCL hereby grants and authorises the Developer to design, engineer, procure, construct the Project Facility and to operate and maintain the Project Facilities and to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement (the “Rights”).

2.2 Agreement Period

The Rights hereby granted for a period of Five (5) years from the Appointed Date (hereinafter referred to as the “Agreement Period”).

Provided that in the event of Termination, Agreement Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

2.3 Acceptance of Rights

Subject to and in accordance with the terms and covenants set forth in this agreement and in consideration of JTDCL agreeing to make payment of construction cost and Annual Fee, and the rights, powers, benefits, privileges, entitlements and authorisations conferred upon by JTDCL and other good and valuable consideration expressed herein, the Developer hereby accepts the Rights and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions hereof.

2.4 Revenue Collection

On and from the COD till the handover, Developer shall have the right to fix, demand, collect, appropriate and revise ticket prices.

ARTICLE 3 PROJECT SITE

3.1 Handover of Project Site

- (a) JTDCL shall, within 15 days from the Appointed Date, handover to the Developer on as-is-where-is basis, peaceful physical possession of the Project Site free from the encumbrance for the purpose of implementing the Project.
- (b) Upon the Project Site being handed over pursuant to the preceding sub-article (a), the Developer shall have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.2 Rights, Title and Use of the Project Site and Project Facility

- (a) The Developer shall have the right to use of the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry into and use of the same by third parties.
- (b) Manage and operate the Project Facilities without any limitation or restriction, other than those expressly set out in this Development Agreement; For avoidance of doubt, the Developer shall not have the right to collect user charges from the users of the Project Facilities. Any such rights shall be vested with JTDCL.
- (c) The Developer shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement.
- (d) The Developer shall not use the Project Site / Project Facilities for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (e) The Developer shall allow access to and use of the Project Site for laying/installing/maintaining utilities such as electric lines, water supply and sewerage system or for such other purposes as JTDCL may specify.

Provided further, that to the extent such access and use allowed by the Developer affects the performance of any of its obligations hereunder, the Developer shall not be deemed or construed to be in breach of its obligations nor shall it incur/ suffer any liability on account thereof.

3.3 Peaceful Possession

JTDCL hereby warrants that:

- (a) The Project Site belongs to and is vested in Jharkhand Tourism Development Corporation Limited, Jharkhand Government of Jharkhand and that the JTDCL has full powers to deal with the same consistent, inter alia, with the provisions of this Agreement, and that the Developer shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.
- (b) The Developer shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site / Project Facilities during the Agreement Period. In the event the Developer is obstructed by any Person claiming any right, title or interest in or over the Project Site / Project Facilities or any part thereof, or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge or the Project Site / Project Facilities or any part thereof, JTDCL shall, if called upon by the Developer, defend such claims and proceedings and also keep the Developer indemnified against any consequential loss or damages which the Developer may suffer, on account of any such right, title, interest or charge.
- (c) Notwithstanding any provisions of this Agreement and without prejudice to any of the other rights vested under the provisions hereof, JTDCL, Third Party Inspector, the Maintenance Review Committee, any Competent JTDCL and any Person authorised by either of them shall during the Agreement Period at all reasonable times and upon reasonable notice have access to the Project Site and the Project Facilities to inspect and examine the materials, plant, equipment and workmanship and all the documents, reports, data, books, accounts, information for compliance thereof with the provisions hereof and to check the progress of the works or for performing statutory duties and the Developer shall provide the necessary cooperation and assistance to them in this behalf.

3.4 Applicable Permits

The Developer shall obtain and maintain all Applicable Permits in such sequence as is consistent with the requirements of the Project.

ARTICLE 4 THIRD PARTY INSPECTOR

4.1 Procedure for Appointment

- (a) JTDCL shall within 15 days from the Appointed Date appoint a third party inspector (the "**Third Party Inspector**") to monitor the construction work of the Developer and to certify the payment to be made to the Developer in accordance with this Agreement. JTDCL may appoint more third party inspector as per requirement.
- (b) The term of the Third Party Inspector shall extend upto one year after the Commercial Operation Date.

4.2 Payments to Third Party Inspector

All fees, costs, charges and expenses payable to the Third Party Inspector in accordance with the terms of its appointment (collectively "**the Remuneration**") shall be borne by JTDCL.

4.3 Replacement of the Third Party Inspector

- (a) JTDCL may replace the Third Party Inspector in any of the following circumstances:
 - i. if JTDCL or the Developer has reason to believe that the Third Party Inspector has not discharged its duties in a fair, appropriate and diligent manner;
 - ii. if, in accordance with the terms of its appointment the Third Party Inspector resigns or notifies its intention not to continue as the Third Party Inspector;
 - iii. any other circumstance which in the opinion of the Parties warrants replacement of the Third Party Inspector.

4.4 Monitoring and inspection by Third Party Inspector

- (a) Third Party Inspector shall monitor the implementation of the Project during the Construction Period and discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule 5 and elsewhere in this Agreement and submit periodic reports (at least once every month) in respect thereof to the Parties in the form and manner as mutually agreed and provide the Parties such additional information as they may reasonably require from time to time to fulfil their obligations hereunder.

ARTICLE 5 DEVELOPER'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Developer shall have the following obligations:

5.1 Performance Security

- (a) The Developer shall, for due and punctual performance of its obligations, has deliver to JTDCL, simultaneously with the execution of this Agreement submitted a bank guarantee from a scheduled bank acceptable to JTDCL in the form as set forth in **Schedule 3, ("Performance Security")** for a sum of Rs. _____¹/- (Rupees _____ only) equivalent to 5% (five percent) of the project cost in favour of JTDCL from a scheduled/ nationalised bank acceptable to JTDCL and enforceable and payable in Ranch.
- (b) The Performance Security shall remain in force and effective for a period of 60 days from the Handover of Project Facilities to JTDCL in case the projected is handed over in pursuance to Article 10 or for a period of 60 days from Termination Date in case this Agreement is terminated in pursuance to Article 9. Upon request made by the Developer for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause, JTDCL shall release the Performance Security forthwith .

Provided that if the Agreement is terminated due to any event other than a Developer Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to JTDCL's right to receive amounts, if any, due from the Developer under this Agreement, be duly discharged and released to the Developer.

5.2 Appropriation of the Performance Security

- (a) In the event of the Developer being in default of the due, faithful and punctual performance of its obligations relating to the Project under this Agreement and failing to remedy such default within the relevant cure period or owing any sums to JTDCL under this Agreement or in the event of there being any claims or demands whatsoever whether liquidated or which may at any time be made or have been made on behalf of JTDCL for or against the Developer under this Agreement or against JTDCL in respect of this Agreement, JTDCL shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to call in, encash and appropriate the relevant or delinquent amounts from the

¹ Amount equivalent to 5% of Total Project Cost

Performance Security, as the case may be, as damages for such default, dues, demands or claims.

- (b) The decision of the JTDCL as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Developer. The Developer specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by JTDCL under this Agreement is required to be provided in connection with any demand made by the JTDCL to recover such compensation through encashment of the Performance, as the case may be, under this Agreement and that no document or any action shall be required other than JTDCL's written demand in this behalf.
- (c) In the event of encashment of the Performance Security, as the case may be, by the JTDCL, in full or part, the Developer shall within 30 (thirty) days of receipt of the encashment notice from the JTDCL provide a fresh Performance Security, or replenish the existing Performance Security, as the case may be. The provisions of this Article 5 shall apply mutatis mutandis to such fresh Performance Security. The Developer's failure to comply with this provision shall constitute a Developer Event of Default, which shall entitle the JTDCL to terminate this Agreement in accordance with the provisions of Article 9 hereof.

5.3 Development Plan & Drawings

5.3.1 Development Plan

The Developer shall, within 15 (fifteen) days of the Appointed Date, finalize the Development Plan in consultation with JTDCL. The Development Plan should be based on the Detailed Project Report provided by JTDCL and should be in conformity with the Construction Requirements and Operations Requirement set out in **Schedule 2** and **Schedule 4** respectively. Developer may as part of its Development Plan suggest any changes to the standards, specifications etc. provided as part of the Detailed Project Report.

5.3.2 Designs, Drawings and Adventure Sports

(a) Preparation of Designs, Drawings and Adventure Sports

- (i) The Developer shall, based on the approved Development Plan and Construction Requirement prepare its own Designs and Drawings for developing the Project Facilities. Provided that, the Developer shall in any event be solely responsible for the adequacy of the Drawings, Designs and details on facilities for Adventure Sports Activities.

- (ii) All Drawings, Designs and details of Project Facilities shall be subject to review by the Third Party Inspector and JTDCL as hereinafter provided in the succeeding sub-article (b).

(b) Review of Drawings, Designs and details of Adventure Sports

- (i) The Developer shall promptly and in such sequence as is consistent with the Construction Requirements, submit a copy each of the Drawings, Designs and details on facilities for Adventure Sports to the Third Party Inspector and JTDCL.
- (ii) By forwarding the Drawings, Designs and details on Adventure Sports facilities to the Third Party Inspector and JTDCL pursuant to the preceding sub-article (i), the Developer shall be deemed to have represented that it has verified and determined that the Drawings, Designs and details on Adventure Sports forwarded are in conformity with the Construction Requirements and Operation and Maintenance Requirements.
- (iii) Within 7 (Seven) days of receipt of the Drawings, Designs and details on Adventure Sports facilities, Third Party Inspector shall review the same taking into account, inter alia, comments of JTDCL, if any, thereon, and convey its comments/observations to the Developer on the conformity of Drawings, Designs and details on Adventure Sports facilities with the approved Detailed Project Report, Development Plan and Construction Requirements. If the comments/observations of the Third Party Inspector indicate that the Drawings, Designs and details on Adventure Sports facilities are not in conformity with the Detailed Project Report, Development Plan and Construction Requirements, it shall be revised by the Developer to the extent necessary and resubmitted to Third Party Inspector and JTDCL for further review. The Third Party Inspector and JTDCL shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised Drawings, Designs and details on Adventure Sports facilities which shall be taken into account by the Developer while finalising the Drawings, Designs and details of Adventure Sports facilities.
- (iv) If, within the period stipulated in the preceding sub-article (iii), the Third Party Inspector and JTDCL does not respond to the Drawings, Designs and details on Adventure Sports facilities submitted to it by the Developer, the Developer shall be entitled to proceed with the Project on the basis of such Drawings, Designs and details on Adventure Sports facilities submitted by it to the Third Party Inspector and JTDCL.

- (v) Notwithstanding any review or failure to review by or the comments/observations of the Third Party Inspector or JTDCL, the Developer shall be solely responsible for the adequacy of the Drawings, Designs and details on Adventure Sports facilities and their conformity with the Detailed Project Report, Development Plan and Construction Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations as set forth in this Agreement.
- (vi) The Developer shall be responsible for delays caused by reason of any Drawings, Designs and details on Adventure Sports facilities not being in conformity with the Detailed Project Report/Development Plan/Construction Requirements and shall not be entitled to seek any relief in that regard from JTDCL.
- (vii) The Developer shall in consultation with the Third Party Inspector finalise the construction schedule for the Project in accordance with the Development Plan.
- (viii) The Developer shall furnish to JTDCL three copies of "as built" Drawings illustrating the layout of the Project, if any, of the buildings and structures forming part of Project Facilities reflecting the Project as actually designed, engineered and constructed.

5.4 Project Implementation

(a) Construction Works

- (i) The Developer is required to commence Construction Works only on or after the approval of the Development Plan by JTDCL.
- (ii) Unless otherwise permitted by JTDCL, no Construction Works shall begin until the Third Party Inspector is in place and has assumed charge. The Developer shall immediately upon commencement of Construction Works notify the Third Party Inspector and JTDCL of the same.
- (iii) The Developer shall adhere to the approved Developer Plan, Detailed Project Report, Construction Requirements and achieve COD on or before the Scheduled Project Completion Date. If the Developer fails to achieve COD on or before the Scheduled Project Completion Date for any reason other than conditions constituting Force Majeure or for reasons attributable to JTDCL, the Developer shall pay to JTDCL, damages calculated at the rate of 6% (six percent) of the Performance Security, for every month of delay till COD.

- (iv) The Developer shall, before commencement of Construction Works have requisite organisation and designate and appoint suitable officers / representatives as it may deem appropriate to supervise the Project, to deal with the Third Party Inspector/JTDCL and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- (v) For the purposes of determining whether the Construction Works are being undertaken in accordance with the Detailed Project Report, Development Plan and Construction Requirements, the Developer shall with due diligence carry out all necessary and periodical Tests at its cost in accordance with the instructions and under the supervision of the Third Party Inspector and the Construction Requirements.
- (vi) If, as a result of such tests, JTDCL and/or the Third Party Inspector decides that any plant, materials, consumables, design, process, software or workmanship relating to the Project Facility is defective or otherwise not in compliance with the Detailed Project Report, Development Plan, Construction Requirement and Good Industry Practice, JTDCL and/or the Third Party Inspector may reject such materials, consumables, process or workmanship and shall forthwith notify the Developer with reasons for rejection and require correction of such defects within the stipulated time.
- (vii) The Developer shall make good such notified defects within the stipulated time, and undertake re-testing, if any, at its cost that may be required by JTDCL and/or the Third Party Inspector. In the event that the Developer fails to repair, replace or rectify such defects within a period of 7 (Seven) days from the date of notice issued by the Third Party Inspector in this behalf, JTDCL shall be entitled to get the same repaired, replaced or rectified at the Developer's risk and cost so as to ensure that the Project Facility is in conformity with the Construction Requirement. All costs incurred by JTDCL in this behalf shall be reimbursed by the Developer to JTDCL within 7 (Seven) days of receipt of demand on this behalf.
- (viii) The Developer shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- (ix) If the Tests are successful and it is ascertained that the Project Facilities can be safely and reliably opened for operation as the case may be, the Third Party Inspector shall issue the Completion Certificate in consultation with JTDCL.

- (x) The Third Party Inspector, may, by written notice, require the Developer and with the consent of JTDCL, to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements.
- (xi) The Project shall be deemed to be complete and ready for operations only when the Completion Certificate is issued by the Third Party Inspector in accordance with the provisions hereof.

Provided, if the issue of the Completion Certificate is delayed beyond 30 days of the Scheduled Project Completion Date, JTDCL shall, subject to the provisions of Article 5.10, be entitled to terminate this Agreement and to appropriate the Performance Security.

5.5 Operation and Maintenance

- (a) The Developer shall, shall provide Adventure Sports Services to general public/ tourists.
- (b) The Developer shall fix, demand, collect, appropriate and revise ticket prices from the Adventure Sports Activities, from the COD till the handover.
- (c) Revenue generation from the Project Facilities shall be the sole responsibility of the Developer.
- (d) The Developer shall, possess requisite technical, financial and managerial expertise/capability, operate and maintain the Project Facilities in accordance with the O&M Requirement as set out in Schedule 4, but in either case, the Developer shall remain solely responsible to meet the O&M Requirements.
- (e) The Developer shall install necessary equipments and should ensure they are of good quality conforming to international standards. The Developer should furnish quality certificate from competent JTDCL for these equipment.
- (f) The Developer should operate the activity on continuous basis during the operation period.
- (g) The Developer shall, during the Agreement Period, have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project Facilities, to deal with the JTDCL and to be responsible for all necessary exchange of information required pursuant to this Agreement;

- (h) The Developer shall provide at its cost all equipment, consumables and materials, necessary for undertaking the operation and maintenance of the Project Facilities. Maintenance shall include regular, routine, periodic and preventive maintenance and the replacement of equipment/consumables etc. and upkeep of the Project Facility in good order and working condition.
- (i) The Developer shall at its cost and expenses replace, repair, replenish or renew, as the case may be, the materials, goods, machinery, equipment, spares, capital components of the Project Facility as necessary to carry out efficient operations and maintenance thereof and to provide adequate service standards. The Developer shall maintain the maintenance logs.
- (j) The Developer shall provide training to the personnel nominated by JTDCL, in operation, management and maintenance of the Project Facility;
- (k) In the event the Developer has failed to operate and maintain the Project Facilities in accordance with O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the JTDCL (“Notice to remedy”), the Developer shall be deemed to be in material breach of O&M Requirements.
- (l) JTDCL, acting reasonably and in accordance with the provisions of this Agreement, determines that due to breach of its obligations by the Developer,
 - (i) the maintenance of the Project Facility or any part thereof has deteriorated to a level which is below the acceptance level by the JTDCL ; and
 - (ii) there has been a serious or persistent breach in adhering to the O&M Requirements and thereby the Project Facility or any part thereof are not safe for operations;

Upon occurrence of Material Breach of O&M Requirements, JTDCL shall, without prejudice to and notwithstanding any other consequences provided therefor under this Agreement, be entitled to terminate this Agreement.

For avoidance of doubt, persistent breach shall mean:

- (i) any breach of O&M Requirements by the Developer which has not been remedied by the Developer despite a Notice to Remedy in respect thereof issued by the JTDCL ;
- (ii) recurrence of a breach by the Developer, during the pendency of Notice to Remedy by the JTDCL requiring the Developer to remedy a breach, and

- (iii) repeated occurrence of a breach, notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

5.6 Insurance

(a) Construction Period

The Developer shall at its cost and expense, purchase and maintain by due reinstatement or otherwise, during the Construction Period, such insurance as are necessary including but not limited to the following:

- i. Construction all risk insurance;
- ii. comprehensive third party liability insurance including injury or death to personnel / representatives of Persons who may enter the Project Site;
- iii. workmen's compensation insurance;
- iv. any other insurance that may be necessary to protect the Developer, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iv).

(b) Operations Period

The Developer shall at its cost and expense, purchase and maintain by reinstatement or otherwise, for the Operations Period, insurance against:

- i. loss, damage or destruction of the Project Facilities, at replacement value;
- ii. the Developer's general liability arising out of the Rights;
- iii. liability to third parties;
- iv. bulk insurance for the tourists
- v. any other insurance that may be necessary to protect the Developer, its employees, visitors and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

(c) Evidence of Insurance

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

(d) Validity of Insurance

The Developer shall from time to time promptly pay insurance premium, keep the insurance policies in force and valid throughout the Agreement Period, and furnish copies thereof to JTDCL. The insurance policy shall not be cancelled or terminated unless 60 days' clear notice of cancellation is provided to JTDCL in writing.

If at any time the Developer fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, JTDCL may at its option (but not being obliged to do so) obtain and maintain such insurance and all sums incurred by JTDCL thereof shall be reimbursed by the Developer to JTDCL together with interest thereon at 5% over SBI PLR from the date the respective sums were incurred by JTDCL, within 7 days from the receipt of claim in respect thereof made by JTDCL.

(e) Application of Insurance Proceeds

The proceeds of all insurance policies received shall be promptly applied by the Developer towards repair, renovation, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Developer may designate JTDCL as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Developer shall carry out such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project Facilities after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

5.7 Environmental Compliance

The Developer shall, ensure that all aspects of the Project Facilities during the Agreement Period, and processes employed in the construction, operation and maintenance thereof shall conform to the laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto.

5.8 Reporting Obligations

(a) During Construction Period

During the Construction Period, the Developer shall, on or before the 7th (Seventh) day of every month, prepare and submit to the Third Party Inspector/JTDCL a monthly progress report, for the previous month. Such report shall describe the progress of the procurement, completion and commissioning of the Project Facilities and shall inter-alia comprise following components;

- i. **Summary of Progress:** summary of the progress of the Project having following details:
 1. any areas of significant concern and the action being taken to resolve any significant difficulties;
 2. the actual progress made during that month against the construction schedule set out in the Development Plan, including a description in reasonable detail of the work carried out;
 3. any matters which are likely to materially and adversely affect the construction of the Project;
 4. any potential or actual deviations from the construction schedule, Development Plan, Detailed Project Report and construction requirements or otherwise confirmation that construction is proceeding in accordance therewith; and
- ii. **Budget Analysis:** showing actual expenditure in that month against the relevant budget for that period and detailing the remaining costs of the Project Facility;
- iii. **Completion:** details of any changes to the proposed date of completion of construction of the Project Facility and the reasons for such changes; and
- iv. **Clearances/Applicable Permits:** written confirmation that all Clearances/Applicable Permits then required are in full force and effect including a list of such clearances.

(b) During Operations Period

During the Operations Period, the Developer shall, on quarterly basis commencing from the Commercial Operation Date, prepare and submit to the Maintenance Review Committee/JTDCL a quarterly progress report, for the succeeding quarter. The quarterly progress report shall inter-alia provide following;

- i. maintenance plan for the Project Facility for the next quarter and a report on maintenance carried out during the previous quarter (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan)
- ii. details of costs or expenses of operations, maintenance and other repairs incurred in that quarter or expected to be incurred in the following quarter on the Project Facility;
- iii. Number of visitors on each of the days during the previous quarter;
- iv. Compliance with the Operation Requirement;
- v. Copies of new insurances and any insurance renewed;

- vi. Details of Force Majeure Event, if any, which has occurred or which is imminent and fortnightly updates with respect to it as long as it continues or is imminent;
- vii. Details of any actual, pending or threatened material litigation, arbitration, claim or labour dispute relating to Project;
- viii. Details of the notices, if any issued under this Agreement; and
- ix. Any other information which JTDCL may specifically sought to be given by the Developer.

5.9 General Obligations

The Developer shall at its own cost and expense:

- (a) investigate, study, design, develop, operate and manage the Project Facilities in accordance with the provisions hereof;
- (b) obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Agreement Period;
- (c) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, patents, agreements and permissions for the designs, materials, methods, processes and systems used in or incorporated in the Project and indemnify and keep indemnified JTDCL and its advisors and consultants against all costs, damages, liabilities or consequences arising out of any breach by the Developer in this behalf.
- (d) responsible to carry out or cause to be carried out the Construction Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, engineers and contractors with experience of work similar in scope and nature to that required under this Agreement.
- (e) appoint, supervise, monitor and control as necessary, the activities of Contractors under the respective Project Agreements;
- (f) engineer and execute the construction and implementation of the Construction Works using the best design and engineering principles and practices.
- (g) make its own arrangements at its cost for quarrying, if necessary, and observe and fulfill the environmental and other requirements under the Applicable Laws and Clearances.
- (h) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies JTDCL against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall JTDCL be treated as employer in this regard;
- (i) make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Law and Applicable Permits;

- (i) confine its activities to the Site and to any additional areas arranged by the Developer at its cost and not encroach upon, damage or degrade adjacent land and be liable for all costs and consequences for its failure to do so.
- (k) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Agreement Period.
- (l) be responsible to provide a security and watch and ward service at the Site to maintain the safety and security of the life and property and make provision and arrangement for first aid and prompt medical attention in cases of accidents and emergencies.
- (m) notify JTDCL and hand over to them any archaeological finds, treasures and precious and semi-precious minerals discovered at the Project Site or its employees, agents and subcontractors.
- (n) promptly remove from the Site in accordance with Good Industry Practice all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris, and keep the Site in a neat and clean condition and in conformity with the Applicable Laws and Clearances.
- (o) ensure that the Project Facilities remain free from all encroachments and take all steps necessary to remove encroachments, if any;
- (p) upon receipt of a request thereof, afford access to the Project Site/Project Facilities to the authorised representatives of JTDCL for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.
- (q) be responsible to provide the necessary documents and other information and such assistance, labour, materials, consumables, electricity, fuel, stores, apparatus and instruments as may reasonably be required by JTDCL/Third Party Inspector to carry out tests in the Project Facility. Further, the Developer shall provide engineering support and technical know-how as necessary to carry out such tests.
- (r) Replace poor/defective spare parts immediately and safety certificate with validity should be obtained from the authorized state government safety officer and produced before operation;
- (s) It will be sole responsibility of the developer to ensure that no accident or mishaps occurs during the operation of the said facilities.

5.10 No Breach of Obligations

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

- (i) Force Majeure Event, subject to Article 8.3;
- (ii) JTDCL Event of Default;

- (iii) Compliance with the instructions of the Third Party Inspector/JTDCL/Maintenance Review Committee or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Developer of any of its obligations as set forth in this Agreement;
- (iv) Closure of the Project Facilities or part thereof with the approval of JTDCL.

ARTICLE 6 JTDCL'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, JTDCL shall have the following obligations:

6.1 Specific Obligations

- (a) JTDCL shall handover the peaceful possession of the Project Site on an as-is where-is condition to the Developer within 15 days of Appointed Date.
- (b) JTDCL shall arrange the power, water and other utilities as may be required for execution and implementation of the Construction Works at its cost and expense.
- (c) JTDCL shall grant in a timely manner all such approvals, permissions and authorizations which the Developer may require or is obliged to seek from JTDCL under this Agreement, in connection with implementation of the Project and the performance of its obligations.
- (d) JTDCL shall approve in timely manner the Development Plan submitted by the Developer.
- (e) JTDCL shall issue Completion Certificate in a timely manner upon completion of the Construction work by the Developer in accordance with the term of this Agreement and on receiving recommendation in this regard from the Third Party Inspector.
- (f) JTDCL shall indemnify the Developer and shall hold it harmless from and against any claim or cost that may arise as a result of any litigation in connection with the project site.
- (g) upon written request from the Developer, JTDCL shall use its best efforts to provide the Developer for the Project Facilities access to all infrastructure facilities and utilities, including water, electricity, telecommunication, sewerage and drainage facilities already available on /at the site.
- (h) JTDCL shall grant all Clearances which are necessary for the implementation of the Project at the appropriate stages and which are in its JTDCL to grant or facilitate the granting of the same by the relevant authorities subject to the Developer complying with the conditions for the grant of such Clearances.
- (i) JTDCL shall make timely payment of the cost of construction of the Project Facilities and the Annual Fee as per the payment milestones and other terms and conditions of this Agreement.

6.2 General Obligations

JTDCL shall:

- (a) where appropriate provide necessary assistance to the Developer in securing Applicable Permits;
- (b) observe and comply with all its obligations set forth in this Agreement.

6.3 Constitution of Maintenance Review Committee

- (a) At least 10 (Ten) days prior to likely completion of the Construction Period, a Committee comprising a representative each from JTDCL, Government of Jharkhand and the Developer shall be constituted by JTDCL for monitoring the operation of the Project Facilities by the Developer (the “**Maintenance Review Committee**”).
- (b) The nominee appointed by JTDCL shall be the chairman of the Maintenance Review Committee. The Maintenance Review Committee shall, to the extent possible, act by consensus, failing which it will act by majority vote. The Maintenance Review Committee shall determine the procedure to be followed for its meetings and carrying out its functions.
- (c) The Maintenance Review Committee shall oversee the operation and maintenance of the Project by the Developer in accordance with the provisions hereof. It shall perform the following duties:
 - i. Review the periodic reports submitted by the Developer;
 - ii. Review the curing of defects and defaults in the operation and maintenance of the Project/Project Facilities;
 - iii. Review the safety and security of the operations and maintenance activities relating to the Project;
- (d) The Maintenance Review Committee shall meet at least once every quarter or any earlier date, as may be required. The expenses of the working and functioning of such Maintenance Review Committee shall be borne by the Developer.
- (e) The Maintenance Review Committee may from time to time appoint experts to assist them in discharge of their functions in accordance with the provisions hereof. The expenses of the experts shall be borne by the Developer.

- (f) The Developer shall provide members of the Maintenance Review Committee and the experts, if any appointed in accordance with the sub-clause above, access to all parts of the Project Site/Project Facilities and to all documents, records and relevant materials and information relating to the Project.

ARTICLE 7
PAYMENT OF CONSTRUCTION COST AND ANNUAL FEE

7.1 Payment of Construction Cost

Subject to the provisions of this Agreement, JTDCL shall pay an amount of Rs. 83,56,000 (Rupees Eighty Three Lakhs and Fifty Six Thousand) as the cost payment towards Development of Adventure Activities at Dassam, Jonha, Hundru and Panchghagh Falls as per the payment milestones provided in Article 7.3 and Article 7.4 respectively.

7.2 Payments towards construction:

Payment Milestones		
SL No.	Description	Percentage of Payment to be released
1	Mobilization Advance against Bank Guarantee	30%
2	Procurement	60%
9	Installation, Testing & Commissioning	10%
Total		100%

7.3 Annual Fee Payment

In consideration of the Developer agreeing to implement the Project, the Developer shall during the Agreement Period pay to the Authority, an amount of Rs. _____ (In words) on Annual basis ("**Annual Fee**") at the beginning of every Financial Year commencing from the Commercial Operation Date (. The first Annual Fee shall be paid on the Commercial Operation Date on Pro-rata basis. Annual Fee shall be escalated by 5% every year.

7.4 Mode of Payment

- (a) The Annual Fee shall be made by way of demand draft/cheque in favour of the Authority and shall be paid not later than 30 (thirty) days ("**Due Date**").

Any delay in making Annual Fee shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default at the prevailing medium term prime lending rate of the State Bank of India plus 2% per annum, on the entire amount of unpaid payable outstanding, from the relevant due date specified in sub-clause (a) above till the date of payment/ realization.

ARTICLE 8 FORCE MAJEURE

8.1 Force Majeure Event

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("**Affected Party**") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event:

- (a) earthquake, flood, inundation and landslide
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
- (c) fire caused by reasons not attributable to the Developer or any of the employees, Contractors or agents appointed by the Developer for purposes of the Project;
- (d) acts of terrorism;
- (e) strikes, labour disruptions, riots or any other industrial disturbances not arising on account of the acts or omissions of the Developer or the Contractor.
- (f) action of a Government Agency having Material Adverse Effect including but not limited to
 - i. acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Site/Project Facility or any part thereof or of the Developer's or the Contractor's rights in relation to the Project Facility.
 - ii. any judgment or order of a court of competent jurisdiction or statutory JTDCL in India made against the Developer or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Developer, and
 - iii. any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Developer's or the Contractor's breach or failure in complying with the Construction Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Developer or the Contractor as the case may be is bound.
- (g) early termination of this Agreement by JTDCL for reasons of national emergency, national security or the national interest.
- (h) any failure or delay of a Contractor caused by any of the events mentioned in (f) and (g) above, for which no offsetting compensation is payable to the Developer by or on behalf of the Contractor.
- (i) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste,

radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub clause for which no offsetting compensation is payable to the Developer by or on behalf of the Contractor.

8.2 Obligations of the Parties

- (a) As soon as practicable and in any case within 7 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party of the same setting out, inter alia, the following in reasonable detail:
- i. the nature and extent of the Force Majeure Event;
 - ii. the estimated Force Majeure Period;
 - iii. the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - iv. the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - v. any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- (b) As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding sub-article 8.2 (a), the Parties along with the Third Party Inspector, if existing, shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facilities in order to:
- i. assess the impact of the underlying Force Majeure Event,
 - ii. to determine the likely duration of Force Majeure Period and,
 - iii. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- (c) The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding sub-article (b) as also any information, details or document, which the Parties may reasonably require.

8.3 Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- (a) due notice of the Force Majeure Event has been given as required by the preceding Sub-article 8.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Third Party Inspector, if existing, a written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;
- (f) any insurance proceeds received shall be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

8.4 Termination due to Force Majeure Event

(a) Termination

- (i) If a Force Majeure Event, is an event described under Sub-articles 8.1(a) to 8.1(e) and 8.1 (i), continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.
- (ii) If the Force Majeure Event is an event described in 8.1 (f), 8.1 (g) or 8.1 (h) and the Developer having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Developer shall be entitled to terminate this Agreement.

Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in 8.1 (f), 8.1 (g) or 8.1 (h) subsists or is likely to subsist for a period exceeding 180 days.

Provided further, JTDCL may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Sub-articles 8.1(f), 8.1(g) or 8.1(h).

(b) Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding sub-article (a) (i) or (a) (ii), it shall issue Termination Notice Setting out;

- i. in sufficient detail the underlying Force Majeure Event;
- ii. the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- iii. the estimated Termination Payment including the details of computation thereof, if any;
- iii. any other relevant information.

(c) Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- i. the Termination Payment, if any, payable by JTDCL in accordance with the following sub-article (d) is paid to the Developer on the Termination Date and
- ii. the Project Facilities are handed over to JTDCL by the Developer on the Termination Date free from all Encumbrance.

(d) Termination Payment

Upon Termination of this Agreement due to a Force Majeure Event, the Developer shall be paid for all work carried out before receiving the termination notice and for any work carried out afterword to which commitment was made. Further, JTDCL shall release the Performance Security, if any, to the Developer. Provided JTDCL shall be entitled to deduct from the Termination Payment any amount due and recoverable by JTDCL from the Developer as on the Termination Date.

8.5 Liability for other losses, damages etc.

Save and except as expressly provided in this Article, neither Party hereto shall be liable in any manner whatsoever to 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.

8.6 DISPUTE RESOLUTION

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure as mentioned in Article 11; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

ARTICLE 9 EVENTS OF DEFAULT AND TERMINATION

9.1 Events of Default

Event of Default means either “Developer Event of Default” or “JTDCL Event of Default” or both as the context may admit or require.

(a) Developer Event of Default

Any of the following events shall constitute an event of default by the Developer ("**Developer Event of Default**") unless such event has occurred as a result of a Force Majeure Event or JTDCL Event of Default or any governmental action for reasons other than any breach, default or lapse on the part of the Developer:

- i. the Performance Security, has been encashed and appropriated in accordance with Article 5.2 and the Developer fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- ii. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article 5.2, the Developer fails to cure, within a Cure Period of 60 (sixty) days, the Developer Event of Default for which whole or part of the Performance Security was appropriated;
- iii. issue of the Completion Certificate is delayed beyond 30 (sixty) days of Scheduled Project Completion Date;
- iv. the Developer is in breach of the Construction Requirements or the Operations Requirements, as the case may be;
- v. The Developer fails to make payment of the Annual Fee to the Authority by the Due Date therefor and more than 30 days have elapsed since such default
- vi. The Developer is in Material Breach of any of its other obligations under this Agreement on account of its own acts of omission or commission under this Agreement and the same has not been remedied for more than 30 days;
- vii. Any representation made or warranty given by the Developer under this Agreement is found to be false or misleading;
- viii. A resolution for voluntary winding up has been passed by the shareholders of the Developer;
- ix. Any petition for winding up of the Developer has been admitted and liquidator or provisional liquidator has been appointed or the Developer has been ordered to be wound up by Court of competent jurisdiction except for the purpose of amalgamation or reconstruction with the prior consent of JTDCL, or reconstructed entity has unconditionally assumed all surviving obligations of the Developer under this Agreement;

- x. The Developer has abandoned the Project Facilities;
- xi. If the Developer fails to pay the necessary insurance premiums towards the Project Facilities and thereby causes the insurance coverage on the Project Facilities to diminish, terminate or expire;
- xii. The Developer has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xiii. The Developer has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect and such attachment has continued for a period exceeding 60 days;

(b) JTDCL Event of Default

Any of the following events shall constitute an event of default by JTDCL ("JTDCL Event of Default"), when not caused by a Developer Event of Default:

- i. The JTDCL fails to make any Payment during the Construction Period by the Due Date therefor and more than 30 days have elapsed since such default;
- ii. JTDCL is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Developer.
- iii. JTDCL has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
- iv. Any governmental action not arising out of a breach, default or lapse on the part of the Developer, whereby this Agreement becomes inoperable or takeover by any government agency of the Project/Project Facilities or any part thereof, thereby causing Material Adverse Effect.
- v. Any representation made or warranties given by the JTDCL under this Agreement has been found to be false or misleading.

9.2 Termination due to Event of Default

(a) Termination for Developer Event of Default

- (i) Without prejudice to any other right or remedy which JTDCL may have in respect thereof under this Agreement, upon the occurrence of a Developer Event of Default, JTDCL may terminate this Agreement by issuing Termination Notice.
- (ii) If JTDCL decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Developer. Within 30 days of receipt of the Preliminary Notice, the Developer shall submit to JTDCL in sufficient detail, the manner in which

it proposes to cure the underlying Event of Default (the "Developer's Proposal to Rectify"). In case of non submission of the Developer's Proposal to Rectify within the said period of 30 days, JTDCL shall be entitled to terminate this Agreement by issuing Termination Notice, to appropriate the Performance Security, and takeover the Project Facilities.

- (iii) If the Developer's Proposal to Rectify is submitted within the period stipulated therefor, the Developer shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however the Developer fails to remedy/cure the underlying Event of Default within such further period allowed, JTDCL shall be entitled to terminate this Agreement, to appropriate the Performance Security, if existing and takeover the Project Facilities.

(b) Termination for JTDCL Event of Default

- (i) Without prejudice to any other right or remedy which the Developer may have in respect thereof under this Agreement, upon the occurrence of JTDCL Event of Default, the Developer shall be entitled to terminate this Agreement by issuing Termination Notice.
- (ii) If the Developer decides to terminate this Agreement pursuant to preceding clause (i) it shall in the first instance issue Preliminary Notice to JTDCL. Within 30 days of receipt of Preliminary Notice, JTDCL shall submit to the Developer its proposal to remedy/ cure the underlying Event of Default (the "JTDCL Proposal to Rectify"). In case of non submission of JTDCL Proposal to Rectify within the period stipulated therefor, Developer shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If JTDCL Proposal to Rectify is forwarded to the Developer within the period stipulated therefor, JTDCL shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however JTDCL fails to remedy/ cure the underlying Event of Default within such further period allowed, the Developer shall be entitled to terminate this Agreement by issuing Termination Notice.

(c) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub article (a) or (b), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date, which shall be a date occurring not earlier than 60 days from the date of Termination Notice;

- (iii) the estimated Termination Payment including the details of computation thereof, if any and;
- (iv) any other relevant information.

(d) Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- (i) until Termination, the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities,
- (ii) the Termination Payment, if any, payable by JTDCL in accordance with the following sub-article (f) is paid to the Developer on the Termination Date and
- (iii) the Project/ Project Facilities are handed over to JTDCL by the Developer on the Termination Date free from any Encumbrance along with any payment that may be due by the Developer to JTDCL.

(e) Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

Provided that the Party in breach shall compensate the other Party for any direct costs/consequences occasioned by the Event of Default which caused the issue of Termination Notice.

(f) Termination Payments

- i. Upon Termination of this Agreement on account of JTDCL Event of Default, the Developer shall be paid for all work carried out before receiving the termination notice and for any work carried out afterword to which commitment was made within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; Further, JTDCL shall release the Performance Security, if any, to the Developer. Provided JTDCL shall be entitled to deduct from the Termination Payment any amount due and recoverable by JTDCL from the Developer as on the Termination Date.
- ii. Upon Termination of this Agreement on account of Developer Event of Default, the Developer shall pay to the JTDCL by way of compensation, all direct costs suffered or incurred by the JTDCL as a consequence of such material default,

within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; Provided JTDCL shall be entitled to deduct from the Termination Payment any amount due and recoverable by JTDCL from the Developer as on the Termination Date.

Further, JTDCL shall be entitled to forfeit the performance security, if any, submitted by the Developer.

9.3 Rights of JTDCL on Termination

(a) Upon Termination of this Agreement for any reason whatsoever, JTDCL shall upon making the Termination Payment, if any, to the Developer have the power and JTDCL to:

- (i) enter upon and take possession and control of Project Site/Project Facilities forthwith;
- (ii) prohibit the Developer and any person claiming through or under the Developer from entering upon/ dealing with the Project Site / Project Facilities;

(b) Notwithstanding anything contained in this Agreement, JTDCL shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Developer or its contractors, and the handover of the Project Site/ Project Facilities by the Developer to JTDCL shall be free from any such obligation.

9.4 Accrued Rights of Parties

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

ARTICLE 10 HANDOVER OF PROJECT FACILITIES

10.1 Obligations of Parties

(a) Developer's Obligations

- i. The Developer shall on the date of expiry of Agreement Period, hand over peaceful possession of the Project Facilities to JTDCL on as-is-where-is basis free of cost as set out in sub-clause (c) below.
- ii. Atleast 2 months before the expected expiry of the Agreement Period a joint inspection of the Project Facilities shall be undertaken by JTDCL and the Developer. JTDCL shall, within 30 days of such inspection prepare and furnish to the Developer a list of works/ jobs ("Handover Requirements"), if any, to be carried out so as to conform to the Construction Requirements and O&M Requirements. The Developer shall promptly undertake and complete such works / jobs at least a month prior to the expected expiry of the Agreement Period and ensure that the Project Facilities continue to meet such requirements until the same are handed over to JTDCL.
- iii. JTDCL shall, within 30 days of the joint inspection undertaken under preceding clause (ii) prepare and furnish to the Developer a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed over to JTDCL along with the Project Facilities.
- iv. The Developer hereby acknowledges JTDCL's rights specified in Article 9.3 enforceable against it upon Termination and its corresponding obligations arising there from. The Developer undertakes to comply with and discharge promptly all such obligations.

(b) JTDCL's Obligations

JTDCL shall, subject to JTDCL's right to deduct amounts towards;

- i. carrying out works/jobs listed in the Handover Requirements, which have not been carried out by the Developer,
- ii. purchase of items listed in the Handover Requirements, which have not been handed over to JTDCL along with the Project Site, and
- iii. any outstanding dues, which may have accrued in respect of the Project Facilities during the Agreement Period,

duly discharge and release to the Developer the Performance Security within 60 days from the expiry of the Agreement Period.

(c) Transfer of Project Facilities

- i. On the Transfer Date, the Developer shall subject to the provisions of this Agreement :
 - transfer, assign and deliver to JTDCL or its nominated agency the Project Facility including vacant possession of all buildings, facilities and structures relating thereto and its right, title and interest therein.
 - transfer all its rights, and interest in or over the tangible assets comprised in the Project Facility (including movable assets which JTDCL agrees to take over) to JTDCL or its nominated agency and execute such documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
 - hand over to JTDCL or its nominated agency all documents including as built drawings, manuals, designs, documents, information and records relating to the Project Facility.
 - to the extent possible assign to JTDCL or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies.
- ii. If on the Transfer Date, any Person is found to be occupying the Site, the Project Facility or any part thereof, it shall be lawful for JTDCL to secure summary eviction of such Person in accordance with the Applicable Laws.

ARTICLE 11 DISPUTE RESOLUTION

11.1 Amicable Resolution

If any dispute or difference or claims of any kind arises between the Parties in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement and so notified in writing by either Party to the other Party (the "Dispute"), whether before or after the termination of this Agreement, then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

11.2 ASSISTANCE OF EXPERT

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

11.3 ARBITRATION

(a) Arbitrators

In the event the dispute or difference or claim, as the case may be, is not resolved, as evidenced by the signing of the written terms of settlement by the Parties, within 30 (thirty) days of reference for amicable settlement and/or settlement with the assistance of Expert, as the case may be, the same shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three arbitrators, one each to be appointed by JTDCL and the Developer and the third to be appointed by the two arbitrators so appointed, who shall act as chairperson of the arbitral tribunal.

(b) Place of Arbitration

The place of arbitration shall be Ranchi but by agreement of the Parties, the arbitration hearings, if required, can be held elsewhere from time to time.

(c) English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

(d) Enforcement of Award

Any decision or award resulting from arbitration shall be final and binding upon the Parties. The Parties hereto hereby waive, to the extent permitted by law, any rights to appeal or to review of such award by any court or tribunal. 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 judgement upon the arbitral award may be entered in any court having jurisdiction thereof.

(e) Fees and Expenses

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 such Party.

(f) Performance during Arbitration

Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published; the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES, DISCLAIMER

12.1 Representations and Warranties of the Developer

The Developer represents and warrants to JTDCL that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and JTDCL to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) 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 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 are bound or affected;
- (g) 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 JTDCL, the outcome of which may constitute Developer Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (h) 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 Material Adverse Effect;
- (i) 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;
- (j) subject to receipt by the Developer from JTDCL 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 and to the Project Site/Project Facilities shall pass to and vest in JTDCL on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Developer or JTDCL;
- (k) no representation or warranty by the Developer contained herein or in any other document furnished by it to JTDCL 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;

- (l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Developer to any person to procure the Right.
- (m) 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 Project Site, and the information provided by JTDCL, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Developer in the course of performance of its obligations hereunder.

The Developer also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that JTDCL shall not be liable for the same in any manner whatsoever to the Developer.

12.2 Representations and Warranties of JTDCL

JTDCL represents and warrants to the Developer that:

- (a) JTDCL has full power and JTDCL to grant the Right;
- (b) JTDCL has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes JTDCL's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) There are no suits or other legal proceedings pending or threatened against JTDCL in respect of the Project Site or the Project.

12.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE 13 LIABILITY AND INDEMNIFICATION

13.1 LIABILITY OF DEVELOPER

Notwithstanding anything to the contrary contained in this Agreement,

- (a) In addition to the Developer's liability and obligations and JTDCL remedies provided elsewhere in this Agreement, the Developer shall be solely responsible for any loss of or damage to the Project Facilities, damage to environment, death or injury to person, and any other liabilities, damages, losses and reasonable cost and expenses (including legal costs) suffered by JTDCL during the Agreement Period:
- (i) resulting from any act, omission or negligence of the Developer or any other Person claiming through or under it, including Subcontractors, and their respective employees, agents, subcontractors and representatives.
 - (ii) in connection with, arising out of, or resulting from any breach of warranty, material misrepresentation by the Developer or any other Person claiming through or under it, or non-performance of any term, condition, covenant or obligation to be performed by the Developer under this Agreement.
- (b) The Developer shall also be liable for any loss or damage which occurs as a result of any act, event, omission, negligence or default (including property circumstances, quality of materials used, workmanship, structural, design or other defects, latent or patent, non-compliance with building bye laws, other Applicable Laws, regulatory requirements of Competent Authorities, Specifications and Standards or any other matter) for which the Developer is liable or which is attributable to the Developer and, in turn, the Persons claiming through or under the Developer.
- (c) The Developer shall be fully and solely liable for all works, contracts, dealings and activities in relation to the development, design, financing, construction, maintenance and implementation of the Project.

13.2 INDEMNIFICATION

- (a) Without prejudice to and in addition to the indemnification provisions elsewhere in this Agreement, the Developer agrees to indemnify and hold harmless JTDCL and its shareholders, managers, officers, directors, employees and advisors (Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages,

liabilities, costs, penalties, litigation, proceedings (including reasonable attorneys' fees and disbursements) and expenses of any nature whatsoever (collectively, "Losses") to which JTDCL Indemnified Party may become subject, in so far as such Losses directly arise out of, in any way relate to, or result from (i) any mis-statement or any breach of any representation or warranty made by Developer or (ii) the failure by Developer to fulfil any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Developer or Person claiming through or under the Developer or (iii) any claim or proceeding by any Third Party against JTDCL arising out of any act, deed or omission by the Developer. For the avoidance of doubt, indemnification of Losses pursuant to this Article 13 shall be made in an amount or amounts sufficient to restore each JTDCL Indemnified Party to the financial position it would have been in had the Losses not occurred.

- (b) Without limiting the generality of sub-clause (a) of this Article 13.2.
- (i) the Developer shall fully indemnify and defend JTDCL i.e., Indemnified Party from and against any and all Losses arising out of or with respect to (1) failure of the Developer and the Persons claiming through or under the Developer to comply with Applicable Laws and Clearances, (2) payments of Taxes relating to the Developer and the Persons claiming through or under the Developer, including contractors, suppliers and representatives, including the income or other taxes required to be paid by the Developer/such Persons, (3) non-payment of amounts due as a result of materials or services furnished to the Developer or any Person claiming through or under the Developer, which are payable by the Developer or such Person, or (4) breach by the Developer of any of the obligations under this Agreement.
 - (ii) the Developer shall fully indemnify and defend JTDCL Indemnified Party harmless from and against any and all Losses which the Indemnified Party may hereafter suffer or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Developer or by the Persons claiming through or under the Developer 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 the Indemnified Party, a license, at no cost to the Indemnified Party, authorising 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.

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

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

13.3 INDIRECT OR CONSEQUENTIAL LOSSES

Notwithstanding anything to the contrary contained in this Article 13, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect or consequential nature except as expressly provided in this Agreement.

13.4 SURVIVAL

The provisions of Article 13 shall survive the expiry or prior termination of this Agreement.

ARTICLE 14 CHANGE OF SCOPE

14.1 CHANGE OF SCOPE

- (a) JTDCL may, notwithstanding anything to the contrary contained in this Agreement, require provision of such additional works and services on or about the Project Facility which are beyond the Scope of Works (the "Change of Scope"), Provided such changes do not require expenditure exceeding 10% (Ten percent) of the Construction Cost and do not adversely affect the Scheduled Project Completion Date.
- (b) JTDCL shall whenever it desires provision of additional works and services referred to in sub-clause (a) above, issue to the Developer a notice of Change of Scope (the "**Change of Scope Notice**") through the Third Party Inspector.
- (c) Upon receipt of Change of Scope Notice, the Developer shall, within a period of 15 (fifteen) days, provide to JTDCL and the Third Party Inspector such information as is necessary and reasonable together with preliminary documentation in support of the following:
- (i) The impact which the Change of Scope is likely to have on the Project completion Schedule if the work is required to be carried out before the commencement of Operations Period, and
 - (ii) The cost to the Developer of complying with such Change of Scope Notice on account of increase in quantities of items of work, material and labour costs along with an analysis of rates (as per current schedule of rates applicable to works assigned by JTDCL to its contractors, including premium on such rates) for carrying out such items of work; the options suggested for implementing the proposed Change of Scope and the effect, if any, of each such option on the cost and time for its implementation.
- Provided that the cost of providing such information shall be reimbursed by JTDCL to the Developer to the extent the same are certified as reasonable by the Third Party Inspector.
- (d) The Third Party Inspector shall review the information provided by the Developer, assess the change in quantities of items of work, verify the analysis of rates if required, settle the rates and quantities and approve the designs, determine the additional cost resulting from such change that shall be payable by JTDCL to the Developer.

- (e) The Third Party Inspector shall communicate its recommendation to JTDCL within a period of 15 (fifteen) days from the receipt of information from the Developer.
- (f) JTDCL shall, on the basis of the recommendation of the Third Party Inspector, issue the Change of Scope Order within a period of 15 (fifteen) days from the date of recommendation made by the Third Party Inspector in accordance with preceding sub-clause (e) above.
- (g) The Change of Scope Order shall be effective and binding upon receipt thereof by the Developer. Notwithstanding a dispute regarding cost and time for implementation of such order, the Developer shall proceed with the performance of such order promptly following receipt thereof. Any such dispute shall be resolved in accordance with the Dispute Resolution Procedure. Pending resolution of the dispute, JTDCL shall pay to the Developer an amount equal to the costs certified by the Third Party Inspector in case the Change of Scope involves an increase in the bill of quantities.
- (h) All claims by the Developer pursuant to this Article 14 shall be supported by such documentation as is reasonably sufficient for the Third Party Inspector to determine the accuracy thereof, including invoices from Subcontractors and certification of such claims by the Statutory Auditors.
- (i) JTDCL shall pay to the Developer the amounts certified as the additional cost by the Third Party Inspector in periodic instalments as per the milestones determined by Third Party Inspector at the settled rates on the basis of actual work executed as measured and certified by the Third Party Inspector.

ARTICLE 15 MISCELLANEOUS

15.1 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at the prevailing medium term prime lending rate of the State Bank of India plus 2% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Article 16.1 shall neither be deemed or construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

15.2 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Ranchi shall have jurisdiction over all matters arising out of or relating to this Agreement.

15.3 Waiver

- (a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations 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 authorised representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) 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 hereunder nor time or other indulgence granted by a Party to the

other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

15.4 Survival

Termination of this Agreement

- (a) shall not relieve the Developer or JTDCL of any obligations already incurred 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.

15.5 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding 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.

15.6 Notices

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

If to JTDCL:

5, Mahatma Gandhi Marg,
Ranchi, Jharkhand – 834001

If to the Developer

Fax No.: _____

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

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

15.7 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall 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.

15.8 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any JTDCL to bind the other in any manner whatsoever.

15.9 Language

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 English language.

15.10 Exclusion of Implied Warranties etc.

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

15.11 Counterparts

This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the 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 JTDCL by:

For and on behalf of Developer:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of:

In the presence of:

SCHEDULE 1
DETAILS OF PROJECT SITE

(Details may be finalized in consultation with the Authority, 7 (days) prior to the signing of this Agreement)

**SCHEDULE 2
CONSTRUCTION REQUIREMENTS**

*(Details may be finalized by the Developer in Consultation with the Authority, 7 (days)
prior to the signing of this Agreement)*

SCHEDULE 3
PERFORMANCE SECURITY
(PROFORMA OF BANK GUARANTEE)³

THIS DEED OF GUARANTEE executed on this the _____ day of _____ at _____ (Name of the Bank) having its Head/Registered office _____ at _____ hereinafter referred to as "the Guarantor" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of

JHARKHAND TOURISM DEVELOPMENT CORPORATION LIMITED, GOVERNMENT OF JHARKHAND, represented by the _____, having its office at 5, Mahatma Gandhi Marg, Ranchi, Jharkhand – 834001, Jharkhand hereinafter referred to as "JTDCL", which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Development Agreement being entered into between JTDCL and _____, a company incorporated under the provisions of the Companies Act, 1956, having its registered office address at _____ hereinafter called "the Developer" ("the Development Agreement"), the Company has been granted the Right to implement the project envisaging Development of Adventure Activities at Dassam, Jonha, Hundru and Panchghagh Falls in Jharkhand on PPP mode in Ranchi, Jharkhand on PPP mode, hereinafter referred to as Project.
- B. In terms of Article 5.1 of the Development Agreement, the Developer is required to furnish to JTDCL, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ Only) as security for due and punctual performance/discharge of its obligations under the Development Agreement, relating to the Project, substantially in the format annexed as Schedule 3 to the Development Agreement.
- C. At the request of the Developer, the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Company of its obligations under the Development Agreement relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

- 1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Development Agreement.
- 2. The Guarantor hereby irrevocably guarantees the due and punctual performance by the Developer of all its obligations relating to the Project during the Construction Period.

³ To be issued by a Scheduled Bank in India

3. The Guarantor shall, without demur, pay to JTDCL sums not exceeding in aggregate Rs. _____/- (Rupees _____ only), within five (5) calendar days of receipt of a written demand therefor from JTDCL stating that the Developer has failed to meet its performance obligations under the Development Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Developer or validity of demand so made by JTDCL and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Developer or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, JTDCL shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Development Agreement or other documents or by the extension of time for performance granted to the Developer or postponement/non exercise/ delayed exercise of any of its rights by JTDCL or any indulgence shown by JTDCL to the Developer and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by JTDCL or any indulgence shown by JTDCL provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until _____⁴ unless discharged/released earlier by JTDCL in accordance with the provisions of the Development Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only) .
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Developer/the Guarantor or any absorption, merger or amalgamation of the Developer/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by _____ Bank
by the hand of Shri _____
its _____ and authorised official.

⁴12 months from the date of signing the Development Agreement

SCHEDULE 4 O&M REQUIRMENTS

1 Maintenance Requirements

1.1 The Developer shall, at all times, operate and maintain the Project Facilities in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Developer shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Agreement.

1.2 The Developer shall maintain the equipment under the Project Facility in line with the maintenance schedule (monthly, quarterly, annual, periodic, major maintenance etc.) prescribed by the Original Equipment Manufacturers" (OEMs) and other parts of the Project Facilities in line with Good Industry Practice.

2 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-4, if any defect, deficiency or deterioration in the Project Facilities poses a hazard to safety or risk of damage to property or the users, the Developer shall promptly take all reasonable measures for eliminating or minimizing such danger.

3 Daily Inspection by the Developer

The Developer shall, undertake a daily visual inspection of the Project Facilities and maintain a record thereof in a register to be kept in such form and manner as the Third Party Inspector may specify. Such record shall be kept in safe custody of the Developer and shall be open to inspection by the JTDCL and the Third Party Inspector at any time during operating hours.

4 Divestment Requirements

All defects and deficiencies specified in this Schedule-4 shall be repaired and rectified by the Developer so that the Project Facilities conforms to the Maintenance Requirements on the Handover Date.

SCHEDULE 5
SCOPE OF WORK OF THIRD PARTY INSPECTOR

1 Scope

- 1.1 These Terms of Reference for the Third Party Inspector (the “**TOR**”) are being specified pursuant to the Agreement dated (the “**Agreement**”), which has been entered into between the JTDCI and (the “**Developer**”) for development of Adventure Activities at Dassam, Jonha, Hundru and Panchghagh Falls in Jharkhand on PPP mode.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2 Definitions and interpretation Third Party Inspector

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.1 and 1.2 of the Agreement shall apply, mutatis mutandis, to this TOR.

3 Role and functions of the

- 3.1 The role and functions of the Third Party Inspector shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iii) conducting Tests on completion of construction and issuing Completion as set forth in Paragraph 5;
 - (iv) review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (v) review, inspection and monitoring of Termination Requirements as set forth in Paragraph 7;

- (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (viii) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
- (ix) undertaking all other duties and functions in accordance with the Agreement.
- (x) Should be responsible for checking and approvals of bills submitted by developer, based on which payment to developer shall be released.

3.2 The Third Party Inspector shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Development Period

4.1 During the Development Period, the Third Party Inspector shall undertake a detailed review of the Drawings to be furnished by the Developer along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys. The Third Party Inspector shall complete such review and send its comments/observations to the JTDCL and the Developer within 7 (Seven) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

4.2 The Third Party Inspector shall review any modified Drawings or supporting Documents sent to it by the Developer and furnish its comments within 3 (three) days of receiving such Drawings or Documents.

4.3 The Third Party Inspector shall review the Drawings sent to it and furnish its comments thereon to the JTDCL and the Developer within 3 (three) days of receiving such Drawings. The Third Party Inspector shall also review the Safety Report and furnish its comments thereon to the JTDCL within 7 (Seven) days of receiving such report.

4.4 The Third Party Inspector shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Developer and furnish its comments within 7 (Seven) days of receipt thereof.

4.5 Upon reference by the JTDCL, the Third Party Inspector shall review and comment on construction, operation and maintenance of the Project, and furnish its comments within 3(three) days from receipt of such reference from the JTDCL.

5 Construction Period

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Third Party Inspector for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 5.2 The Third Party Inspector shall review the progress report furnished by the Developer after completion each milestone and send its comments thereon to the JTDCL and the Developer within 3 (three) days of receipt of such report.
- 5.3 The Third Party Inspector shall inspect the Construction Works and the Project Facilities once every 15 (fifteen) days, preferably after receipt of the progress report from the Developer, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Third Party Inspector shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Third Party Inspector shall send a copy of its Inspection Report to the JTDCL and the Developer within 3 (three) days of the inspection.
- 5.4 The Third Party Inspector may inspect the Project more than once in 15 (fifteen) if any lapses, defects or deficiencies require such inspections.
- 5.5 In the event that the Developer fails to achieve any of the Project Milestones, the Third Party Inspector shall undertake a review of the progress of construction and identify potential delays, if any. If the Third Party Inspector shall determine that completion of the Project Facilities is not feasible within the time specified in the Agreement, it shall require the Developer to indicate within 7 (seven) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Developer, the Third Party Inspector shall review the same and send its comments to the JTDCL and the Developer forthwith.
- 5.6 If at any time during the Construction Period, the Third Party Inspector determines that the Developer has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the JTDCL forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.7 In the event that the Developer carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Third Party Inspector to inspect such works, and within 3

(three) days of receiving such notice, the Third Party Inspector shall inspect the suspended works and make a report to the JTDCL forthwith, recommending whether or not such suspension may be revoked by the JTDCL.

- 5.8 If suspension of Construction Works is for reasons not attributable to the Developer, the Third Party Inspector shall determine the extension of dates set forth in the Project Completion Schedule, to which the Developer is reasonably entitled, and shall notify the JTDCL and the Developer of the same.
- 5.9 The Third Party Inspector shall carry out, or cause to be carried out, all the Tests and issue a Completion Certificate or Provisional Certificate.
- 5.10 Upon reference from the JTDCL, the Third Party Inspector shall make a fair and reasonable assessment of the costs of providing information, works and services and certify the reasonableness of such costs for payment by the JTDCL to the Developer.
- 5.11 The Third Party Inspector shall aid and advise the Developer in preparing the Maintenance Manual.

6 Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Third Party Inspector for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 6.2 The Third Party Inspector shall review the annual Maintenance Programme furnished by the Developer and send its comments thereon to the JTDCL and the Developer within 7 (seven) days of receipt of the Maintenance Programme.
- 6.3 The Third Party Inspector shall review the quarterly status report furnished by the Developer and send its comments thereon to the JTDCL and the Developer within 7 (seven) days of receipt of such report.
- 6.4 The Third Party Inspector shall inspect the Project once every quarter, preferably after receipt of the quarterly status report from the Developer, but before the 20th (twentieth) day of the last month of each quarter in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Third Party Inspector shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Third Party Inspector shall send a copy of its O&M Inspection Report to the JTDCL and the Developer within 7 (seven) days of the inspection.
- 6.5 The Third Party Inspector may inspect the Project more than once in a

quarter, if any lapses, defects or deficiencies require such inspections.

- 6.6 The Third Party Inspector shall in its O&M Inspection Report specify the tests, if any, that the Developer shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Developer in this behalf.
- 6.7 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule 5, the Third Party Inspector shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.8 The Third Party Inspector shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Developer to the JTDCL for such delay.
- 6.9 The Third Party Inspector shall monitor and review the curing of defects and deficiencies by the Developer.
- 6.10 In the event that the Developer notifies the Third Party Inspector of any modifications that it proposes to make to the Project, the Third Party Inspector shall review the same and send its comments to the JTDCL and the Developer within 7 (seven) days of receiving the proposal.

7 Termination

- 7.1 At any time, not earlier than 30 (thirty) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Third Party Inspector shall, in the presence of a representative of the Developer, inspect the Project for determining compliance by the Developer and, if required, cause tests to be carried out at the Developer's cost for determining such compliance.
- 7.2 The Third Party Inspector shall inspect the Project twice in every 15(fifteen) days during a period of 45 (forty five) days after Termination for determining the liability of the Developer, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Third Party , it shall make a report in reasonable detail and send it forthwith to the JTDCL and the Developer.

8 Determination of costs and time

- 8.1 The Third Party Inspector shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

- 8.2 The Third Party Inspector shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9 Assistance in Dispute resolution

- 9.1 When called upon by either Party in the event of any Dispute, the Third Party Inspector shall mediate and assist the Parties in arriving at an amicable settlement.

In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Third Party Inspector shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10 Other duties and functions

The Third Party Inspector shall perform all other duties and functions specified in the Agreement.

11 Miscellaneous

- 11.1 The Third Party Inspector shall notify its Programme of inspection to the JTDCL and to the Developer, who may, in their discretion, depute their respective representatives to be present during the inspection.

- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Third Party Inspector to the Developer pursuant to this TOR, and a copy of all the test results with comments of the Third Party Inspector thereon shall be furnished by the Third Party Inspector to the JTDCL forthwith.

- 11.3 The Third Party Inspector shall obtain, and the Developer shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Developer to the Third Party Inspector, whereupon the Third Party Inspector shall send one of the copies to the JTDCL along with its comments thereon.

- 11.4 The Third Party Inspector shall retain at least one copy each of all Drawings and Documents received by it, including „as-built“ Drawings, and keep them in its safe custody.

Upon completion of its assignment hereunder, the Third Party Inspector shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the JTDCL or such other person as the JTDCL may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in micro film form or in such other medium as may be acceptable to the JTDCL.